



FACULTY OF LAW  
University of Lund

Magnus Nordanskog

The Legal System of Lebanon:  
From French Influence to Globalisation  
and  
European Community Law

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Supervisor: Professor Michael Bogdan

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# Abstract

In this thesis, the Lebanese legal system is presented using a comparative approach, with emphasis on its French influence and rapprochement to European Community law.

The republic of Lebanon was formally established in 1943, following a French mandate period sanctioned by the League of Nations in 1920. During this period most of the legal institutions and material rules and codes that characterize the Lebanese legal system today were established.

To a great extent, French legal principles and rulings can still be used when arguing before Lebanese courts. Apart from French influence, the legal system also contains remains from Ottoman (ancient Turkish) law and Canon law, as well as the Islamic legal order of *Shari'a* to some extent.

Lebanese civil and commercial law is mainly built up around a number of codes following the tradition of the Roman-German civil law family. The most central of these, the Code of Obligations and Contracts of 1932, can be characterised as an adopted reception of the Napoleon civil code of 1804.

Only the family (or personal status) law is still generally governed and settled by the internal rules of Lebanon's many different religious sects.

The judicial system is basically modelled on the French system, with the exception of the personal status jurisdiction. Some legal institutions are unique for Lebanon, such as the Judicial Council that handles criminal cases concerning national security.

The legal professions are also basically the same as in France, but the particular social and legal environment in which the Lebanese lawyers function, shape the specific framework and content of their respective professions.

The EU and Lebanon are in the process of signing an association agreement, and the subsequent Euro-Mediterranean Partnership will eventually establish a free trade area comprising North African and Middle Eastern countries. Because of this, Lebanon will most likely be pressured to adjust some of its rules and institutions dealing with trade and commercial issues as well as some procedural and constitutional regulations.

From the Ottoman Empire and the French mandate, through the Arab-Israeli conflict, to the devastating civil war, Lebanon will probably now move towards the European peace project and be pressured to build up rules and institutions in conjunction with those of Community law.

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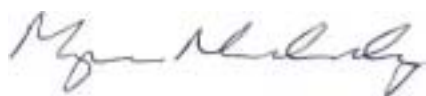
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Magnus Nordanskog

# Abbreviations

A.J.C.L.	American Journal of Comparative Law
AMAL	Lebanese Resistance Battalions (in arabic)
AUB	American University of Beirut
CDR	Council for Development and Reconstruction
CEUE	Centre d'Etudes sur l'Union Européenne
CEDROMA	Centre d'Etudes des Droits du Monde Arabe
C.M.L.R	Common Market Law Review
D.E.A.	Diplôme des Etudes Approfondies
D.E.S.	Diplôme des Etudes Supérieurs
D.E.S.S.	Diplôme des Etudes Supérieurs Spécialisés
EC	European Community (-ies)
ESCWA	Economic and Social Commission for Western Asia
EU	European Union
GATS	General Agreement on Trade in Services
GATT	General Agreement on Trade and Tariffs
GNP	Gross National Product
GSP	Generalised System of Preferences
IBRD	International Bank for Reconstruction and Development
IDA	International Development Agency
IFC	International Finance Corporation
IMF	International Monetary Fund
MEDA	Mesures d'Appuisement
MFN	Most Favoured Nation
NGO	Non-Governmental Organization
OPRSG	Office of the Personal Representative of the UN Secretary General (for Southern Lebanon)
PA	Palestinian Authority
PLO	Palestine Liberation Organization
P.O.E.J.	Proche-Orient, Etudes Juridiques
R.I.D.C.	Revue Internationale de Droit Comparé
R.M.C.U.E.	Revue du Marché Commun et de l'Union Européenne
TRIPs	Trade Related Aspects of Intellectual Property Rights
UN	United Nations
UNDP	United Nations Development Programme
UNHCR	United Nations High Commissioner for Refugees
UNIFIL	United Nations Interim Force in Lebanon
UNRWA	United Nations Relief and Works Agency for Palestinian Refugees in the Near East
USJ	Université Saint-Joseph de Beyrouth
WTO	World Trade Organization



# 1 Introduction

## 1.1 Purpose and goal

To most people in the Western world, Lebanon is probably best known for the civil war of 1975 to 1990. Presence of alleged terrorist organizations such as *Amal* and *Hezbollah*, guerrilla warfare, scary traffic, confessionism or sectarianism might be other characteristics generally ascribed to Lebanon by outsiders. From the Second World War up until the fighting started in 1975, Lebanon was to many people known as “the gateway to the Orient” and its capital Beirut was known as “the Paris of the Middle East”. Despite certain alarming problems present at that time, such as a substantial number of Palestinians seeking refuge in the country, and uprising confessional polarization, Lebanon was the financial centre of the Middle East and the Arab country with the most commercial liaisons with Europe and the rest of the Western world. The civil war naturally presented a major obstacle in sustaining that situation, and since the *Ta'if* Agreement in 1989, which ended the war, the Lebanese government has introduced an aggressive policy of economic reforms. These aim at reconstructing the country, increasing the trade with the outside world and regaining a prominent financial position for Lebanon in the Middle East.

The EC concluded its first trade agreement with Lebanon in 1965. A subsequent co-operation agreement in 1977 gave unilateral freedom of custom on the Common Market for Lebanese industrial and (some) agricultural products. In the early 1990's the EU started giving increased interest to its neighbouring countries around the Mediterranean and the economic and security problems that had started to emerge there. With the threat of an increasing migration to European countries the EU launched the *Barcelona Process* (the Euro-Mediterranean Partnership) in 1995, aiming at expanding and deepening the contacts between the EU and the Mediterranean countries in order to secure peace, stability and welfare in the region. The Process comprises of, among other things, financial aid through the MEDA-programs, and has the ultimate goal of establishing a free trade area of 37 countries from the EU and the Mediterranean by 2010, making it the largest in the world. In this context, the EU and Lebanon recently concluded comprehensive negotiations for an association agreement.

The aim of this thesis is to present the Lebanese legal system using a comparative approach in the above-mentioned context. The previous French influence has been extensive and the current international pressures on Lebanon force the country to adjust to its surroundings, notably the EU, one of its main trading partners. The purpose of the thesis is to investigate the roots, the present state and the future development of the legal system.

The goal is to present a balanced outline of the Lebanese legal system as well as the timely association agreement and future forms of collaboration between Lebanon and the EU, most notably the setting up of the free trade area.

## 1.2 Scope and delimitations

The scope of the thesis is wide, aiming at presenting the legal and judicial system in a comprehensive manner. The focus is put on the aspects of the system that are influenced by the French legal culture. Some contemporary issues concerning the system are presented in order to exemplify or highlight some aspects of the legal system. Finally, the Barcelona Process and its legal implications on Lebanon are discussed.

In a disciplinary fashion, the study mainly focuses on placing the Lebanese legal system within the framework made up by the major legal systems or families in the world. To formulate this in another way, one might say that the study constitutes a *macro* comparison.

When specific aspects of the Lebanese legal system are presented, there has been no ambition to conduct a *micro* comparison *per se*. Since there are no features of the Lebanese legal system that apparently originate from Swedish legal culture – besides the possible future introduction of the institution of *Ombudsman* – there are no natural focal points between the two systems. Therefore, that approach will not be used. The study will instead have its main starting point in French law in those cases where a brief and summary micro comparison has been deemed necessary.

Religious affiliation is an issue of greatest concern in Lebanon, but because of the limited size of this study, this influential factor on the legal system is not investigated in an extensive manner. The first reason for this partial exclusion is that contemporary France and the EU do not attach enough importance to religion in this respect to make a detailed comparison fruitful, or even interesting. The differences are too striking to be further elaborated on. The second reason is that because religious affiliation affects all parts of Lebanese society, this factor is in some way or another generally part of the other factors, especially in the context of studying the legal system with a comparative approach.

## 1.3 Method

### 1.3.1 General background

In the macro part of the thesis the method is mainly *descriptive*. The main characteristics of Lebanese society will be systematically reproduced and a summary description of the major Lebanese fields of law, the judiciary, the most common legal professions as well as a brief outline of some current Lebanese legal issues, will give a lucid presentation of the system. This part is comparative only insofar as an attempt to place the legal system within the different theories on legal families will be conducted.

Some discussion concerning the specifics of the Lebanese legal material evidently has the character of micro *comparison*, even though this is not the overall purpose of the thesis. In a thematic fashion, the utilised methods can be said to establish a *tertium comparationis* between Lebanese, French and Community law in the topical fields of law, making it possible to note common legal characteristics *de lege lata*, and potential legal harmonization or unification measures *de lege ferenda*.

### 1.3.2 The discipline of Comparative Law

The Encyclopædia Britannica defines Comparative Law as the “*examination of comparative legal systems and of the relationships of the law to the social sciences*”.<sup>1</sup> This definition would make it appear as if this field of legal science is easily grasped. This is far from the reality. It has been said that comparative law is “*without borders*” and that the general problems of methodology constitute a great part of the discipline.<sup>2</sup>

Comparative law must be distinguished from private and public international law, legal history, legal ethnology and sociology of law, which at the same time are all neighbouring fields.<sup>3</sup> Since the 1960's, the concept of “*legal culture*” has been used to recapitulate these fields, *inter alia*, in a more manageable fashion. The work of the American legal sociologist Lawrence Friedman has been especially pioneering in this respect.<sup>4</sup>

The comparative approach has several aims, of which knowledge of different solutions to legal problems, adoption or reception of foreign solutions to legal problems, interpretation of national regulations, improving legal education and achieving international unification of law are the most salient.<sup>5</sup>

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<sup>1</sup> See <http://www.britannica.com/eb/article?eu=117543> (visited on 12 July 2001).

<sup>2</sup> See Bogdan, Michael, *Comparative Law*, pp. 17-26.

<sup>3</sup> See Zweigert, K. & Kötz, H., *Introduction to Comparative Law*, pp. 1-12.

<sup>4</sup> See Nelken, David, *Comparing Legal Cultures*, Dartmouth Publishing, Vermont 1997.

<sup>5</sup> See Zweigert, K. & Kötz, H., pp. 13-27 (note 3).

There are many theories on how to divide the different legal systems of the world into families or groups.<sup>6</sup> One usually speaks of three major families today: the civil law family, the common law family and other families. The latter category includes a large number of legal systems, such as some of the former socialist countries and China, tribal systems in Africa and Latin America as well as some systems based on Islamic law. They all have features that cannot easily be submitted under any of the initial two families, but for the sake of clarity and uniformity it can be beneficial to narrow the number of families down. Some legal systems that cannot be exclusively submitted under any of the families usually have some characteristics from at least two of them, and can therefore be characterised as *mixed* (or "hybrid") *legal systems*.<sup>7</sup> The legal system of the EU has been characterised as a "*mega mix*" in this respect.<sup>8</sup>

In the context of increased globalisation and international cooperation, especially in matters regarding trade under the WTO, the historical, political, economic and religious backgrounds to, or contexts of, a nation-state's legal system might, *inter alia*, get a position further down on the agenda when it comes to evaluation and improvement of that individual legal system. Submission to the almighty dollar can easily blur the conceptualisation of the legislator in this context. An attempt to widen the horizons when it comes to presenting a legal system should, therefore, be practiced. That is the essence of the comparative approach in this thesis.

### 1.3.3 The comparison

The methodological problems that have to be encompassed in the study of and comparison between legal systems are extensive and difficult to master. Some initial remarks and explanations must therefore be presented, in order to render the comparative parts of the study legitimate.

The general starting point of the comparative law method is the formulation of a "*mother system*" or "*parent legal family*", to be used as a basic model for the comparison.<sup>9</sup> But since this field of science is still experimental, there is no definitive method.

The pitfalls in the process of legal comparison are numerous and it is easy to wander off in the wrong direction. To make a critical evaluation of what has been discovered in the comparison is one of the major difficulties.<sup>10</sup>

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<sup>6</sup> For a comprehensive overview of different theories on legal families, see Zweigert, K. & Kötz, H., pp. 63-73 (note 3).

<sup>7</sup> For a to the point example of this, see Bogdan, Michael, *The Law of Mauritius and Seychelles - A Study of Two Small Mixed Legal Systems*, Juristförlaget i Lund, Lund 1989.

<sup>8</sup> See Öricü, Attwool & Coyle, *Studies in Legal Systems: Mixed and Mixing*, pp. 297-312.

<sup>9</sup> See de Cruz, Peter, *Comparative Law in a Changing World*, p. 26-28.

<sup>10</sup> See Zweigert, K. & Kötz, H., p. 46 (note 3).

Even if comparative law can be said to be scientific and objective in its theoretical and descriptive form, the same cannot be said about its “*applied*” side; that is, the concluded advises of legal reform based on the findings of the former side. A major problem for the comparative lawyer is to distinguish between “*is*” and “*ought*” in this respect, and it can be questioned whether this is at all possible without falling into natural law.<sup>11</sup>

When establishing the *tertium comparationis*, one can choose between two methods. The first is the “*legislative* (or normative) *comparison*”, in which norms, institutions and acts of legislation are used as the basis for the comparison. The other is the “*problem comparison*”, which focuses on a specific social problem and compares the different legal solutions, whatever the form.<sup>12</sup> However, one has to remember that the *tertium comparationis* is an abstraction and that it is not formed until one masters the *secundum comparatum*, the foreign law subject to the comparison. In order to accomplish this, the comparative lawyer should (ideally) combine academic excellence with current practical knowledge and experience in this respect.<sup>13</sup> Along with globalisation, law students and scholars are subjected to foreign legal systems, for instance through exchanges and internships, while practicing lawyers are becoming less bound by their national origin.<sup>14</sup>

The comparison of this thesis can best be characterised as a normative comparison: in what way and to what extent is the Lebanese legal system influenced by French legal culture and how compatible are the Lebanese norms and institutions with Community law? The comparison focuses on different legal and judicial structures in three different environments.

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<sup>11</sup> See Hill, Jonathan, *Comparative Law, Law Reform and Legal Theory*, Oxford Journal of Legal Studies, Vol. 9, 1989, pp. 102-103.

<sup>12</sup> See Butler, W. & Kudriavtsev V., *Comparative Law and Legal Systems: Historical and Socio-Legal Perspectives*, p. 75.

<sup>13</sup> See Baade, Hans W., *Comparative Law and the Practitioner*, A.J.C.L., Vol. 31, 1983, p. 499.

<sup>14</sup> The Swedish Professor Stig Strömholm has said the following about the current state of Comparative Law in Sweden: “[...] *il est évident, disons-nous, que dans un pays de ce type, le monde ouvert à grandes portes, le flot incessant et croissant d’informations, les voyages des jeunes aujourd’hui globaux, rendent en quelque sorte un comparatisme general et quelquefois peut-être passif et même relâché la matière habituelle de regarder le monde qui nous entoure. Si cette manière de voir a des avantages intellectuels et éthiques considérables – on est très loin du chauvinisme brutal du 19ième siècle et de l’arrogence coloniale qui menaçait trop souvent d’entacher les interpretations des pays “avancés” face aux cultures étrangères – elle n’en risque pas moins de dégénérer en une espèce d’antropologie intellectuelle passivement descriptive qui prive la comparaison de ses ressorts moraux essentiels, qui sont après tout d’un côté la volonté de comprendre, de comprendre vraiment, en profondeur, et d’un autre côté la volonté de se servir de l’ensemble de l’expérience juridique disponible pour arriver aux solutions les plus rationnelles et les plus humaines qu’il soit possible de donner aux innombrables problèmes que le droit, notitia rerum divinarum atque humanarum, doit s’efforcer, en toute humilité et en toute conscience de ses faiblesses, de résoudre.*”, See Strömholm, Stig, *Le droit comparé en Suède au seuil du troisième millenaire*, R.I.D.C., No. 4, 1999, p. 1040.

Since French law has had a substantial influence on the Lebanese legal system overall, the *tertium comparationis* will in this case probably be relatively easy to determine. A difficulty is that Community law is not a national legal system, and therefore not directly comparable.

The Lebanese legal system is presented using different variables and factors. These are, in chronological order: history and geography, political system, economic system, religions, ideologies, demographic factors, legal material or norms, legal institutions and legal professions. These are some of the factors used by Professor *Michael Bogdan* in his lectures on and research in Comparative Law at the University of Lund. Because of the limited size of this study, some of the factors that would have been fruitful to study in more detail had to be excluded or dealt with in connection to other adjacent factors. For instance, as mentioned before, religious affiliation is a major issue of concern in Lebanon, but this factor is not examined in an exhaustive manner on its own merits; instead it is included in most other factors.

The Euro-Mediterranean Partnership is presented mainly by summarising the content of the Barcelona Declaration – the political statement made by the partner states – and by presenting the association agreement. The EU representation in Lebanon is also briefly presented. Since legal issues *per se* are not explicitly included in the Partnership, with the exception of Human Rights (or “Justice and Home Affairs” as it is called in the agreement from the EU Commission’s General Directorate by the same name), the context of this presentation will be the political realities.

## **1.4 Literature and sources**

The material background consists mainly of literature and articles on the concerned legal systems and the political and socio-economic situation. Dissertations dealing with the methodological problems of comparative law have also been used. The use of primary sources, such as codes, statutes, treaties and *travaux préparatoires* have been reduced to a minimum because of the general character of the study. In the historical and political sections some journalistic pieces of work have been referred to since they present the most hands-on and objective studies in that context, especially on the Lebanese civil war.

Most of the literature on the Lebanese legal system is either in French or Arabic. The latter texts have been unavailable to the author and therefore limited the foundation of the study. This shortcoming is compensated by the interviews conducted and the briefings and conferences attended by the author. Nonetheless, it is noteworthy that even though most of the people that were interviewed were helpful and enlightening, the general impression was that they tried to present their information within a Western framework

and avoided going deeper into the more distinguishing, or exotic, aspects of the subject matter.

The negotiations for the association agreement between the EU Commission and Lebanon are set to be concluded at the end of 2001, and because a final draft is not yet publicly available, the agreement between the Commission and Tunisia will be used as a reference. The general disposition of the two agreements is basically the same, and the only things that will differ fundamentally are the annexes to the two agreements.<sup>15</sup>

## 1.5 Previous and ongoing research

The Lebanese legal system has been described and investigated in two major non-Arabic studies, in the 1960's and the 1980's.<sup>16</sup> They both have very ambitious agendas, and are set out to give detailed exposés of the system, the latter in a somewhat thematic fashion. The two studies are starting to become outdated though.

Summary and descriptive presentations of the system can be found in numerous international legal encyclopaedias and law digests. In these one generally only finds the basic facts of the system, and a more in depth analysis can only be achieved by following the usually few references to Lebanese legal literature or mainstream comparative law commentary provided.

Some presentations by local Lebanese jurists have been conducted in English and French.<sup>17</sup> These have the advantage of being hands-on depictions of the system, but might lack the critical objectivity of an unaffected bystander, especially in a country recovering from civil war and certainly in issues of a more legal-political character. However, to find a functioning balance in this respect is a general problem within the field of comparative law.

Educational introductions into legal studies in French or English aimed primarily at Lebanese university students can be very useful for foreign lawyers who want to know more about the legal system in Lebanon.<sup>18</sup> A major introduction to the legal system in French, targeted at the outside

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<sup>15</sup> Interview with *Mr. René Milas*, Commercial Attaché at the EU Delegation in Lebanon, Beirut, 18 June 2001.

<sup>16</sup> See Catala, P. & Gervais A., *Le droit libanais*, 2 vol., Libraire générale de droit et de jurisprudence, Paris 1963, and El-Germayel, A., *The Lebanese Legal System*, 2 vol., International Law Institute, Washington 1985.

<sup>17</sup> See Chibli Mallat, *Yearbook of Middle Eastern and Islamic Law*, Vol. 1-4, 1994-1998.

<sup>18</sup> See Mroue, Hyam, *Introduction à l'étude du droit*, Entreprise Universitaire d'Etude et de Publication, Beirut 2001, El-Hélou Rizk, Marie, *Introduction à l'étude du droit*, Maison Naaman, Jounieh 1995, and Rabah, Ghassan, *Introduction to Jurisprudence*, 2<sup>nd</sup> edition, Beirut 1995.

world, will be conducted at USJ as soon as some results from the current reforms can be noted.<sup>19</sup> The Lebanese Professor *Ibrahim Najjar* completed a comprehensive bibliography of Lebanese Private Law in the summer of 2001. It constitutes an invaluable resource for anybody conducting legal research in Lebanon.<sup>20</sup>

The French and EC legal systems have been investigated extensively within the field of Comparative Law, whereas the Euro-Mediterranean Partnership has mainly been studied within the field of political science and other social sciences. The legal aspects have only been sporadically examined.<sup>21</sup>

The Lebanese rapprochement to the EU and its legal implications is one of the current focal points at the CEUE and to some extent at the CEDROMA at USJ.<sup>22</sup> This is also currently investigated within the EU Commission in Brussels, as well as in Beirut, but the comprehensive legal implications for the national Lebanese legal system are not on top of the agenda.<sup>23</sup>

Even though Comparative Law is a rather young legal discipline, there are a lot of studies on it to be found. Two of the most prominent contemporary scholars within the field are the German Professors *Konrad Zweigert* and *Hein Kötz* at the Max Planck Institute.<sup>24</sup> A great source of information is also the work of the late French comparatist *René David*.<sup>25</sup> For a general introduction into comparative legal research, a comprehensive bibliography has been compiled by the American Library Association.<sup>26</sup>

General studies on the legal development in the Middle East and on Islamic Law, conducted by Western scholars in the middle of the 20<sup>th</sup> Century, still constitute great introductions into the subject.<sup>27</sup>

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<sup>19</sup> Interview with *Dr. Richard Chémali*, Dean of the Faculty of Law and Social Sciences at USJ, Beirut, 5 June 2001. See also sections 2.2.3 and 6 on the reforms.

<sup>20</sup> See Najjar, Ibrahim, *Chroniques de droit privé libanais*, USJ, Beirut 2001.

<sup>21</sup> See for instance Hakura, Fadi S., *The Euro-Mediterranean Policy: The Implications of the Barcelona Declaration*, C.M.L.R., Vol. 34, 1997, pp. 337-366, and Lannon, Erwan, *La déclaration interministerielle de Barcelone, acte fondateur du partenariat euro-méditerranéen*, R.M.C.U.E, No. 398, 1996, pp. 358-368.

<sup>22</sup> See Zakhour, Lina, *Le devenir du Liban face aux avancées inexorables de l'Union européenne*, article in *L'Orient-Le Jour*, 12 March 2001. See also Professor Chibli Mallat's inaugural speech as Director for CEUE, [http://www.usj.edu.lb/ceue/ceuein\\_augurale.htm](http://www.usj.edu.lb/ceue/ceuein_augurale.htm) (visited 7 May 2001).

<sup>23</sup> Interview with *Mr. René Milas*, (note 15).

<sup>24</sup> Zweigert, K. & Kötz, H., *Introduction to Comparative Law*, 3 ed., Clarendon Press, Oxford 1998. Zweigert died in 1996, but Kötz is still working as comparatist.

<sup>25</sup> David, René, *Les grandes systèmes de droit contemporain*, 10 ed., Dalloz, Paris 1992.

<sup>26</sup> See Danner, R.A. & Bernal, M-L. H., *Introduction to Foreign Legal Systems*, Oceana Publications, New York 1994.

<sup>27</sup> See Schacht, Joseph, *An Introduction to Islamic Law*, Clarendon Press, Oxford 1964, Coulson, Noel, J., *A History of Islamic Law*, Edinburgh University Press, Edinburgh 1964 and Liebesny, Herbert J., *The Law of the Near and Middle East – Readings, Cases and Materials*, State University of New York Press, Albany 1975.



## 2 Social context

### 2.1 History and geography

#### 2.1.1 General background

Since Lebanon is a relatively young state, the research on the legal development on its territory focuses mainly on, and usually starts in, the 19<sup>th</sup> and beginning of the 20<sup>th</sup> centuries: the period during which Lebanon started to become an autonomous and sovereign nation state. The following sections will therefore give only a brief introduction to the history of Lebanon.

#### 2.1.2 Ancient times

The Eastern coast of the Mediterranean has been populated since at least 3,400 BC. The Phoenicians established the city of *Byblos*, situated 25 km north of Beirut, around this time, and this fact makes it one of the oldest documented urban settlements in the world.<sup>28</sup> Extensive trade with other territories around the Mediterranean by this time probably raised a need to regulate the many transactions, and the conflicts connected to them. Accordingly, the first signs of a legal system in the region could quite possibly be traced.<sup>29</sup>

Assyrian, Babylonian, Persian and Greek domination followed and in 64 BC the Romans conquered the territory that is today Lebanon.<sup>30</sup> The Eastern Roman Empire in the first centuries AD continued the comprehensive legal tradition from its Western counterpart and at the end of the 4<sup>th</sup> century Beirut emerged as the centre for legal studies in the region.<sup>31</sup> The Roman system peaked with the Justinian *Corpus Juris Civilis* in the year 533, but after half a century or so, the Empire was overrun and the legal system began to fade out.<sup>32</sup>

By the 4<sup>th</sup> century Christianity was established and the territory became a refuge for religious minorities hiding from persecution. In the 7<sup>th</sup> century, in

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<sup>28</sup> See Nantet, J & Maurak, F., *Histoire du Liban*, pp. 21-22.

<sup>29</sup> Within the fields of legal history and jurisprudence the legal system that arose in the nearby *Babylon* circle of culture at the *Euphrate* and *Tigris* rivers around 2,000 BC is normally said to be the first known legal system. See for instance Strahl, Ivar, *Makt och rätt*, p. 13.

<sup>30</sup> Lebanon ("Lebnann" in Arabic) means "white" and refers to the country's multiple snowy mountaintops.

<sup>31</sup> See Collinet, Paul, *L'école de droit de Beyrouth*, p. 34.

<sup>32</sup> See Tamm, Ditlev, *Romersk rätt och europeisk rättsutveckling*, p. 251.

the dawn of an earthquake that destroyed Beirut, a Christian Maronite<sup>33</sup> sect settled in the Lebanese mountains to avoid the Arab Muslims that had started to convert most of the region to Islam.<sup>34</sup> The Shiites settled in the region in the 9<sup>th</sup> century and the Druzes in the 11<sup>th</sup> century. The individual religious groups had a certain amount of autonomy in specific areas, but the many different beliefs made unity for the region as a whole almost impossible.<sup>35</sup> Therefore it is not feasible to talk of a homogeneous Lebanese legal system at the time, but rather of different smaller communities living by their own internal rules.<sup>36</sup> One might find differences in legal culture between the cities and the countryside, though. The cities had a more progressive element to them.<sup>37</sup>

The Crusaders conquered Lebanon at the end of the 11<sup>th</sup> century. Many Maronites in contemporary Lebanon feel a sense of connection to Europe, especially France. This phenomenon can be derived from this time.<sup>38</sup>

At the end of the 13<sup>th</sup> century control of Lebanon was seized by the Egyptian Mamluks. For almost three centuries they sporadically ruled the region, even though they were not able to stabilize and institutionalise its governance.<sup>39</sup>

### 2.1.3 Middle ages

During the Middle Ages the region gradually drove into feudal governance, with the head of the different religious groups acting as lords, or “*emirs*” over the peasants that constituted the communities.<sup>40</sup> One cannot talk of any legal systems per se, but within the Muslim communities, the Islamic legal order of *Shari’a* kept the members in control in varying degree, depending on the level of fundamentalism within the different sects.<sup>41</sup>

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<sup>33</sup> *Maron* was the name of a Roman-Catholic emirate in the 5<sup>th</sup> century.

<sup>34</sup> In the year 571, the prophet *Mohammad* was born.

<sup>35</sup> See Hitti, Philip K., *History of the Arabs*, pp. 231-232.

<sup>36</sup> Interview with *Dr. Antoine A. Khair*, Chamber President of the Council of the State and Professor of Administrative Law at USJ, 16 June 2001.

<sup>37</sup> See Liebnesy, Herbert J., *The Law of the Near & Middle East – Readings, Cases & Materials*, p. 54.

<sup>38</sup> See Nationalencyklopedin, [http://www.ne.se/jsp/search/article.jsp?i\\_art\\_id=240771](http://www.ne.se/jsp/search/article.jsp?i_art_id=240771) (visited 25 May 2001).

<sup>39</sup> See Mansfield, Peter, *A History of the Middle East*, p. 23.

<sup>40</sup> See Khoury, Wagih, *La justice feodale au Liban*, pp. 1-22.

<sup>41</sup> The *Shari’a* is formed by the *Koran* and the *Sunnah*, or habitual modes of thought and action. It is a whole system of social morality, describing how to act according to God’s will. See Mansfield, Peter, *A History of the Middle East*, p. 12. For a comprehensive but yet to the point depiction of this interesting form of legal order, see for instance *The Culture of Islam: Islamic Law, Shari’a* in Vol. 22 of *The New Encyclopædia Britannica*, pp. 31-36, Encyclopædia Britannica Inc., Chicago 1994. See also note 27.

### 2.1.4 Ottoman period

In the 16<sup>th</sup> century the Ottoman Turks conquered the eastern Mediterranean coast and the region became part of the Ottoman Empire. The Ottomans gave the local leaders relative autonomy and two powerful sects eventually emerged: the Muslim Druze and the Maronite Christians. Under Ottoman rule, Lebanon developed economic ties with Europe, notably France, Russia and Britain.<sup>42</sup> Besides political motives, a reason for this development was the need to reform the chaotic financial conditions in the Ottoman Empire.<sup>43</sup>

The Ottomans adopted the French commercial code in 1850, the first reception of a complete code by an independent country.<sup>44</sup> The legal traditions of the Turks were initially not able to break through the communities maintained by the feudal lords. Eventually, however, during the 18<sup>th</sup> and 19<sup>th</sup> centuries, the Lebanese territory attempted to formally introduce the rule of law. This endeavour was in conjunction with the general Lebanese rapprochement towards Europe.<sup>45</sup>

In 1860 a bloody civil war between the Maronites and the Druze ended with British and French intervention.<sup>46</sup> The two countries pressured the Ottomans into establishing a Christian-dominated administration for Lebanon, the *Règlement organique*, which lasted until World War I.<sup>47</sup>

The Ottomans retained the power to nominate the Governor for Lebanon, the *Moutaçarrif*.<sup>48</sup> He had full executive powers, but was assisted by the so-called Administrative Council consisting of representatives of the Lebanese sects. Lebanon maintained its own judiciary and police force, the prior feudal privileges were abolished and the inhabitants of Lebanon were declared to be equal before the law.<sup>49</sup>

During this time some French inspired legislation was at first introduced, but in 1876 the Ottoman *Majelle* was put into force. This was a comprehensive piece of legislation and the first of its kind in the Islamic culture, with its French framework and Islamic traditions. It covered virtually the whole area of civil law, with the exception of a general theory

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<sup>42</sup> See Salibi, Kamal S., *A House of Many Mansions*, p. 152.

<sup>43</sup> See Liebnesy, Herbert J., *The Law of the Near & Middle East – Readings, Cases & Materials*, p. 54.

<sup>44</sup> See Hill, Enid, *Comparative and Historical Study of Modern Middle Eastern Law*, A.J.C.L., Vol. 26, 1978, pp. 286.

<sup>45</sup> Interview with *Dr. Simon Karam*, Attorney at Law and former Ambassador for Lebanon to the US, 4 June 2001.

<sup>46</sup> See Hitti, Philip, K., *History of the Arabs*, pp. 734-736.

<sup>47</sup> See Salibi, Kamal S., *The Modern History of Lebanon*, pp. 106-111.

<sup>48</sup> See Khair, Antoine A., *Le Moutaçarrif du Mont-Liban*, p. 5.

<sup>49</sup> See Habachy, Saba, *The Republican Institutions of Lebanon: Its Constitution*, A.J.C.L., Vol. 13, 1964, pp. 596-597.

of obligations.<sup>50</sup> A great deal of effort by the drafters was given to make sure that the *Majelle* was to be inspired by Islamic legal traditions, both regarding rules and legal categories.<sup>51</sup>

The Ottomans also introduced a Constitution in 1876, which included Lebanon, but it was suspended two years later. With the developments in the international arena, the Ottomans' conflict with Russia and the Berlin conference, the Constitution was not considered functional and it started to create internal dysfunctions. The failure of the Constitution was the start of the fall of the Ottoman Empire.<sup>52</sup>

### 2.1.5 French mandate

After World War I, the area that today comprises Lebanon and Syria became a French mandate under the League of Nations. During the 1920's the French combined the Muslim-inhabited fertile coastal plain and inland Bekka-valley with the Christian-dominated mountains to create the borders of "Greater Lebanon".<sup>53</sup> Even though this endeavour increased the population it also divided and weakened Lebanon.<sup>54</sup>

From 1922 onwards, the territory was governed by an *Administrative Commission* consisting of 15 members appointed by the French *Governor of Greater Lebanon*. He enacted two decrees on the government of the territory, which were in effect until 1926, after which a French-inspired Constitution came into effect.<sup>55</sup>

Several French-influenced institutions were established and legal norms resembling the French started to be introduced. The Property Law of 1930 and the Code of Obligations and Contracts of 1932 together formed a Lebanese Civil Code, which abolished the provisions of the *Majelle*. Especially within the Muslim sects, but to some extent in the society as a whole, the *Shari'a* still influenced the everyday life, even though it started to lose formal influence on the official Lebanese legislation. This is a phenomenon that according to some people is generally still valid in contemporary Lebanon.<sup>56</sup>

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<sup>50</sup> See Fawar, Dorian F., *The Legal System of Lebanon*, pp. 5.190.10-5.190.11.

<sup>51</sup> See Mallat, Chibli, *Commercial Law in the Middle East: Between Classical Transactions and Modern Business*, A.J.C.L., Vol. 48, 2000, p. 101.

<sup>52</sup> See Rabbath, Edmond, *La formation historique du Liban politique et constitutionnel*, pp. 43-46.

<sup>53</sup> See Hammond, P. & Alexander, S., *Political Dynamics in the Middle East*, p. 33. See also the map of Lebanon in Supplement A on page 75.

<sup>54</sup> See Lewis, Bernard, *The Multiple Identities of the Middle East*, pp. 102-103.

<sup>55</sup> See Sayegh, Daoud, *L'exercice de la fonction législative au Liban – approche juridico-politique*, p. XXIX.

<sup>56</sup> Interview with *Dr. Simon Karam*, 4 June 2001 (note 45). Dr. Richard Chémali does however not agree and maintain that the *Shari'a* only influences the Personal Status law (note 19). This is a controversial area, and the opinion probably varies with confessional affiliation.

Greater Lebanon remained under French mandate until 1943, when the independent (or at least formally sovereign) Republic of Lebanon was proclaimed.<sup>57</sup> An unwritten agreement between the Christians and the Muslims, *the National Pact*, was accorded the same year. It stipulated that the different religious sects were to share power by dividing the highest political positions.<sup>58</sup> Nonetheless, the pact was favourable to the Christians and since the Muslims comprised around 50 percent of the population they felt deprived of the power.<sup>59</sup>

### 2.1.6 Palestinian refugees

Starting in 1948, after the establishment of Israel, many Palestinians whom had been forced from their homes found a refuge in Lebanon. They continued the conflict with their alleged occupier Israel by attacking the country from Lebanese bases.<sup>60</sup>

In 1958 the situation of Muslims feeling a sense of deprivation of power and Palestinian guerrilla warfare became intolerable and a Muslim rebellion broke out, which was eventually ended by American intervention.<sup>61</sup> With the Cairo-agreement in 1969, the Lebanese government gave the PLO almost a *carte blanche* in the refugee camps scattered around Lebanon and at the border to Israel; in return, the PLO promised not to intervene in Lebanese politics.

By this time the different sects had built up, or were in the process of building up, well equipped private armies to protect themselves from the other sects.<sup>62</sup> The Lebanese failed to restrain the Palestinians and when Israel started to increase the raids over the border in the ensuing years, militant Maronites started attacking the (also militant) Palestinians within Lebanon.<sup>63</sup>

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<sup>57</sup> See Rabbath, Edmond, *La formation historique du Liban politique et constitutionnel*, pp. 432-468.

<sup>58</sup> For more information on the National Pact, see Messarra, Antoine Nasri, *Constitution libanaise et pacte national en droit constitutionnel comparé – cadre juridique pour l'analyse d'une consociation intercommunautaire au Proche-Orient*, Gesellschaft für rechtvergleichung, Bonn 1983 and *Le pacte libanais – le message d'universalité et ses contraintes*?, Librairie Orientale, Beirut 1997.

<sup>59</sup> See Cobban, Helena, *The Making of Modern Lebanon*, pp. 73-75.

<sup>60</sup> See Cobban, Helena, *The Palestinian Liberation Organization – People, Power and Politics*, pp. 21-35.

<sup>61</sup> See Agwani, M.S., *The Lebanese Crisis 1958: A Documentary Study*, pp. 228-239.

<sup>62</sup> See Friedman, Thomas L., *From Beirut to Jerusalem*, p. 13.

<sup>63</sup> See Fisk, Robert, *Pity the Nation – Lebanon at War*, pp. 74-75.

### 2.1.7 Civil war

In 1975 full scale civil war broke out when a bus with 20 Palestinians was attacked by Maronites in central Beirut in retaliation for a conflict that had arose in the southern costal city of Saidon between Muslim fishermen, supported by Palestinians, and the Christian-dominated Lebanese Army.<sup>64</sup>

By this time the Muslims had, as noted before, become the most numerous religious community in Lebanon and sought increased political power. The Maronites, on the other hand, wanted to preserve political dominance and fought the Muslims and the PLO.<sup>65</sup>

In the beginning, the Muslims were winning the war, and in 1976, Syria sent troops into Lebanon in order to avoid Israeli invasion were the PLO to succeed in taking control. By this time, however, the Maronites had both Israeli and Syrian backing and soon *they* started to win the war. Beirut was partioned along the “Green line” dividing the city into a western Muslim area and an eastern Christian area.<sup>66</sup> The fighting continued.

Israel invaded southern Lebanon in 1978 in an attempt to end PLO raids originating from there. UN forces soon replaced Israel in the area, but initially these could not control the situation, and the Palestinians soon returned. In 1982 Israel invaded Lebanon again, this time occupying territory all the way to Beirut, finally forcing the PLO out of the country. The Israelis assisted in the accession of a Maronite president, but he was assassinated in 1983, upon which the Maronites committed the infamous massacre of hundreds of Palestinians in the refugee camps of *Shatila* and *Sabra* in Beirut.<sup>67</sup> The Israelis remained in a security zone in southern Lebanon.<sup>68</sup>

The fighting continued throughout the decade, as the different religious sects and the Syrian forces could not decide on a principle for dividing the power over Lebanon. In 1989 most of the Parliamentarians elected in the last national election in 1972 met in *Ta'if* in Saudi Arabia and accepted a constitutional compromise that divided the power between the Muslims and Christians equally.<sup>69</sup> Syrian forces remained in Lebanon though.<sup>70</sup> In 1990 the war finally ended and the militias were disarmed.

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<sup>64</sup> See Gordon, David C., *The Republic of Lebanon: Nation in Jopardy*, pp. 105-106.

<sup>65</sup> See Gilmour, David, *Lebanon: The Fractured Country*, pp. 98-101.

<sup>66</sup> See Friedman, Thomas L., *From Beirut to Jerusalem*, pp. 216-217. See also the map of Beirut in Supplement A on page 75.

<sup>67</sup> See Cobban, Helena, *The Making of Modern Lebanon*, pp. 187-190. See also section 6.5 on the recent developments concerning the indictment of Israeli Prime Minister Ariel Sharon for responsibility in the massacre.

<sup>68</sup> The UN Security Council Resolution 425 calls for a total Israeli withdrawal from Lebanon.

<sup>69</sup> The Agreement is officially known as “*Document d’Etante Nationale*” (D.E.N.).

<sup>70</sup> According to the *Ta'if* Agreement, the Syrian military presence in Lebanon was to be gradually diminished until 1992. Syrian troops have been posted in Lebanon up until

Between 1975 and 1990 as many as 150,000 Lebanese died while approximately one quarter of the population fled abroad, and hundreds of thousands were forced to move to another part of the country.<sup>71</sup> The legal system and the rule of law almost collapsed along with the rest of society. Nonetheless, a sense of justice could be traced sporadically during the cease-fire periods, something that helped the legal system to merely be put on hold.<sup>72</sup> According to the current Director General of the Ministry of Justice, the courts were the only institutional bodies that truly functioned during the war.<sup>73</sup> On the other hand, according to a Professor of Constitutional Law, the *Palais de Justice* was almost closed down during the war; sometimes for months on end because of shelling. Instead, the militias set up their own tribunals, but they were mainly used as a means to justify the multiple executions during the war.<sup>74</sup>

The Lebanese government issued several special laws during the war, especially concerning the relationship between employer and employees and between landlord and tenants, as well as concerning payment of taxes.<sup>75</sup> Because of the fundamentalist polarization during the war, a tendency towards an opinion that the legal system should change its character from French-influenced to a more local character could be traced, even though this was never realized because of the fighting.<sup>76</sup>

### 2.1.8 The 1990's

The 1990's were characterized mostly by reconciliation and reconstruction. Lebanon is today considered a development country. A public institution, CDR, has been created to administer the reconstruction of the country. The EU-Commission and numerous UN-bodies (for instance ESCWA and UNDP), as well as individual developed states, have initiated several development and co-operation projects. These focus mainly on the economy and infrastructure with judicial aspects kept in the background.<sup>77</sup> The legal system was gradually reinstalled and a new French-inspired institution was set up, known as the Constitutional Council.<sup>78</sup>

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recently though. See Logan, Joseph, *Syrian Troops Reportedly to Leave Beirut in 48 Hours*, article published by Reuters, 17 June 2001.

<sup>71</sup> See Encyclopædia Britannica, <http://www.britannica.com/eb/article?eu=114873&tocid=0&query=lebanon> (visited 21 May 2001).

<sup>72</sup> See Mallat, Chibli, *Yearbook of Middle Eastern and Islamic Law*, Vol. 1 1994, p. 205.

<sup>73</sup> Interview with *Judge Omar Al Natour*, Director General of the Lebanese Ministry of Justice, 15 June 2001.

<sup>74</sup> Interview with *Dr. Antoine A. Khair*, 18 June 2001 (note 36).

<sup>75</sup> See Kawar, Dorian F., *The Legal System of Lebanon*, p. 5.190.14.

<sup>76</sup> Interview with *Dr. Simon Karam*, 4 June 2001 (note 45).

<sup>77</sup> See Assaf, Georges, *Le rôle émergent de la justice dans la reconstruction de l'Etat de droit: le cas du Liban d'après-guerre*, P.O.E.J., Nr. 52-53, 1999/2000, p. 18.

<sup>78</sup> See section 4.1.

In 1991, a treaty of friendship was accorded between Lebanon and Syria, stipulating that the two countries were to co-ordinate foreign policy and military affairs.

In 1996, substantial Israeli attacks on the Israeli-resistant Shiite group *Hezbollah* ("Party of God", supported by Iran), and its positions all the way up to Beirut, were instigated under the code-name "Operation Grapes of Wrath". In May 2000 Israel finally performed a total withdrawal from southern Lebanon. Pressure from Shiite groups, predominantly *Hezbollah*, has been one explanation for the sudden departure; internal political pressures in Israel is another.<sup>79</sup>

Syria still influences most major political decisions taken in Lebanon, but since the Israeli withdrawal, Syria's military presence in Lebanon has been more openly questioned. The three countries are still fighting over territory in *Golan* and *Sheeba*.

There are approximately 130,000 landmines or unexploded ordinances in southern Lebanon. A recent Lebanese initiative, with international support, calls for them to be cleared within four years.<sup>80</sup> The UN Peace Keeping Force, UNIFIL, which has been posted in southern Lebanon since 1978 will be reduced to about half of its present size in accordance with a UN Security Council decision last May.<sup>81</sup>

The Minister of State for Administrative Reform estimates (or hopes) that Lebanon will re-emerge as a prosperous nation by the year 2010, a date which coincides with the envisaged date for the *mise en place* of the Euro-Mediterranean free trade area.<sup>82</sup>

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<sup>79</sup> Israel argues that they have fulfilled the provisions of UN Security Council Resolution 425, whereas Lebanon claims that Israel is still occupying certain areas, notably the Sheeba Farms near Golan.

<sup>80</sup> Statement by OPRSG for southern Lebanon at the "International High Level Work-Shop on Landmines in Lebanon", 20 May 2001.

<sup>81</sup> Interview with Mr. John Bell, Deputy at OPRSG for southern Lebanon, Beirut 31 May 2001. UNIFIL will be reduced to about 2500 troops.

<sup>82</sup> In its annual report of 1997/98, the Ministry states the following under the heading "The Vision": "By the year 2010, Lebanon, with its rich diversity, will have built on that resource in the promotion of its national identity. It will have regained its standing in the region and abroad in the pursuit of peace, social development and economic prosperity. It will be a civil society respectful of the rule of law, formal and informal, promoting equality of opportunity and environmentally conscious. It will be served by a dynamic and prosperous private sector and a renewed public administration considerably less consuming of human and material resources and reflective of the Lebanese society and its aspirations. It will have become a modern Public Administration, outward looking and open to the world. Its modernity will have been acquired by reaching into its historical and cultural roots." See Republic of Lebanon, "Annual Report 1997-1998 of the Office of the Ministry of State for Administrative Reform".



## 2.2 Systems and ideologies

### 2.2.1 General background

Being in essence a melting pot of different confessions, cultures and nationalities, Lebanon is very difficult to describe in terms of systems and ideologies. The brief approach to the issues that are presented in this section can – at best – be characterised as rudimentary. However, in order to gain a correct knowledge of the Lebanese legal and judicial system, it is essential to have a basic understanding of the framework of systems and ideologies in place. To fully accomplish this is probably impossible, even for the Lebanese, and for a foreigner to even grasp a basic understanding one would probably have to live and work in the country for at least ten years.

### 2.2.2 Political system

The best words to use in order to describe the political system in Lebanon are “confessionalism”, “sectarianism” or “consociational democracy”. Essentially they all refer to the society composed in such a way that the different religious communities or sects within the society are guaranteed direct representation in its governance.<sup>83</sup>

Another characteristic of the Lebanese society in this respect is “*zuama clientelism*”: the promotion of the interests of a particular sect. Clientelism is probably more a natural part of society in Lebanon than in most other countries. This system is derived from feudal times, when the lord allowed peasants and their families to use the land in exchange for loyalty. In modern time, this social system has been transformed into a political system. The lord has become a political leader, or “*zaim*” and the peasants have become his supporting voters. Instead of land, favours are exchanged for electoral loyalty.<sup>84</sup>

The Constitution, introduced by the French in 1926<sup>85</sup>, stipulates that Lebanon is to have three dominant political institutions: a President, a

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<sup>83</sup> Picard, Elizabeth, *Is Consociational Democracy Reformable?*, Lecture at the conference “*The Lebanese System: A Critical Reassessment*”, 18 May 2001 at AUB in Beirut.

<sup>84</sup> See Library of the US Congress Web Site, [http://lcweb2.loc.gov/cgi-bin/query/D?cstdy:2:./temp/~frd\\_AYXq:](http://lcweb2.loc.gov/cgi-bin/query/D?cstdy:2:./temp/~frd_AYXq:) (visited 25 May 2000). Robert Fisk, *The Times* correspondent in Beirut during the Civil War, estimates that the average Westerner would identify the system as mafiosi, *Pity the Nation – Lebanon at War*, p. 75.

<sup>85</sup> See section 3.2.2 and Supplement B on page 78.

Parliament (or Chamber of Deputies), headed by a Speaker and a Government (or Council of Ministers), headed by a Prime Minister.<sup>86</sup> The government cabinet is formed in such a way that the sectarian balance is secured with the National Pact calling for, in accordance with the principle of political division between the sects, a Maronite President, a Sunni Prime Minister and a Shiite Speaker of Parliament.<sup>87</sup> Together, the three of them constitute the “leadership troika”, with the government and the President functioning together in what has been characterised as “dual executive power”.<sup>88</sup>

The National Pact was originally unwritten, but constitutional revisions in the 1990’s codified most of its provisions. The election system is built up around a four-year term with universal adult suffrage to the seats in the Parliament. According to the *Ta’if* agreement the seats are to be divided equally between Christian and Muslim sects. The Parliament then elects a President and a Prime Minister. The results of the most recent elections have been the object of some interesting lawsuits.<sup>89</sup>

Because Lebanon is characterised by sectarianism, political parties are difficult to define. During the civil war the “parties” transformed into militias and a new type of leader emerged.<sup>90</sup> The speaker of Parliament, *Nabih Berri*, has been the leader of the Shiite group *Amal* for almost two decades.

With the exclusion of Israel, one can argue that Lebanon is the democratic exception in the Middle East. Most of the neighbouring countries are ruled by authoritarian regimes with one single leader. In these countries civil society traditionally has a marginalized role to play, if the ruler does not already forbid it. NGO’s and labour unions are therefore very rare, along with an organised system of independent attorneys.

However, this is not the case in Lebanon, wherein civil society is relatively large, lasting and well organised.<sup>91</sup> Nonetheless, the political climate in

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<sup>86</sup> Art. 16, 17 and 49 of the Constitution.

<sup>87</sup> The Lebanese Professor Antoine Nasri Messara said the following in 1983: “*Les aménagements consociationnels visent à la coexistence pacifique des différences. [...] Les libanais sont condamnés à la tolérance intercommunautaire. C’est dire que la tolérance mutuelle implique une pensée politique réaliste consciente de la nature et de l’importance des rapports de force dans la société politique, ainsi que des leçons de l’histoire*”. See Messarra, Antoine Nasri, “*Le modèle politique libanais et sa survie*”, p. 496. This kind of ideal, almost prophetic, submission to the consociational structure of Lebanese society was very common among the politically and legally initiated people this author met in Lebanon. This passage is very striking since it was published in the midst of the Lebanese civil war.

<sup>88</sup> See Issa-El-Khoury, Anthony E., *Le président de la république en droit constitutionnel libanais et français comparé*, p. 10.

<sup>89</sup> See section 6.1.2.

<sup>90</sup> El Khazen, Farid, *Political Parties in Post-war Lebanon*, Lecture at the conference “*The Lebanese System: A Critical Reassessment*”, 19 May 2001 at AUB in Beirut. See also the table of political parties in Supplement A on page 72.

<sup>91</sup> A current example of this is the lobby against the Death Penalty. See section 6.6.3.

which these organisations have to function is very different from Western societies, because of the sectarianism and the *zuama clientelism*.

### 2.2.3 Economic system

Since the end of the civil war, the Lebanese government, headed by the Sunni billionaire *Rafik Hariri*<sup>92</sup>, has introduced a policy of aggressive economic reforms to kick-start the economy in order to reconstruct the country. The results were initially promising, but today Lebanon has a deficit of approximately four billion dollars, growth is non-existent and the rate of unemployment is over 10 per cent.<sup>93</sup>

After the establishment of Lebanon as an independent republic, the growth of the financial sector initially flourished and with the emergence of oil states in the area, Lebanon almost automatically became the financial middleman and translator for oil exports to the Western world. The freedom and openness, as well as the outward orientation, of the Lebanese economic market-based system somewhat explain this development.<sup>94</sup> During the early 1970's, the Lebanese economy was described as a "wonder" in renowned economic research circles<sup>95</sup>. Initially, the civil war did not present any major obstacles in sustaining the situation, but as the war progressed and fighting increased, the banks and financial institutes were unable to deliver the same level of service as before. The oil states soon began to interact with the West themselves and built up financial institutions of their own and consequently, the major basis for the Lebanese economy disappeared, making the post-war reconstruction even more difficult.

The World bank (IBRD, IDA and IFC) and IMF are presently monitoring the severe economic situation gripping the country, and have developed a rescue plan to be introduced if the current reforms presented by the government do not deliver the desired results. The major ingredients of the current governmental reform plan consist of cleaning up the finances, especially through cutbacks in governmental institutions and privatisation of state-owned companies. The legal framework is also to be revised as it is seen to slow down the private sector, which consists mainly of agriculture

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<sup>92</sup> Hariri has been Prime Minister for two periods since the 1992 elections. In the 1998 elections he lost to *Selim Hoss*, but he regained the position in the 2000 elections.

<sup>93</sup> For Palestinians the rate of unemployment is very high, more than 50 per cent.

<sup>94</sup> See Gates, Carolyn L., *The Merchant Republic of Lebanon: Rise of an Open Economy*, pp. 12-34.

<sup>95</sup> Shehadi, Nadim, *Michel Chiha and the Lebanese Political System*, Lecture at the conference "The Lebanese System: A Critical Reassessment", 18-19 May 2001 at AUB in Beirut.

(mostly wine producers), retail sales and service providing<sup>96</sup>. Industrial manufacturing is not that common in Lebanon.<sup>97</sup>

The national currency is the Lebanese Pound (*Livre Libanais, L.L.*). During the civil war the inflation was exceptional, and today the government maintains a policy of keeping its value fixed in relation to the dollar. A major part of the financial budget is spent on this. 1 USD is worth 1,500 L.L. and American and Lebanese banknotes are used side by side in everyday trading.

## 2.2.4 Religions

Religion is a matter of great importance in Lebanon, even though it is not the confessional conviction *per se* that is of direct interest in this context (since personal status is the only field of law directly dictated by confessional belonging, the potential general influence of *Shari'a* put aside), but rather the *sectarian* belonging.<sup>98</sup> The two dominant religions are Islam and Christianity, with numerous sub-groups within both of them. A small Jewish community in Lebanon also exists, but with no real practical influence. A total number of 18 sects are officially accepted and included in the political sphere.<sup>99</sup>

## 2.2.5 Ideologies

With regard to political ideologies, it would be tempting to try to place the dominant ideologies on a scale from right to left (conservative-liberal-socialist), placing the Christian sects to the right and the Muslim sects to the left. This is a simplification that needs some explanation. The sects are generally defined by religious confession, but this does not exclude political ideology, especially in the case of the Muslim sects where separation between the two is usually non-existent.<sup>100</sup> Some political parties have

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<sup>96</sup> Briefing by the advisor to the Minister of Finance, *Dr. Jihad Azuor*, 27 March 2001. See also in section 6.4 on contemporary legal issues.

<sup>97</sup> See Export Promotion Council, "Lebanese Exporters 1999-2000" at [www.ali.org.lb](http://www.ali.org.lb).

<sup>98</sup> For recent historical depictions of the sectarian structure of Lebanese society, see Makdisi, Ussama, *The Culture of Secterianism - Community, History and Violence in Nineteenth-Century Ottoman Lebanon*, University of California Press, Berkeley 2000, and Dagher, Caroline H., *Bring Down the Walls: Lebanon's Post-War Challenge*, St. Martins Press, New York 2000.

<sup>99</sup> See table of religious minorities/sects in Supplement A on page 76.

<sup>100</sup> The Lebanese professor Edmond Rabbath said the following in 1973, before the civil war: "Le régime communautaire se caractérise par la coexistence sur le même territoire, sous le signe d'une religion ou d'une doctrine religieuse, de divers groupements ou Communautés, qui se trouvent, de ce fait, gouvernées par leurs autorités respectives, régies par leur institutions organiques et soumises à des juridictions autonomes, formées de membres appartenant à leurs hiérarchies religieuses, auxquelles l'État a reconnu la compétence d'appliquer leurs lois et coutumes, et même de dire le droit, en des matières relevant du statut personnel, entendu en son acception la plus large, embrassant l'entier réseau de la vie familiale et spirituelle. De ce particularisme ont surgi des mentalités

supporters from different sects, despite the majority of the parties almost exclusively recruiting from within the dominating sect.<sup>101</sup> The Druze sect, for example, is dominated by the Socialist Progressive Party, a leftist reformist party ideologically linked to European social democratic parties.<sup>102</sup>

## 2.3 Demographic and other factors

### 2.3.1 General background

Approximately one third of Lebanon's three million inhabitants live in the Beirut governorate, which makes the area around the capital very densely populated compared to the countryside.<sup>103</sup> Infrastructure, however, is starting to reach an acceptable level. The central parts of Beirut are rebuilt after the war, most roads are driveable and a dual-carriage highway between Beirut and Damascus is being constructed. Telephone coverage is almost total and cellular phones are common. However, the public electrical company cannot fulfil the demand and electrical shortages are very common.

Lebanon is an Arab country, organically part of the *Machrek* and the MENA-region (Middle East and North Africa). The French conducted the most recent census in the year 1932, and this census constituted for a long time the foundation of the sectarian division of power.<sup>104</sup> The Muslims argue that this division should change in favour for them since they today constitute the largest group, but fear of losing influence among Christian groups has halted most attempts to conduct a new census.<sup>105</sup>

The degree of literacy is very high for the Middle East, at around 90 per cent. The school system is relatively assured and accessible to most

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*congénitales, des mœurs hétérogènes, des tendances politiques, qui ne manquent guère de s'exprimer dans la vie publique par l'apparition de fractions, gravitant autour de leaders antagonistes – autant de marques distinctives, dont les manifestations sont continuellement visibles dans chacune des Communautés libanais d'aujourd'hui.*". See Rabbath, Edmond, *La formation historique du Liban politique et constitutionnel*, p. 57.

<sup>101</sup> El Khazen, Farid, *Political Parties in Post-war Lebanon*, Lecture at the conference "The Lebanese System: A Critical Reassessment", 18-19 May 2001 at AUB in Beirut.

<sup>102</sup> For a comprehensive background on the political parties in Lebanon, see Suleiman, Michael W., *Political Parties in Lebanon – The Challenge of a Fragmented Political Culture*, pp. xv-xxiii.

<sup>103</sup> See Encyclopædia Britannica, <http://www.britannica.com/eb/article?eu=114873&tocid=0&query=lebanon> (visited 21 May 2001).

<sup>104</sup> For a comprehensive depiction of the census, see Rondot, Pierre, *Les institutions politique du Liban*, pp. 28-29.

<sup>105</sup> Around 55-60 per cent of the Lebanese population belongs to a Muslim sect.

Lebanese, but a major problem is that well educated young people leave the country in large numbers, giving the country a huge intellectual deficit.<sup>106</sup>

### 2.3.2 Social classes

The social classes in Lebanon are not easily defined, aside from the fact that a large majority of the population is poor and a small minority is very rich. Traditionally, or at least since the French mandate, the Maronites have maintained a leading role in society, and are still considered (at least by themselves) as some sort of Lebanese patron. The Maronites tend to be better educated and wealthier than other segments of Lebanese society.<sup>107</sup> Between 1943 and 1964, the country had three Maronite presidents who created a “quasi-authoritarian” leadership and made sure that the most important public posts, notably the commander-in-chief of the army, the higher positions in the judiciary and the heads of the civil and military intelligence agencies were handed to Maronites. Even though the Maronite dominance on these positions has come to an end since, the elite officials are still to a large extent Maronites.<sup>108</sup>

### 2.3.3 Foreign nationals in Lebanon

Between 1948 and 1969, Palestinian refugees entered the country in large numbers. Even though about 60 per cent of them have been integrated into society, many remain in refugee camps with bad living conditions.<sup>109</sup> The total number of refugees varies depending on the political affiliation of the source, with estimates varying between 150,000 and 380,000.<sup>110</sup> The Palestinians in the camps are not allowed to work in certain professions and their right to construct or even improve their houses (or in most cases, shelters) as well as their right to have possessions is restricted.<sup>111</sup> The main reason for this situation is that the Lebanese authorities consider the refugee problem a responsibility for the international community and adhere to the right-of-return policy for Palestinians. The international community, on the

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<sup>106</sup> See Noueihed, Lin, *People, Lebanon's Most Valuable Export*, article published by Reuters News Service, 6 May 2001.

<sup>107</sup> See Karlsson, Ingmar, *Korset och halvmånen*, p. 109. A large number of the Maronites has French as first language, and many of them are educated in France or in French schools in Lebanon.

<sup>108</sup> See Salamé, Ghassan (ed.), *Democracy without Democrats? – The Renewal of Politics in the Muslim World*, pp. 88-89.

<sup>109</sup> See Andersson, Marianne (among others), *Israel hånar Bernadottes minne*, article in Svenska Dagbladet, 21 March 2001.

<sup>110</sup> For official UNRWA statistics, see <http://www.un.org/unrwa/pr/pdf/uif-dec00.pdf> (visited on 20 August 2001).

<sup>111</sup> See Aasheim, Petter, *The Palestinian Refugees and the Right to Work*, Graduate Thesis, Faculty of Law, University of Lund, 2000, pp. 57-58.

other hand, claims that the Palestinians should be integrated into Lebanese society (as has been done in Syria and Jordan).<sup>112</sup>

There are approximately one million Syrians living and working in Lebanon. Even though most of them do not have working permits, the Lebanese authorities silently accept them; one of the apparent reasons for this being the Syrian influence over Lebanese decision making. They have generally come to work in low-wage professions (such as construction and agriculture) and send most of their income back to their families in Syria. They normally live in low standard facilities or areas, usually comparable to the refugee camps.<sup>113</sup>

A lot of Philippine and Sri Lankan women work in Lebanon, almost solely as housemaids (and in some cases as prostitutes). One possible reason for this is the sense of liberation that most of them feel in Lebanon, compared to their countries of origin (and therefore feel lucky to have a somewhat “free” job)<sup>114</sup>, combined with the fact that few Lebanese want to work in what is perceived as demeaning labour under other Lebanese, especially if the employer belongs to another sect.<sup>115</sup>

#### 2.3.4 Gender equality

Traditional gender roles are generally strong within the Lebanese society, even in the most Western influenced sects. Only one out of four women work outside the home.<sup>116</sup> The man is usually considered the head of the family and patriarchal structures exist in almost all fields of society. According to the Director of the Human Rights institute at the Beirut Bar Association, the general opinion (among men as well as most women) is that women are considered not able to handle issues of national security. They are therefore, at best, under-represented in the public institutions. For instance there are no women in the Government and only four out of 128 parliamentarians and one out of 27 governors are female. Approximately 30 percent of the judges are female. The situation in civil society is different. Among medical doctors, attorneys and engineers women are well represented, if not yet equally proportionate.<sup>117</sup>

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<sup>112</sup> Interview with *Dr. George Assaf*, Attorney at Law and Director of the Human Rights institute of the Beirut Bar Association, Beirut, 26 May 2001.

<sup>113</sup> See Young, Michael, *Migrant Workers in Lebanon – Working Conditions, Problems, Prospects*, pp. 11-12.

<sup>114</sup> Interview with *Dr. George Assaf*, 26 May 2001 (note 112).

<sup>115</sup> See Hamaoui, C. & Palamoudian, S., *At home in Beirut – A Practical Guide to living in the Lebanese Capital*, p. 51.

<sup>116</sup> Abou Lahoud, Carine, *Une Libanaise active pour quatre Hommes*, article in *L'Orient-Le Jour*, 25 May 2001.

<sup>117</sup> Interview with *Dr. George Assaf*, 26 May 2001 (note 112).

# 3 Legal material and norms

## 3.1 General background

The legal sources in Lebanon have multiple origins. Even though Lebanon has been a melting pot for different confessions and cultures throughout history, and despite the fact that the legal structures at first sight might be difficult to make out for an outsider, the legal material that is in effect today is stringent and relatively easy to classify.

In a more disciplinary fashion, the collection of Lebanese material norms is divided between *private law* and *public law*. The former consists of all the rules that govern the relationship between individuals and the legal relationship between governmental administration and individuals (i.e. civil law, commercial law, administrative law and personal status law), while the latter consists of all the rules that govern the State and its internal organisation, as well as the relationship between the public power and individuals (i.e. constitutional law and criminal law).<sup>118</sup> This division originates from French law, or *le droit commun français*.

## 3.2 Constitutional law

### 3.2.1 General background

Constitutional law has a French framework even though the historical origins of most of the provisions are local. The originality of the Lebanese society regarding confessional structure is the determining factor in this respect.<sup>119</sup>

### 3.2.2 The constitution

The hierarchy of norms starts with the constitution. The mandate of the League of Nations required France to introduce organic, or fundamental,

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<sup>118</sup> See *Lexique des termes juridiques*, pp. 210-211, and Mroue, Hyam, *Introduction à l'étude du droit*, pp. 68-70.

<sup>119</sup> A Lebanese legal scholar has put it this way: “*L’originalité du régime juridique appliqué au Liban est gouvernée par le “jeu combine” de plusieurs facteurs: tenant à la géographie, à l’histoire et à la constitution organique de l’Etat Libanais. L’un est déterminant, et s’attache au rôle exceptionnel des communautés à base religieuse et a favorisé le régime spécial du status personnel. Les autres sont secondaires, pivotent dans l’atmosphère du communautarisme et agissent grâce à d’ingénieux compromis pour maintenir l’équilibre du système et sauvegarder les bases de l’indépendance de l’Etat Libanais.*”, see El-Hélou Rizk, Marie, *Introduction à l’étude du droit*, p. 145.



laws for Syria and Lebanon. Initially, the French met some local resistance and realised that they had to cooperate with the Lebanese in the drafting of a Constitution. The Lebanese Representative Council, set up in 1925 and led by *Michel Chiha* (who in recent years has reached a legendary reputation as one of Lebanon's "founding fathers" among many Lebanese scholars<sup>120</sup>), was given the task of producing a draft in collaboration with the French judge *Paul Souchier*. After consultations with multiple representatives of the Lebanese society, a draft proposal was finalised and the French eventually ratified the Constitution in 1926.<sup>121</sup>



The Constitution was originally divided into five parts, namely: basic or fundamental provisions, powers, elections/amendments, miscellaneous and temporary measures. With the *Ta'if* Agreement in 1990, a preamble<sup>122</sup> was introduced, which articulates the principle that Lebanon is a parliamentary republic based on respect for public liberties, and establishes that the people are the source of authority and sovereignty, exercising these powers through the constitutional institutions. An interesting addition is that it also stipulates that Lebanon is Arab in identity and association. Personal freedom, rights of individuals and equality are indicated as general principles, and are specified to include freedom of education, religious belief, opinion and press, freedom to meet and to form societies as well as freedom of nomination for election.

In its original version, the Constitution was based on confessionalism, with division of institutions between the sects. These provisions were abolished in 1990 and exchanged for a statement in the preamble that Lebanon is to work towards abolishment of formal confessionalism.<sup>123</sup> The unwritten provisions of the National Pact, laying down the division of power between the sects, were codified in a law separate from the Constitution in 1990.<sup>124</sup> When public offices are appointed, the different sects must therefore still be taken into account, especially in offices of so-called first degree (for instance director generals of authorities). The official Lebanese body in which this

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<sup>120</sup> For instance, the conference at AUB in May of this year entitled "*The Lebanese System: A Critical Reassessment*", included a large number of seminars in many different fields. Many of these concerned the impact of Michel Chiha on the Lebanese society.

<sup>121</sup> See Rabbath, Edmond, *La constitution libanaise – origine, textes et commentaries*, pp. 5-12, and Sayegh, Daoud, *L'exercice de la fonction législative au Liban – approche juridico-politique*, pp. XXX-XXXV.

<sup>122</sup> See the table of Important Lebanese Laws in Supplement B on page 78.

<sup>123</sup> According to *Dr. Richard Chémali*, this provision is practically useless today, and it will probably require a lot of time to truly influence the state of things in Lebanon. Interview 5 June 2001 (note 19).

<sup>124</sup> Constitutional Law Nr. 18 of 1990. In the article "*Réflexions sur la naissance de la Constitution libanaise*" in *L'Orient-Le Jour*, 9 June 1999, the Lebanese Professor and Attorney Chibli Mallat said the following about the Constitution: "*Malgré ses lacunes, elle n'est pas legs insignifiant, cette Constitution qui régleme notre vie quotidienne depuis trois quarts de siècle, polie par les amendements comme une pierre de lune, aguerrie comme un diamant par la force de la continuité dans une région don't elle est, parmi toutes les Constitutions du Moyen-Orient encore en vigueur, la doyenne*".

phenomenon is the most present is probably the Armed Forces.<sup>125</sup> Over all, with the confessional structure and the *zuama clientelism*, an estimate that more than half of the higher Lebanese administrative positions are practically inherited is not at all an exaggeration.<sup>126</sup>

The general disposition of the constitution was very much influenced by the French constitution to the Third Republic of 1875. When interpreting the original provisions, and to some extent the added provisions of 1990, one therefore has to go back to the French jurisprudence of that era.<sup>127</sup> The drafters were strongly influenced by the French jurist *Esmein* and his work on French constitutional law. There is also some indirect French influence as the Lebanese constitution has borrowed several of its provisions from the Belgian constitution of 1831 and the Egyptian constitution of 1923, which in turn rely heavily on French constitutional traditions.<sup>128</sup>

### 3.2.3 Sources of law and hierarchy

It is important to distinguish the internal rules of the sects governing personal status from the legislation enacted by the Parliament or the Government. The former are scarcely regulated by the constitution or other basic rules. The latter are defined in the constitution as being *Laws* or *Decree-Laws*. Rules enacted by the Government or its administration are called *règlements*, and can either be in the form of *décrets* (together with the President) or *arrêtes* (by a single Minister, the prefecture or the municipality).<sup>129</sup>

The style or the essence of a legal rule in Lebanon is in conjunction with the general fashion envisaged within civil law-based legal systems: the *règle juridique* is characterised as being general or imprecise and giving the judge some room for his own discretion.<sup>130</sup> Besides this general character of rules, there are also general principles that are considered part of the law, even though it is sometimes difficult to draw a line between the two. Some principles can be derived to obsolete laws, like the *Majelle*, or old customs.<sup>131</sup> For instance the regulation of civil incapability in Lebanese law can be traced back to the *Majelle*.<sup>132</sup>

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<sup>125</sup> Interview with *Dr. George Saad*, Professor of Administrative Law at the Lebanese University, Beirut June 2001.

<sup>126</sup> Interview with *Dr. Antoine A. Khair*, 18 June 2001 (note 36).

<sup>127</sup> Interview with *Mr. Mohamad Ramadan*, Attorney at Law, Beirut, 16 June 2001.

<sup>128</sup> Interview with *Dr. Antoine Khair* (note 36). See also Habachy, Saba, *The Republican Institutions of Lebanon: Its Constitution*, A.J.C.L., Vol. 13, 1964, pp. 599.

<sup>129</sup> Article 56-58 of the Constitution. See also Mroue, Hyam, *Introduction à l'étude du droit*, pp. 83-90. Amendment of the constitution itself is regulated in articles 76-77.

<sup>130</sup> See Leibnesy, Herbert J., *The Law of the Near and Middle East – Readings, Cases and Materials*, p. 60. See also *Lexique juridique*, p. 450.

<sup>131</sup> See El-Hélou Rizk, Marie, *Introduction à l'étude du droit*, pp. 126-127.

<sup>132</sup> See Najjar, Ibrahim, *Chroniques de droit privé libanais*, p. 27.

In most fields of law, especially civil and administrative law, *le droit commun* is regularly used as a reference in interpretation of the current state of Lebanese law. The French legal traditions, especially those surrounding the code civil, are often referred to in order to fill out legal gaps. However, in theory it is possible for a Lebanese judge to refer to the *Majelle* (or even older formally obsolete legal material) if he comes to a point where he cannot find applicable legislation or principles in the material Lebanese law.<sup>133</sup>

Case law does not constitute a source of law, in the sense that judges are not formally bound by decisions from courts further up the judicial hierarchy. However, the courts must rule in all cases even if they cannot find an applicable source of law. Thus, judges regularly use case law where all other ends fail, especially in the fields of private international law and administrative law.<sup>134</sup> According to the Code of Civil Procedure, the courts cannot form a decision as a regulation, and *res judicata* is limited to the same subject, cause and parties.<sup>135</sup>

Legal commentary by scholars does not constitute a binding source of law, but the opinion of distinguished law professors, as well as judges and attorneys, in for instance law reviews and legal circulars, may influence the general interpretation or solution to a legal problem. The main benefit of legal doctrine or commentary in Lebanon is its ability to “*modify, complete, transform, evolve and interpret*” rules that the legislator does not promote, not to mention its ability to provoke changes.<sup>136</sup>

New acts of legislation are published in Arabic by the Ministry of Justice in the *Journal Officiel de la République Libanaise* (J.O.), also known as the *Official Gazette*. Private companies publish French and English translations of some of the more important laws.<sup>137</sup>

## 3.3 Criminal law

### 3.3.1 General background

With the multitude of confessions in Lebanon it is very difficult to find a common ground when considering social behaviour and what is considered as condemnable acts. The religious and moral codes of the different confessions might constitute a primary set of rules for the more

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<sup>133</sup> Interview with *Dr. George Saad*, 13 June 2001 (note 125).

<sup>134</sup> Regarding the great law shaping activities undertaken by the Council of the State in the field of administrative law, see section 4.4.1.

<sup>135</sup> See El-Gemayel, Antoine, *The Lebanese Legal System*, Vol. 2, p. 492.

<sup>136</sup> See Najjar, Ibrahim, *Droit laïc et pesanteurs confessionnelles (contribution à l'étude du droit de la famille dans la jurisprudence libanaise)*, R.I.D.C., Vol. 31, 1979, p. 297.

<sup>137</sup> L'Argus des documents Libanais.

fundamentalist followers (for example the *Shari'a* for Muslims), but the state backed rules and institutions naturally take formal precedence.

### 3.3.2 The Penal Code

The *Penal Code* came into force in October 1944 and was the first codification by solely Lebanese lawyers. It superseded the Ottoman Code of 1868, which to a large extent was inspired by the French penal code. The new code was the result of a commission that was formed in 1939 by the government, and consisted mainly of Lebanese legal scholars. They were mainly influenced by contemporary foreign criminal legislation and aimed at finding a middle way between the classical schools of responsibility and the more modern schools based on the social circumstances.<sup>138</sup>

The code is divided into two parts. The first part deals with general questions, such as criminal responsibility, the methods of selecting a sanction, aggravating or extenuating circumstances and international aspects. The second part presents the different individual crimes and sanctions in more detail. The division of the crimes into groups is virtually copied from the French penal code.

Contrary to most of the foreign criminal legal orders that served as inspiration to the code, certain crimes conducted with determination, or criminal intent, are punished, but with reduced scope of the sanction. The law makes a distinction between “honourable intent” and “dishonourable intent”.<sup>139</sup> The attention given to these provisions in Lebanon today mainly focus on the lenient penalties that are imposed on men who kill female relatives under suspicion of having affairs in order to cleanse their honour. Women’s groups and other activists have lobbied for decades in order to fully criminalize these offences, but have yet not seen any results.<sup>140</sup>

Another distinguishing characteristic (at least for a Swede) of the Lebanese criminal system is that people who are considered to be leading a “dangerous” life (for instance vagrant people, beggars, alcoholics, drug addicts and gamblers) can be submitted under the scrutiny of the criminal system for preventive purposes.<sup>141</sup>

The principle of deterrence is very much in the forefront and the scope of the punitive sanctions can be very disproportional to the crime. For instance neglecting to use seat belts in the front of a car is punishable by up to ten

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<sup>138</sup> See Nasr, Philomène, *Droit penal general – étude comparé entre les deux codes libanais et francias*, p. 51.

<sup>139</sup> Articles 192-194 of the Penal Code.

<sup>140</sup> See Kanafani, Samar, *Women demand repeal of law on ‘honor killings’*, article published by the Daily Star, 12 July 2001.

<sup>141</sup> Section X of the Penal Code.

days in prison, according to a *décret* that came in to force in June 2001. However, the traffic security situation in Lebanon is appalling.

### **3.3.3 The Military Penal Code**

Criminal actions undertaken within the military, (namely, areas governed by the Armed Forces or by military personnel conducting their duty), fall under the jurisdiction of the *Military Penal Code* of 1946. Crimes within this jurisdiction vary from failure to perform military service to entering Israel, civilian or not.<sup>142</sup>

### **3.3.4 The Code of Criminal Procedure**

The *Code of Criminal Procedure* of 1948 was revised in 1950 and 1961. The French influence on the procedure in Lebanese courts is substantial.

### **3.3.5 Blood vengeance and honour crimes**

Blood vengeance exists in Lebanon, as part of the well spread system of family justice. This should, however, not be seen as a failure by the state regarding criminal enforcement, but rather as an extension of the confessional structure of Lebanese society, in the same sense as the *zuama clientelism*. The centre of attention is not the individual receiving the sanction, but rather the concerned families. Honour crimes constitute the most common form of family justice, even though other forms occur.<sup>143</sup> A recent example was the agreement between two families in Baalbek, where the family of a murder victim agreed with the family of the alleged killer to settle the matter themselves by taking the life of the killer.

## **3.4 Civil law**

### **3.4.1 General background**

The French influence is most dominant within civil and commercial law. During the Ottoman period, with the introduction of the *Majelle*, French legal culture was introduced in Lebanon for the first time in the field of civil law. Being in essence a hybrid between Islamic and Western legal culture, and covering a vast geographical area and a wide spectrum of cultures and religions within the Ottoman Empire, this legal instrument could hardly be said to be in organic harmony with the Lebanese tradition. With the

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<sup>142</sup> See *Military Tribunal sentences* 75, article in the Daily Star, 8 August 2001.

<sup>143</sup> See Younes, Massoud, *Ces morts qui nous tuent – la vengeance du sang dans la société libanaise contemporaine*, pp. 270-271.

introduction of the Codes during the French mandate, the legal regulation of civil matters were limited to, and specifically designed for Lebanon. However, one cannot neglect the fact that France probably had an agenda of its own, other than helping the Lebanese to create a civil legal framework.

### 3.4.2 The Code of Obligations and Contracts

The civil law is focused around the *Code of Obligations and Contracts*. It was drafted by the French law professor *Louis Josserand* at the University of Lyon and revised by the Lebanese Legislative Committee. This is in harmony with the general difference between codes and statutes: the latter are usually produced by legal scholars; the former by politicians.<sup>144</sup> The code came into force in 1934 and consists of 1107 articles. The first part deals with obligations in general and the second with special rules concerning certain contracts.<sup>145</sup> The ambition of its drafters was to keep the spirit of previous local regulations and build the code with a French framework, with influences from the contemporary legal development in other European civil law countries, for example Germany, Italy and Switzerland.<sup>146</sup>

With the introduction of the code, all provisions of the *Majelle* that were inconsistent with the code were abrogated.<sup>147</sup> Some Lebanese scholars maintain that the *Majelle* can be said to be *le droit commun* in Lebanon, and that Islamic law therefore should be referred to before French law when filling out legal gaps.<sup>148</sup> However, such scholars constitute a substantial minority in this respect. The French tradition is dominant.

Another relevant piece of legislation in civil law is the *Property Law* of 1930. This law deals exclusively with objects, and not with land. However, rent issues are considered being part of the field of property law. Intellectual property and information technology are modalities that present some problems in this field.

Together, the two codes cover virtually the same legal issues as the third book of the *Code civil des français* of 1804.<sup>149</sup> The first book on family law could hardly be transformed to Lebanon because of the confessional structure. The style and content of the code civil was an abrupt break with the feudal past, and it was meant to be read and understood by the average citizen. In the pluralistic and complex legal surroundings of Lebanon, the code was introduced in a more gradual fashion, and does not constitute

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<sup>144</sup> See Leibnesy, Herbert J, *The Law of the Near and Middle East – Readings, Cases and Materials*, p. 57.

<sup>145</sup> See Cardahi, C., *Code des obligations du Liban - Etude de droit comparé*, pp. 18-20.

<sup>146</sup> See Boustany, Elie J., *Code des obligations et des contrats*, p. 22.

<sup>147</sup> Art. 1106 of the Code of Obligations and Contracts.

<sup>148</sup> See Mousseron, Jean Marc, *La réception au Proche-Orient du droit français des obligations*, R.I.D.C, 1968, p. 40.

<sup>149</sup> See Fenet, P.A., *Naissance du Code Civil – La raison du législateur*, pp. 29-31.

general knowledge in the same way as in France.<sup>150</sup> The substantial French influence on the legislation can generally be derived to two areas, the code civil and the USJ (which maintained strong ties with the University of Lyon up until the civil war).<sup>151</sup> In a disciplinary fashion, one might say that the two codes constitute an adopted reception of the code civil.

The developed nature of the general civil law in Lebanon has given rise to the claim that it is today practically autonomous in terms of its own rules of definition and development. The connection to the French tradition is therefore diminishing, much the same way as historically happened in Belgium.<sup>152</sup>

A problem with the current state of civil law in Lebanon, however, is that certain legal solutions that are common in the Western world, for instance leasing, cannot be submitted under the prevailing Lebanese civil regulations. Instead, the courts must refer to other sources, such as general principles in French law.<sup>153</sup>

### **3.4.3 The Code of Civil Procedure**

The *Code of Civil Procedure* of 1934 was also produced by French lawyers. It was replaced by a new edition in 1985, during the civil war. Despite being a domestic product, the general framework of the old edition was maintained, whereas the material content was updated.

### **3.4.4 The Code of Labour**

The relationship between an employer and his employees is regulated in the *Code of Labour* from 1946. Before its entry into force, the Code of Obligations and Contracts regulated the relationship. The Labour Court regulates disputes over its application.<sup>154</sup> There is also the Social Security Law of 1963, which is normally considered part of the field of labour law.

### **3.4.5 Other civil regulations**

There is an *Insurance Law* of 1968, which mainly aims at regulating the financial protection of companies.

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<sup>150</sup> See Glendon, Gordon & Osakwe, *Comparative Legal Traditions*, pp. 49-50 and p. 56.

<sup>151</sup> Dr. Simon Karam has said that "the Lebanese industry of law is normally an industry of Christians". Interview 11 June 2001 (note 45).

<sup>152</sup> See Mousseron, Jean Marc, *La réception au Proche-Orient du droit français des obligations*, R.I.D.C. 1968, p. 64-65.

<sup>153</sup> Interview with Dr. Antoine A. Khair, 18 June 2001 (note 36).

<sup>154</sup> See section 4.7.2.

## 3.5 Commercial law

### 3.5.1 General Background

The field of commercial law is a discipline within private law and concerns the rules of business and trading, specifically, dealing with forms of association, company law and enterprise law and related aspects.<sup>155</sup> The Western legal influence on this field is substantive. Terminology and categories (for instance in fields such as bankruptcy, transport liability and company law) are often taken straight from Western practice.<sup>156</sup> Maritime law and aviation law can also be included in a disciplinary fashion within commercial law, but are sometimes considered autonomous fields.

### 3.5.2 The Commercial Code

The Lebanese *Code of Commerce* is originally from 1942, when French legal scholars drafted it, but it has been revised and updated regularly since then. The French commercial code was of course the greatest inspiration for the drafters, but the Lebanese code also got some inspiration from Italian, Portuguese and Polish commercial law. The transition from the Ottoman commercial code was relatively smooth, since that code also was based upon the French code.

If there is no rule to be found in the code regarding a specific matter, the Code of obligations and contract is applicable.

The two most common forms of association are the S.A.L. (Société Anonyme Libanaise) and the S.A.R.L. (Société à Responsabilité Limitée). The former is regulated in the commercial code and has two supplementary forms: an offshore-company and a holding-company (which were introduced in 1983 in order to attract foreign investments to Lebanon).<sup>157</sup> The latter is regulated by a *décret* as an annex to the code of commerce in 1967. The minimum capital needed to form a S.A.R.L. is 5 million L.L (about 3500 dollars), and the company needs to be represented by an attorney. This presents an administrative problem since most of the smaller companies really do not need an attorney.<sup>158</sup>

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<sup>155</sup> See Tyan, Emile, *Droit commercial*, pp. 1-12.

<sup>156</sup> See Mallat, Chibli, *Commercial Law in the Middle East: Between Classical Transactions and Modern Business*, A.J.C.L., Vol. 48, 2000, p. 90. However, the Lebanese courts have met some difficulties in cases concerning “leasing” (see section 3.4.2).

<sup>157</sup> See Najjar Alexandre, *L'administration de la société anonyme libanaise*, p. 23.

<sup>158</sup> See section 5.4.



### 3.5.3 Arbitration

A chapter in the Code of Civil Procedure, introduced in 1983, regulates civil conflict resolution through arbitration.<sup>159</sup> The international aspects are adopted from French law, whereas the regulations on local arbitration are a bit more peculiar. For instance, Lebanese courts accept agreements to arbitrate that have been made after the conclusion of the contract at stake.<sup>160</sup>

The potential for Lebanon to become an international centre for arbitration is big considering the multitude of nationalities, religious sects and cultures residing within its territory.<sup>161</sup>

### 3.5.4 Other commercial regulations

The *Maritime Law* of 1947 regulates the handling of ships, maritime work, transport contracts as well as maritime risks and insurance. The *Aviation Law* is from 1955.

Lebanon has adhered to several international conventions in the field, for instance the Paris Convention of 1883 on intellectual property, the Brussels Convention of 1910 on maritime transports and the Warsaw Convention of 1929 on aerial transports.

Lebanon is renowned for its liberal regulation of the banking sector, see for example the *Code of Money and Credit* of 1963, the *Insolvency Law* and the *Consumer Law*.

## 3.6 Administrative law

### 3.6.1 General background

Administrative law in Lebanon is a field of law that is not regulated in a code, or a united body of laws, but can rather be found in the form of regulations in the majority of Lebanese laws in one way or another. The field is mainly set, or governed, by the rulings of the Council of the State.<sup>162</sup>

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<sup>159</sup> For more information on arbitration in Lebanon, see the Web page of “*The Lebanese Review of Arab and International Arbitration*” at <http://www.dm.net.lb/rla/> (visited on 11 December 2001). See also Comair-Obeid, Nayla in Yearbook of Islamic and Middle Eastern Law, Vol. 5, 1998-1999, pp. 284-288.

<sup>160</sup> See El-Ahdab, Abdel Hamid, *La loi libanaise sur l'arbitrage*, Revue de l'Ordre des Avocats, Beirut, 1994, pp. 5-11.

<sup>161</sup> See Schellen, Thomas, *Lebanon's multiculturalism may herald world legal role*, article in the Daily Star, 18 June 2001.

<sup>162</sup> See section 4.4.1.

### 3.6.2 Tax law

The *Income Tax Law* is from 1959.<sup>163</sup> Collection of public revenues is weak. Often students are sent out to collect door-to-door.<sup>164</sup>

### 3.6.3 Land law

The part of the Lebanese regulations that govern the ownership and administration of land is the only field of law that to some extent is still explicitly regulated by provisions from the Ottoman *Majelle*. While the *Land Ownership Law* of 1930 does exist, the provisions of the *Majelle* that are not inconsistent with this law are still in effect.

### 3.6.4 Environmental law

Lebanon has ratified the two *Rio de Janeiro Conventions* on climate changes and biological diversity of 1992 as well as the *Basel Convention* on toxic waste of 1989. A Law in 1996 declared the area of the *Shuf Cedars* a natural reserve: one of the few areas that still have cedar trees (which are the best known Lebanese national symbol).

### 3.6.5 Media law

The *Law on the Media* of 1994 is a conglomerate including the *Law of the Press* of 1962 as well as the Penal Code. The main object of the law is to allow for the government to shut down a newspaper or TV station if public policy is in jeopardy. Nonetheless, this law might contravene some traditional Lebanese public liberties.<sup>165</sup> An interesting provision in the law prohibits the broadcast of programmes “encouraging relations with the Zionist enemy”.<sup>166</sup>

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<sup>163</sup> See Freifer, R. & Farhat, A., *To Invest in Lebanon – The Legal and Fiscal Incentives*, for further information on the fiscal situation in Lebanon.

<sup>164</sup> Interview with Mr. René Milas, 31 May 2001 (note 15).

<sup>165</sup> See Mallat, Chibli, *Yearbook of Islamic and Middle Eastern Law*, 1994, p. 223.

<sup>166</sup> Article 4 of Law No. 382 of 10 November 1994.

## 3.7 Personal status law

### 3.7.1 General background

This field of law, which governs family law, or more specifically betrothal, marriage, divorce, ancestry or paternity, adoption, guardianship and alimony, is *sui generis* and probably deserves a thesis of its own.<sup>167</sup>

The system of having different regulations for the different communities was initiated during the Ottoman period.<sup>168</sup> The main reason for the family oriented regulations of the sects to remain in force was probably that the sects wanted to preserve their traditions and at the same time function in the development of the bigger community with the other sects. This is a phenomenon that has been used to explain why the *Shari'a* remains the same, whereas society as a whole changes. The Muslims would not accept a violation of their most fundamental rules and would rather see it sidestepped, but still intact, than see it gradually disappear. It was a practical compromise.<sup>169</sup>

Before 1959, the law on succession was the same for all the sects. A law from that year regulates succession for Christians and Jews under civil jurisdiction, and thus are today dealt with by the regular civil court system.<sup>170</sup>

As we have seen, having personal status regulated by sects, leads to many problems. There was a proposal for a civil facultative regulation of marriage in 1998, but the President blocked it.<sup>171</sup> Confessionalism is also a problem in elections. Following the 1996 elections, a lot of legal suits were filed.<sup>172</sup>

### 3.7.2 Christian and Jewish sects

Christian and Jews are governed by the *Law of wills for non-Mohammadans* of 1929, the *Jurisdiction Law* of April 2, 1952 and the *Inheritance Law for non-Mohammadans* of 1959. The different sects apply their own traditions and customs.

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<sup>167</sup> For a more detailed introduction into Personal Status Law, see Mahmassani, M. & Messarra, I., *Status Personnel – Textes en Vigueur au Liban*, Lebanese University, Beirut 1970.

<sup>168</sup> Interview with Dr. Antoine Khair (note 36).

<sup>169</sup> See Hill, Enid, *Comparative and Historical Study of Modern Middle Eastern Law*, A.J.C.L., Vol. 26, 1978, pp. 292-293.

<sup>170</sup> Traboulsi, Ibrahim, *Les derniers développements en matière de status personnel au Liban et en Egypte*, Seminar at Université Saint-Joseph de Beyrouth, 7 Juin 2001.

<sup>171</sup> See section 6.1.1.

<sup>172</sup> See section 6.1.2.

Since Catholics cannot get divorced under Canon Law – they can only get their marriage annulled – there is a tendency today to convert to Islam in order to get divorced. This procedure is accepted by civil law on competence if both spouses do it, but not if only one of them does it.<sup>173</sup>

### 3.7.3 Muslim sects

As different sects apply different movements of Islamic Law, Sunni and Shiite Muslims are governed by the *Law Organising the Shari'a Courts* of 1942, revised in 1962, while a 1948 law governs Druze Muslims.

Even though Shiite Muslims may be renowned for their patriarchal culture and rigidity of marriages, there exists an interesting form of extramarital “contract” that can be concluded between two persons of opposite sex, even if they are already married to other people, *le mariage de plaisir*.<sup>174</sup>

## 3.8 International private law

### 3.8.1 General background

As a general rule, there is predominance in Lebanon of nationality over domicile, when it comes to international private law, despite the mobility of the Lebanese population in the last 20 to 30 years. Of the relevant rules governing this field, internal sources are of considerably greater importance than international sources, and many rules have been created by case law: for example concerning *lex fori*, *renvoi* and public policy.<sup>175</sup>

### 3.8.2 Private law

Foreign judgements need to be approved by the Court of Appeal in the governorate where the defendant lives, or if it is not known, by the Court of Appeal in Beirut in order to be enforced in Lebanon. However, while awaiting approval, the foreign judgement may be used as evidence in a case before Lebanese courts.

Foreign decisions in personal status law are seldom accepted. Abduction of children is a big problem, especially for France, who has a long history of involvement in Lebanon and therefore a large French community in Lebanon and a lot of connections between people from the two different

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<sup>173</sup> Interview with Dr. *Ibrahim Traboulsi*, Attorney at Law and Professor of Personal Status Law at USJ, Beirut 18 June 2001.

<sup>174</sup> Interview with Dr. *Georges Saad* (note 125).

<sup>175</sup> See Tyan, Emile, *Précis de droit international privé*, pp. 1-15, and Ghossoub, Abdo, *Les effets des jugements étrangers au Liban*, pp. 185-188.

countries.<sup>176</sup> The fierce Lebanese policy has also had some harsh effects on marriages and divorces conducted abroad.

### 3.8.3 Public law

As a general rule, Lebanese courts and authorities do not accept, and cannot enforce, rulings or decisions by foreign courts or authorities regarding public law, if there is no international convention (for instance in criminal law regarding extradition) or an explicit legal rule in Lebanese law to the contrary.<sup>177</sup> However, if such a ruling or decision includes a civil obligation, then the obligation can be covered by the code of civil procedure and hence that part of the ruling can be enforced in Lebanon.<sup>178</sup>

## 3.9 International public law

### 3.9.1 General background

Lebanon is formally a sovereign country, and has been accepted *de jure* as an independent state by practically all other states in the world since the proclamation of the republic in 1943. However, the Syrian influence on Lebanese decision making, the unclear status of Palestinian refugees in Lebanon and the territorial, as well as the other political uncertainties of the Arab-Israeli conflict, present undecided legal issues in regard of the position of Lebanon in the international arena.

### 3.9.2 International organisations

Lebanon is member of multiple International Organizations, including the UN and the Arab Council. The country's former foreign minister *Charles Malek* was active in the drafting of the UN Covenant of Human Rights in 1948, something that Lebanese officials often refer to when accusations of human rights violations occur. The country has not yet signed the treaty establishing the International Criminal Tribunal.

The most pending international issue is the regional instability originating in the Arab-Israeli conflict. Southern Lebanon was occupied until last year by Israel, and there is still instability in the region, manifested mainly by sporadic *Hezbollah* raids over the border and violation of Lebanese airspace by Israeli jet fighters. Syrian military installations in Lebanon were also a

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<sup>176</sup> Interview with *Mr. Bruno Dubois*, Deputy Consul at the French General Consulate in Beirut, 15 June 2001.

<sup>177</sup> See Freifer, R. & Farhat, A., *To Invest in Lebanon – The Legal and Fiscal Incentives*, pp. 358-359.

<sup>178</sup> Art. 1011 of the Code of Civil Procedure.

common target for Israeli attacks up until the partial Syrian withdrawal last June. The major legal instrument regarding these questions is the UN Security Council Resolution 425, which is surrounded by controversy.

During the 1980's, the US Embassy and a contingent of US Marines were subjected to terrorist attacks by suicide bombers. Hijacking of Western airliners and forcing them down at the Beirut International Airport in order to put political pressure on Western leaders in matters connected to the Arab-Israeli conflict also occurred. In the context of the recent terrorist attacks on New York and Washington D.C., some suspicions of involvement have been given to Lebanese organizations historically known for this kind of activities. Even though a large number of bank accounts held by terrorist organizations or supporters thereof have been blocked worldwide, the Lebanese organization *Hezbollah* has not been subjected to these actions in Lebanon. This organization collects money off the streets openly, normally having people standing in the middle of the street with a *Hezbollah* flag and a collecting basket receiving money from people in the cars passing by them. According to statements in the Lebanese media, no bank accounts in Lebanon have been frozen.<sup>179</sup> This is quite astonishing since the financial sector in Lebanon still maintains some stamina in the Middle East, but can maybe be explained by the well spread money laundering in the country.

### **3.9.3 International conventions**

Once ratified, International Conventions or Treaties become laws and their provisions turn into a part of the Lebanese law.<sup>180</sup> Parliamentary approval requires a two-thirds vote in favor.

In the preamble of the Constitution the state commits itself to respect the UN Charter, the Universal Declaration of Human Rights and other UN conventions. This should probably be regarded as a general aspiration of the state, rather than a legal ground for regarding the provisions of these instruments as having direct effect as Lebanese law, at least not the total body of conventions at stake.<sup>181</sup>

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<sup>179</sup> See also in section 6.5 for information on the Lebanese stand on UN Security Resolution 1373.

<sup>180</sup> See Mroue, Hyam, *Introduction à l'étude du droit*, pp. 87-88.

<sup>181</sup> For a comprehensive overview of the international conventions on legal and judicial relations that Lebanon has concluded with other states, see Khairallah & Chaiban, *Lebanon Law Digest* in "Martindale-Hubble Law Digest 1999", pp. 13-14.

# 4 Judiciary and institutions

## 4.1 General background

The Judicial Power in Lebanon is regulated by the constitution, which declares that it shall function within the limits of an order established by law and offer the necessary guarantees to judges and litigants.<sup>182</sup> As noted above, the legislator mainly forms Lebanese law whereas the courts have a very slim mandate to establish binding rules, like the courts in common law based systems. However, the integrity of the judgements is solid, and the courts can distance themselves from enacted legislation in their rulings.

Access to justice, or rather the lack thereof, is a matter of concern in Lebanon. The major problems are that the system is slow, inefficient and out of date.<sup>183</sup>

There is a *Palais de Justice* in every governorate which contains the majority of the courts. In Beirut the Ministry of Justice and the Military Court of Cassation are found within the vicinity of the Palais de Justice. The judges wear red capes and the attorneys wear black capes with a white crest. Numerous heavily armed guards are posted outside the building and inside the courtrooms. Security issues are taken seriously because of the impending violence that has remained under the surface since the end of the civil war and sporadically reoccur. For instance a car bomb exploded outside the Palais de Justice in Beirut in August, at a time when dissident Lebanese Christian nationalists were being kept down by the security forces.<sup>184</sup>

## 4.2 The Constitutional Council

### 4.2.1 General background

Along with the amendments to the Constitution in the 1990's, a new institution was set up, the *Constitutional Council*, regulated in article 19 of the Constitution and the "*law of internal règlement*". It began to function in 1994, when its ten members were appointed.

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<sup>182</sup> Art. 20 of the Constitution.

<sup>183</sup> Interview with *Dr. Simon Karam*, 13 June 2001 (note 45). See also "*Equal Access to Justice in the Euro-Mediterranean Region*", seminar at Uppsala University, Sweden, 27-28 April 2001.

<sup>184</sup> See *Car bomb explodes outside Palace of Justice*, article published at [www.thisiscyberia.com](http://www.thisiscyberia.com), 20 August 2001.

## 4.2.2 Objectives

The institution is modelled from its French equivalent and handles *judicial review* of the constitutionality of laws and elections. After the substantial disturbances that the Lebanese society had gone through since the formation of the Republic, there was a need for an increased control over the Parliament.<sup>185</sup>

The President, the Prime Minister or a minimum number of ten Deputies can initiate a case in the Constitutional Council regarding the constitutionality of laws and regulations. Parliamentarians and candidates, who ran for a seat at the Chamber of Deputies in an election, can also try the constitutionality of the election procedure and results at the Council.

As in France, the Council can only conduct *à priori* control of laws. It may delay a law for one month, after this time the law may be applied. In 1996, the proposal for a new electoral law gave birth to what some characterise as a “*constitutional crisis*” for Lebanon.<sup>186</sup>

In 1995, the Council decided that its control of the constitutionality of laws is not limited by written provision, but rather includes general norms and principles.<sup>187</sup>

## 4.2.3 Composition

The Constitutional Council is composed of 10 members, five of whom are appointed by the Parliament, and five by the Government.

## 4.3 Civil and criminal courts

### 4.3.1 Single-Judge Court

The *Single-Judge Court (juge unique)* deals with cases worth less than 100 Million L.L. as well as with the execution of judgements. It also deals with less serious offences (delicts).<sup>188</sup> There are 85 Single-Judge Courts in Lebanon.

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<sup>185</sup> Interview with *Dr. Antoine A. Khair*, 18 June 2001 (note 36). See also the official web site of the Conseil Constitutionnel at [http://www.conseilconstitutionnel.gov.lb/French/fr\\_start.htm](http://www.conseilconstitutionnel.gov.lb/French/fr_start.htm) (visited 10 August 2001).

<sup>186</sup> See section 6.1.2.

<sup>187</sup> Decision of the Constitutional Council, no. 2/95, 25 February 1995.

<sup>188</sup> Interview with *Mr. Mohamad Ramadam*, 16 June 2001 (note 127).



### 4.3.2 Court of First Instance

The *Court of First Instance* deals with civil cases, in which the object of concern is worth more than 100 Million L.L., as well as ordinary criminal cases (Chamber of Accusation). There are 14 of them and when ruling they are composed of three judges (collegial judgement). There are also at least one commercial court/chamber organised within each court of first instance.

### 4.3.3 Court of Appeal

The five *Courts of Appeal* constitute the second instance in the system since the rulings of both the courts of first instance and the single-judge courts are appealed to it. The courts of appeal also have unique jurisdiction concerning execution of foreign judgements.<sup>189</sup>

### 4.3.4 Criminal Chamber

The *Criminal Chamber* is part of each court of appeal, and deals with criminal cases that are appealed from a single judge or a court of first instance. It is also the first judicial instance for severe criminal cases, such as murder. The Chamber is in terms of formal organisation independent from the court of appeal, but the same judges may simultaneously function in both places.<sup>190</sup>

### 4.3.5 Court of Cassation

The *Court of Cassation* is the highest civil and criminal court. It is situated in Beirut and consists of eight chambers and a plenary assembly.

The court handles cases in two steps. First it verifies that the law has been correctly applied in the first two instances, i.e. it is a formal investigation into the lawfulness of the inferior judgements. If it finds that formal errors have been conducted, it then revokes the judgement. The second step is a public hearing in which the whole case is tried. The court may confirm or alter the judgements of both of the inferior courts. The judgement is final.

Criminal cases are submitted to be tried by the court only if there were divergent rulings in the first two instances. The *General Prosecutor for Cassation* sits on the bench in criminal cases.

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<sup>189</sup> See also section 3.8.

<sup>190</sup> The prosecution system will be further elaborated on in section 5.3.2.

An important difference from the French cassation court is that the Lebanese court does not review the judgement of the court of appeal. If it revokes the judgement, the case is sent back to the court of appeal.<sup>191</sup>

#### 4.3.6 Judicial Council

The *Judicial Council* was set up in 1948 and deals with delicate crimes concerning national security. It is composed of the President of the court of cassation and four other judges. No appeal of its rulings is possible.<sup>192</sup>

### 4.4 Administrative courts

#### 4.4.1 Council of the State

The *Council of the State* is the appeal body for decisions by administrative authorities. It was established in 1924, during the French mandate.<sup>193</sup>

Besides having normative powers (the hierarchy of administrative norms is set by the Council) it deals mainly with fiscal matters, public functions, administrative contracts and public works. It also has the power to annul laws enacted by the Parliament.<sup>194</sup> But it cannot however rule that the State is obliged to execute.

Individuals, as well as authorities, may initiate a case before the Council. However, an individual citizen or a group of persons may not initiate cases concerning violations of human rights: that is only allowed for groups that are legally constructed to protect their interests, for instance labour unions or professional corporations.<sup>195</sup>

The procedure is regulated in the *Law of the Council of the State*. If a certain procedural situation cannot be solved by those rules, the judges turn to the civil procedure for influence.

Lebanon is a member of the International Association of Councils of the State. It remains in solid connection to the French Council of the State.

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<sup>191</sup> See Rabah, Ghassan, *Introduction to Jurisprudence*, pp. 191-193.

<sup>192</sup> See also section 6.2.1.

<sup>193</sup> For a comprehensive historical depiction of the institution, see Khair, Antoine, *Le Conseil d'Etat: histoire et évolution*, Proche-Orient, Etudes Juridiques, Nr. 52-53, 1999/2000, pp. 5-17.

<sup>194</sup> Interview with Dr. Antoine A. Khair, 18 June 2001 (note 36).

<sup>195</sup> Assaf, Georges J., *The Lebanese Judiciary and Human Rights*, The Lebanon Report, No. 2, 1997, pp. 39.

#### 4.4.2 Tribunal of Conflicts

The *Tribunal of Conflicts* rules in matters regarding jurisdiction between the Court of Cassation and the Conseil d'Etat. It consists, *inter alia*, of the chamber presidents of the two courts.

#### 4.4.3 Court of Audit

The *Court of Audit* (or the *Audit Office*) is an administrative Court dealing with taxes, budgetary matters and public funds. Its rulings can be appealed to the Council of the State.<sup>196</sup>

### 4.5 Religious courts

#### 4.5.1 General background

Since there are 18 different religious sects with unique jurisdiction in personal status law, there are also 18 different court systems in this field. One usually speaks of “*parallel jurisdiction*” as a result of the “*personality of law*” that is part of for instance the *Shari'a*: separate courts and separate law for those courts.<sup>197</sup>

The different courts usually have a first instance and a body for appeal. Laws limiting the competence of the religious courts were introduced in the middle of the 20<sup>th</sup> century: Christian and Jewish courts (1951), Druze courts (1960) and other Muslim courts (1962). If a certain situation is not regulated in these laws, the Code of Civil Procedure takes over (*le droit commun*).<sup>198</sup>

Because of the peculiar regulation of personal status in the country, Lebanon has some exceptions from the *UN Convention on the Elimination of all Forms of Discrimination against Women*. However, Lebanon has no reservations from the *Convention on the Rights of the Child*. In this field, a possible intervention from the state to enforce the conventions in the rulings of the religious courts, for instance by narrowing the application of the laws

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<sup>196</sup> For more information on the Court of Audit, see the court's official website <http://www.coa.gov.lb/htdocs/guide.htm> (visited on 27 June 2001).

<sup>197</sup> See Hill, Enid, *Comparative and Historical Study of Modern Middle Eastern Law*, A.J.C.L., Vol. 26, 1978, pp. 290-291, and Liebesny, Herbert J., *Comparative Legal History: Its Role in the Analysis of Islamic and Modern Near Eastern Institutions*, A.J.C.L., Vol. 20, 1972, pp. 38-41.

<sup>198</sup> See Traboulsi, Ibrahim A., *De Nicole à Beyrouth: le mariage civil au Liban*, pp. 53-63. Interview with Dr. Ibrahim Traboulsi, 18 June 2001.

regulating the courts, might conflict with the principle of freedom of belief.<sup>199</sup>

#### **4.5.2 Ecclestial Courts**

The *Ecclestial Courts*, of which there are eleven, have jurisdiction over the members of the Christian and Jewish sects in Lebanon. They are all formed as two-level courts, with a first instance and an appellate body. The rulings of the Catholic ecclestial courts can be appealed to the *Rota Court* at the Vatican in Rome.

#### **4.5.3 Shari'a Courts**

There are seven different *Shari'a Courts*, with jurisdiction over the Sunni, Shiite and Druze Muslim sects in Lebanon. They are also all formed as two-level courts, with a first instance and an appeal body. The rulings can be appealed to the *Supreme Shari'a Court* in Saudi Arabia.

### **4.6 Military courts**

#### **4.6.1 General background**

There is unique criminal jurisdiction for the Military Courts in cases concerning the people, land and material of the Armed Forces and the Internal Security Forces.<sup>200</sup> Recently, there has been some discussion about abolishing this jurisdiction and instead including it within the general criminal courts. However, the current Lebanese President is a former army general and has explicitly expressed reluctance to initiate such a change.

#### **4.6.2 Military Courts of First Instance**

There is a *Military Single-Judge Court* in every governorate and a *Military Court of First Instance* in Beirut. The former are composed of both military and civil judges, whereas a military single-judge must be a military officer.

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<sup>199</sup> See Assaf, Georges J., *The Lebanese Judiciary and Human Rights*, The Lebanon Report, No. 2, 1997, pp. 40-41.

<sup>200</sup> For more information on and news about the Military Court, see the Information Web Page about its President at <http://www.libancom.com.lb/clients/na-lahoud/> (visited 11 December 2001).

### **4.6.3 Military Court of Cassation**

The *Military Court of Cassation* in Beirut can revoke the rulings of the lower military courts.

## **4.7 Special courts**

### **4.7.1 Land Court**

Matters relating to real property, for instance delimitation and realization, are handled by a *Single Land Judge*. Even though this court is considered being part of the general court system, since its rulings are appealed to the general courts, the matters of real property are administered by the Directorate of Real Estate, which is a part of the Ministry of Finance.

### **4.7.2 Labour Court**

Each governorate has a *Labour Court*, or *Labour Arbitration Council*, which rules in cases concerning disputes between employers and employees under the Code of Labour, disputes concerning the Workmen's Compensation Law and disputes regarding the official minimum wage. It consists of a chairman who is a judge and of two other members representing employers and employees respectively. Its rulings can be appealed to the court of cassation.

### **4.7.3 Juvenile Court**

Delinquents under the age of fifteen are tried before a Single Judge who applies the ordinary procedure, but the trial is not public (with the exception of the rendering of the sentence). A representative from social services participate in the hearing, and the parents of the defendant are allowed to be present.

#### 4.7.4 Customs Committee

In issues concerning the laws and regulations on customs, the *Customs Committee* has jurisdiction over duties, fines and damages.<sup>201</sup>

#### 4.7.5 Judiciary Control Bodies

The *Judiciary Control Bodies* might not fall under the heading of courts, at least not by the traditional definition, but they have executive powers that render them basically the same level of judicial influence. They can be characterised as “courts that supervise the other courts”: the *High Judicial Committee*, the *Judicial Inspection Committee* and the *Disciplinary Council* all consist of judges appointed by the Government and were created to supervise and investigate the nation’s courts and judges.

### 4.8 Executive branches

#### 4.8.1 Internal Security Forces

The *Lebanese Police Forces* were created at the end of the 19<sup>th</sup> Century by the Ottomans to maintain order and law enforcement. They were called *Gendarma* and were led by French police officers. During the mandate the French introduced their own police force. In 1959 the French police and the *Gendarma* were united into the present *Directorate General of the Internal Security Forces* (ISF)<sup>202</sup>, an organ under the supervision of the Ministry of Interior.<sup>203</sup> Its main prerogatives include maintaining security, protecting people and property, enforcing laws issued by the judiciary as well as guarding public institutions and prisons. The Commander of ISF claims that the organisation needs at least 29,000 men in order to function properly, as opposed to the 11,000 men that it holds today.<sup>204</sup>

#### 4.8.2 Jails and prisons

There are Prisons in every governorate as well as a women’s prison in Beirut. There are detention centres in all major cities and governorates.<sup>205</sup>

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<sup>201</sup> The Customs Law can be found in English at [http://www.customs.gov.lb/customs/English/Laws\\_regulations/Customs\\_law\\_english.html](http://www.customs.gov.lb/customs/English/Laws_regulations/Customs_law_english.html) (visited on 11 December 2001).

<sup>202</sup> For more info on ISF, see <http://www.isf.gov.lb/definition.html> (visited 10 August 2001) and <http://www.lebanon.com/isf/index.htm> (visited on 11 December 2001).

<sup>203</sup> The management of prisons is by law entrusted to the Ministry of Justice, but in reality the Ministry of Interior handles it. The main reason for this situation is probably that prisoners are considered a security risk.

<sup>204</sup> See Kanafani, Samar, *ISF commander tries to convince people that police are their friends*, article in the Daily Star, 9 June 2001. See also in section 6.6 on law enforcement and the state of Lebanese prisons.

<sup>205</sup> See *Press Ban: What are authorities hiding in Roumieh prison?*, article in the Daily Star, 16 May 2001.

The Israelis administered *El-Khaim Prison* in the South during their occupation. Today it is governed by *Hezbollah* as a victory landmark, and is more or less a tourist attraction. The signs of the torture that were conducted when the prison was in use are very present.

When visiting the *Romieh Prison* in the mountains just West of Beirut one notes that the security is very tight. For instance, in order to enter the facilities, one has to pass by three different large iron gates. Laundry is hanging out from the small cell apertures and prisoners are looking out and shouting to the visitors. According to reports, as well as information from the prisoners, every cell holds around 40 prisoners. This fact, together with bad hygiene, insufficient nutrition and borderline systematic torture make the situation for convicts very harsh.<sup>206</sup>

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<sup>206</sup> The situation for prisoners in Lebanon will be further discussed in section 6.6.

# 5 Legal professions

## 5.1 General background

The different legal professions in Lebanon are, to a large extent, modelled on their French equivalents, even though the confessional heritage in some legal fields call for a more traditional and local mark on certain professions. To a large extent, the sectarian structure of the Lebanese society also makes for some particularities in this respect, and lawyers entrusted with essentially the same tasks might work in totally different ways depending on their sectarian belonging.

## 5.2 Law schools

### 5.2.1 General background

Up until 1969, the only Lebanese university that offered a law degree was USJ.<sup>207</sup> Today there are five other universities with law faculties that offer studies for a law degree.<sup>208</sup> The Law program is the only state-regulated education program in Lebanon, and even though the different faculties cannot have their own program, the formation is in fact very different between them.<sup>209</sup> USJ and the Lebanese University offer courses in French and have curriculum mainly influenced by the French system, whereas the other universities use strictly Arabic and are mostly influenced by the Egyptian system. The studies on property, the criminal procedure and some other domains (but not capital law, public liberties and constitutional law) must be taught in Arabic.<sup>210</sup>

A new institution for higher education aiming at producing elite officials for the Lebanese administration is presently being planned, and this institution is modelled from the French elite school *Ecole Nationale d'Administration*. An official at the Ministry of Economy and Trade, who herself is an *enaaque*, claims that the introduction of such an establishment is a good thing since the Lebanese administration needs skilled people with analytical minds.<sup>211</sup>

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<sup>207</sup> See "L'annuaire de l'USJ: Faculté de droit et des sciences politiques 2000-2001".

<sup>208</sup> Arab University, Kaslik University, Lebanese University, Muslim University and Sagesse University.

<sup>209</sup> Interview with *Dr. Ibrahim Kobeysi*, Director of Lebanese University and former Dean of the Faculty of Law, 12 June 2001. See also Lebanese University, "Faculté de droit et des sciences politiques et administratives: Filière francophone de droit".

<sup>210</sup> Interview with *Dr. Richard Chémali*, 5 June 2001 (note 19).

<sup>211</sup> Interview with *Ms. Alia M. Moubayed*, Advisor to the Minister of Economy and Trade, Beirut 19 June 2001.



## 5.2.2 Law degrees

Until 1979, USJ could issue official French diplomas in law (signed by the University of Lyon). A Lebanese law degree is today officially recognised in France. Graduate studies are possible in several respects (D.E.S., D.E.S.S. and D.E.A.), and are usually a prerequisite for a career in the magistrature.

All the officials of Lebanese law faculties that were interviewed in the course of doing research for the thesis had a very positive approach to the prospect of establishing deepened contacts between themselves and their counterparts in the EU countries.



## 5.2.3 Languages

In the everyday legal reality, the French language is being used to a diminishing extent. The judges use exclusively Arabic, and usually do not allow petitions in French.

# 5.3 Magistrature

## 5.3.1 Judges

In order to become a judge, graduated law students, usually after finishing graduate studies, have to go through two years of studies at a school at the Ministry of Justice. A period of internships in courts then follows. The *Conseil Supérieur de la Magistrature* monitors the cadets and gives its recommendations to the Government who can appoint them as judges.<sup>212</sup>

The judges wear wine red capes during procedures in court. In a hearing attended by this author the judges were positioned on a podium, slightly higher than the rest of the people in the courtroom.

According to a Lebanese litigator it is obvious that the current 400 judges in the judiciary is far from enough to adequately meet the requirements of an effective and efficient judiciary to deal with the large number of cases.<sup>213</sup> But she did add that there are a lot of recently graduated students presently completing internships and training to become judges, so it is possible that this problem will diminish in the near future.

State officials, such as members of the Cabinet and Deputies, have distinctive licence plates for their cars to single them out from ordinary cars. This goes for Judges as well. Even though the traffic in Lebanon can hardly

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<sup>212</sup> Interview with *Judge Omar Al Natour*, 15 June 2001 (note 73).

<sup>213</sup> Interview with *Ms. Rita Boutros*, Attorney at Law, Beirut 20 June 2001.

be characterised as smooth and organised – borderline chaos would probably be more accurate for describing the real situation – this author’s experience is that cars equipped with this kind of licence plate usually get to go first at intersections.

### **5.3.2 Prosecutors**

Prosecutors are recruited in the same way as judges. There is a *Public Prosecution Office*, organised very much in the same way as in France.

## **5.4 Attorneys**

### **5.4.1 General background**

To become an attorney and be accepted to a Lebanese Bar Association, a graduated law student has to complete a two-year internship under the supervision of a senior attorney.<sup>214</sup> The relationship between the law clerk and the mentor is rather informal, but the clerk has to “*run for his life, knock doors, go by with just a chair and a desk and work for peanuts*”.<sup>215</sup> Membership in the Bar also requires the finalisation of a test and a thesis. There is also a test for foreign lawyers who want to practice law in Lebanon.

### **5.4.2 Bar associations**

There are two Bar Associations, one in Tripoli covering the northern parts of Lebanon, and one in Beirut covering the capital and the rest of the country. However, membership to either of the two Bars authorizes an attorney to fulfil the profession before courts and institutions in all of Lebanon. In total there are about 5000 attorneys registered with the two Bar Associations. Since the introduction of the bars, about 8000 attorneys have been registered.

The Beirut Bar Association was founded by, and is still largely dominated by, Christians. Muslim lawyers started to become members of the Bar in a more substantial way in the 1960’s. Between one fourth and one third of the members today are Muslims. Economic interests rooted in a sectarian community tend to give work to lawyers from the same community.<sup>216</sup>

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<sup>214</sup> Interview with *Mr. Nabil Tobia*, Deputy at the Beirut Bar Association, Beirut 7 June 2001.

<sup>215</sup> Interview with *Dr. Simon Karam*, 13 June 2001 (note 45).

<sup>216</sup> Interview with *Ms. Aline El Khoury*, Attorney at Law, Beirut 7 & 20 June 2001.

Along with the title of attorney follows partial judicial immunity and certain guaranties regulated by law.<sup>217</sup> In order for an attorney to be prosecuted for a crime, the matter needs to be decided by a committee within the Bar Association prior to its investigation in the normal channels.<sup>218</sup>

### 5.4.3 Law firms

A law firm is usually the property of the individual attorneys working there. Partnerships are coming more to the forefront today (although this phenomenon is not comparable (size-wise) to the situation in the USA).<sup>219</sup> A firm of four attorneys and two law clerks is considered medium size in Lebanon. The largest firm has around 20-22 lawyers in total.

## 5.5 Other professions

### 5.5.1 Notary public

Another legal profession that requires a law degree (since 1994) is that of Notary Public. This semi-official body deals mainly with enactment and legalisation of documents and assists in the drafting of contracts. There are not that many notaries public in Lebanon.<sup>220</sup>

There are also some legal professions within the judiciary and other state bodies that are sometimes employed by holders of a law degree, even though it is not a formal requirement, for instant *notaries*, *huissiers de justice* and *greffiers*. They often work as assistants to judges, prosecutors, attorneys or government officials, and often handle issues of an administrative – as opposed to a purely legal – nature.<sup>221</sup>

### 5.5.2 Governmental administration

Many lawyers work within the governmental administration, with matters regarding legislation or the administration of the Ministries. The Ministry of Justice employs many lawyers in order to fulfil the requirements of the rule of law in the execution of the different responsibilities enacted to the Ministry, for instance offering legal advice to governmental agencies.<sup>222</sup>

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<sup>217</sup> Law No. 8/70.

<sup>218</sup> Interview with *Ms. Aline El Khoury*, 20 June 2001 (note 216).

<sup>219</sup> The Lebanese journalist *Michael Abohoudi* has reportedly said that “*the development of large law firms is connected to large economies*”. Interview with *Dr. Simon Karam*, 13 June 2001 (note 45).

<sup>220</sup> Interview with *Dr. Richard Chémali*, 5 June 2001 (note 19).

<sup>221</sup> Interview with *Ms. Aline El Khoury*, 20 June 2001 (note 216).

<sup>222</sup> Interview with Judge Omar Al Natour (note 73).

### **5.5.3 Private and international sector**

The UN has a big agenda in Lebanon, and employs some Lebanese lawyers, as well as lawyers of many other nationalities. Some lawyers also work in the private sector or within NGO's.

# 6 Contemporary legal issues

## 6.1 Religious sects

### 6.1.1 Facultative civil regulation of marriage

It is not possible for a man and a woman from different sects to marry without doing so according to the rules of one of the sects to which they belong. There is no civil authority in Lebanon who can perform marriages. However, the couple can travel abroad to get a marriage certificate and then get it certified by Lebanese authorities upon returning to the home country. It is not uncommon for Lebanese “mixed” couples to travel to the Turkish side of Cyprus, which is only a short ferry ride from Beirut, to receive a certificate.

In order to rectify this bizarre situation, the President presented a law proposal in 1998 concerning the introduction of a facultative civil marriage, to be introduced as an alternative to the sectarian regulations, which would remain in force.<sup>223</sup>

The political opposition against the proposal was probably extensive, however it was never manifested in the mainstream political arena since the Prime Minister neglected to send the proposal to the Parliament (probably in defiance of the constitutional law-making process since there was no precedence to fall back on).<sup>224</sup> The idea of an optional civil marriage has not been brought up on the political agenda since.

### 6.1.2 Elections

The Constitutional Council started to function in 1994, and the first Parliamentary election that came to be put under its scrutiny was that of 1996. The situation was complex since the Parliament passed an electoral law just a month before the elections. Ten Parliamentarians questioned the constitutionality of the law by initiating a case before the Council, and some of the losing candidates challenged the results of the elections.

The Council ruled several of the provisions in the law invalid, for instance an article regulating the size of the electoral districts, something that is of greatest importance in a country based on confessionalism. The legal

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<sup>223</sup> See Traboulsi, Ibrahim A., *De Nicole à Beyrouth: le mariage civil au Liban*, pp. 53-63, and Mallat, Chibli in *Yearbook of Islamic and Middle Eastern Law*, Vol. 4, 1997-1998, pp. 297-298.

<sup>224</sup> The Constitution calls for the Prime Minister to send a law proposal to the Parliament as soon as it has been accorded by the Council of Ministers.

foundation of the ruling was that it violated the Constitution in terms of equality before the law.<sup>225</sup> Over all, the Council referred mainly to French general principles on the *ordre constitutionnelle* in its ruling.<sup>226</sup>

Only six days after the ruling, the Parliament passed a new electoral law, which had been revised in conjunction with the ruling simply by adding the phrase “*for one time only*”. This new law was not challenged, and the elections were carried out as planned.<sup>227</sup>

Nineteen petitions concerning the election were brought before the Council by dissatisfied candidates. The following handling of the cases led to several controversies, which eventually led to the resignation of the President of the Council. He was close to being prosecuted for allegedly conducting irregularities while in office, but the charges were never filed. Fifteen of the petitions were dismissed and four partial re-elections were ordered, of which only one resulted in a change compared to the original elections. Some of the secret dissident opinions of the Council were also published in Lebanese press.

In 1998 the President proposed to change the electoral process in electing the president from the current indirect system, where the Parliament chooses the President, to direct universal suffrage. However, the proposal was never formally presented. In any case, it probably manifested the need for a change if Lebanon wants to be regarded as a true democracy, despite the sectarian structure and the confessionalism.

## 6.2 Amnesty laws

### 6.2.1 War crimes

When the civil war ended, a law was passed which meant that those responsible for crimes committed during the civil war would not be convicted before Lebanese courts. The *Law of General Amnesty* was passed on 28 March 1991 and according to its article 3.2 the law excludes crimes that had been raised before the Judicial Council before that date. Despite this, many warlords or militia leaders allegedly responsible for crimes during the war were not brought before the court, even though intensive lobbying on all levels of society were instigated in order to bring justice to some of the horrific crimes committed during the war.

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<sup>225</sup> See Mallat, Chibli in Yearbook of Islamic and Middle Eastern Law, Vol. 3, 1996, pp. 221-227.

<sup>226</sup> Interview with Dr. Antoine A. Khair, 18 June 2001 (note 36).

<sup>227</sup> Salem, Paul, *Skirting Democracy: Lebanon's 1996 Elections and Beyond*, pp. 26-29.

This law is very controversial, especially since one of the Militia leaders, *Samir Geagea*<sup>228</sup>, head of one of the major Christian militias during the war, was convicted in 1995 for the assassination of another militia leader in October 1990. The Judicial Council held that he was responsible for the chain of command in the careful planning of the crime. He was sentenced to death, but the ruling was reduced to life imprisonment for mitigating circumstances. A common opinion among the Lebanese is that he was used as a scapegoat.<sup>229</sup>

Amnesty International has publicly criticised the proceedings before the Justice Council for being incompatible with international standards for fair trials, especially the lack of review by a higher court. The organisation has used the Geagea-sentence as an example in this respect in its public statements.<sup>230</sup>

When travelling in Lebanon, and walking in the streets of Beirut, it is not unlikely for one to encounter people who might be responsible for horrible crimes that have not been tried before an unbiased court. Some high officials in the Lebanese society, including Cabinet Members, are among many people considered being responsible for crimes committed during the war for which they were never indicted.

## 6.2.2 Narcotics

Lebanon has a long history of producing *Narcotics*. In order to fulfil commitments to the international community, the government granted producers amnesty from criminal procedure regarding their production of non-legal substances (mainly hash and marijuana) if they agreed to switch to other crops.<sup>231</sup>

## 6.3 Corruption

### 6.3.1 General background

In a recent Lebanese survey, six out of 10 respondents “*strongly agreed*” or “*agreed*” that Lebanon’s judiciary is not independent in its decisions. About 70 per cent of the respondents claimed that they uphold laws but said that a

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<sup>228</sup> See the official Webb page of Lebanese Forces, for further albeit biased, information on Samir Geagea at <http://www.lebanese-forces.org/> (visited 11 December 2001).

<sup>229</sup> See for instance the intervention by the Lebanese jurist Nizar Saghieh, *The memory of war in the Lebanese judicial system*, held at “Memory for the Future Seminar”, United Nations House, ESCWA, Beirut 30-31 March 2001.

<sup>230</sup> See Amnesty International, *Lack of Judicial Review is a denial of fair trial*, Public statement, 1 July 1999.

<sup>231</sup> Interview with *Mrs. Anne Dismorr*, Ambassador of Sweden in Lebanon.

majority of the population does not.<sup>232</sup> In the survey, 98.6 per cent of the respondents answered “yes” to the question “*Is there corruption in Lebanon?*”. The Former Prime Minister, *Dr. Salim el Hoss*, has allegedly said that “*corruption in Lebanon might be organic*”.

### 6.3.2 Corruption within the judiciary

It is a common wisdom in Lebanon that the body of magistrate is tainted by corruption. It is probably not as badly tainted as other parts of society though. Because of its internal immunity it is still considered a body able for reform.<sup>233</sup>

The Director General of the Lebanese Ministry of Justice would not characterise the corruption as open, even though he cannot deny that it exists. According to him there are two levels of corruption within the judiciary. The first regards the “accessories” of judges – helpers around him who have low salaries and therefore an incentive to take bribes, even though their possibilities to interfere in a judgement are very slim. The other regards the judges themselves, and this corruption is very difficult to see, but the Director is convinced that it is not at all common. Of the around 400 judges in total there are probably around 20 judges who have a bad reputation in this respect. The Ministry is allegedly aware of them and they are normally taken apart on mutation and are consequently not receiving any future attractive posts.<sup>234</sup>

The leader of the Progressive Socialist Party, *Walid Junblat*, has publicly admitted that politicians systematically pressure judges to influence legal rulings in favour of their political clientele.<sup>235</sup>

While in Beirut, this author heard of an accident wherein a pedestrian was killed by a speeding car in the centre of the city. The driver of the car was not indicted for any crime in connection to the accident, even though his actions were likely in violation with several criminal offences in Lebanese law. This was merely a rumour, and any official channels could not verify its truthfulness. The general impression of the Lebanese people who gave the information was that the driver probably had paid the right amount to the prosecutor to avoid a thorough investigation into the events surrounding the accident. However, this anecdote probably tells more about the public’s lack of faith in the judiciary than it does about the true state of the rule of law in Lebanon.

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<sup>232</sup> Survey conducted by Information International S.A.L., presented at the “*National Anti-Corruption Plan in Lebanon – Experts Meeting*”, Marriott Hotel, Beirut 22 January 2001.

<sup>233</sup> Interview with *Dr. Simon Karam*, 13 June 2001 (note 45).

<sup>234</sup> Interview with *Judge Omar Al Natour*, 15 June 2001 (note 73).

<sup>235</sup> See Assaf, Georges J., *The Lebanese Judiciary and Human Rights*, The Lebanon Report, No. 2, 1997, p. 39.



There are presently discussions regarding the introduction of an *Ombudsman* to handle investigations and give suggestions on improving the state of the rule of law in Lebanon. The need to reform the judiciary is the most prudent short-term goal for the Government. That, apart from the political instability following the *Ta'if* Agreement, is the main Lebanese issue that the debate in Parliament has focused on in recent years.<sup>236</sup>

## 6.4 Financial situation

The Minister of Economy and Trade, *Basil Fuleihan*, made a public statement in July in which he said that administrative regulations concerning trade are getting too old to be effective today: “*These archaic laws has turned the Lebanese economy into a labyrinthine bureaucratic system that stands in the way of progress*”. He referred specifically to the pending globalisation of trade following from Lebanon’s adhering to the WTO and the association agreement with the EU.<sup>237</sup>

A *Money Laundry Law* was recently enacted in order to deal with the huge Lebanese problem of financial fraud, with the long-term goal of gaining better goodwill internationally.<sup>238</sup> A *Special Investigation Committee* will be formed to monitor compliance with the rules and procedures in the law.<sup>239</sup> A large effort is also being put towards dealing with the currently inefficient *Tax Collection*. A proposal has also been made to introduce *Value Added Tax* on goods and services.<sup>240</sup>

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<sup>236</sup> See *Lebanon: Judicial Reform*, article published in The Daily Star 11 June 2000. The following are some extractions from a leader column published by the editorial office of The Daily Star earlier this year: “*The system of justice is still antiquated in both structure and intent, enforced at whim (if at all), and interpreted according to something wholly unrelated to the principles of either legal precedent or natural law. [...] A judicial system that enjoys neither the respect of legal professionals nor the trust of laymen cannot help but to pervert the principle of being ruled by consent and therefore to make a mockery of claims that Lebanon is a democracy in anything but name. [...] As susceptible as Lebanon’s judges are to intimidation, corruption, pressure, etc., bureaucrats are even more so. The results of any games to be played on this field can therefore be pre-determined. [...] Only the creation of an independent judiciary can set this situation right, and only a courageous leadership can make it so. How long will it take until we have one?*”. See *Real Reforms*, leader column published by The Daily Star, 25 May 2001.

<sup>237</sup> See *Fuleihan says ‘archaic’ laws hold him and globalization back*, article published by the Daily Star, 7 July 2001.

<sup>238</sup> The law can be found in English at <http://www.finance.gov.lb/fi/mlaw/monlaunde.htm> (visited on 11 December 2001).

<sup>239</sup> See Ministry of Justice, *Recent Economic Measures – Six months of Economic Reforms*, Press Release, 23 May 2001, p. 15.

<sup>240</sup> See Abu Rizk, Zeina, *Parliament approves introduction of VAT*, article published in The Daily Star, 6 December 2001. See also <http://www.finance.gov.lb/fi/vatjune01.htm> (visited on 27 July 2001). For further information on the financial reforms currently being undertaken, see the material from the conference “*Vision and Partnership @ Ministry of Finance*”, Institute of Finance, Beirut 30-31 May 2001.

## 6.5 Security situation

An area of concern that affects all aspects of Lebanese society is regional security. The Israeli-Arab Conflict has been going on for more than 50 years now, and a solution does not seem near.<sup>241</sup> Since the Israeli withdrawal, the most impending issues are the question of the Palestinian refugees and the Syrian presence. The judiciary is also concerned in this respect. A large number of (Israeli supported) South Lebanese Army-soldiers that remained in Lebanon after the Israeli withdrawal have been convicted for various crimes and are presently overcrowding the prisons.

After 11 September 2001, the United States' "war on terrorism" has mainly affected Lebanon by the uncertain status of *Hezbollah*. The EU Commission added a new provision to the Euro-Mediterranean association agreement stating that the parties would cooperate with a view to preventing and repressing terrorist acts within the framework of UN Security Resolution 1373 on terrorism, mainly by sharing information and expertise. The negotiations stranded for a while, since the Lebanese Government had to decide whether the clause would be in conflict with their position in the *Hezbollah*-issue, but were eventually solved when Lebanon adhered completely to the provision.<sup>242</sup>

During the 1980's, the current Israeli Prime Minister, *Ariel Sharon*, Defence Minister at the time, was officially deemed "personally responsible" for the massacre at *Sabra and Shatila*, and was forced to resign after a public Israeli inquiry of the massacre (conducted by the Israeli *Kahan Commission*). The Israeli supported Phalangist Militia conducted the massacre.

The 1993 Belgian local court jurisdiction reform for war crimes makes it possible to seek cases against foreigners suspected of war crimes no matter where they occurred. On 17 June 2000, Professor Chibli Mallat and two Belgian lawyers filed a case with a court in Brussels on behalf of 28 survivors of the massacre, claiming liability for those responsible for it, Sharon and others.<sup>243</sup>

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<sup>241</sup> Dr. Simon Karam made the following remark in 1993, when he was Ambassador for Lebanon to the US: "Throughout the pacification process of the regional environment, with the presence of true international guarantees, the Lebanese experience can become a laboratory where better understanding between the West and the Islamic world can be achieved. Lebanon's openness to modern values, while maintaining its traditional ones, was the tour de force achieved by the Lebanese throughout the nineteenth century, when, under the Mutasarrifiah rule, international guarantees provided peace and stability." See Karam, Simon, *Lebanon, Collapse and Revival: Society and the Nation-State in the Arab World*, Middle East Policy, Vol. 2, 1993, p. 24.

<sup>242</sup> See Zaide, Mona, *Hariri will defend against Euro-Med terror clause*, article in The Daily Star, 8 December 2001.

<sup>243</sup> See Blanford, Nicholas, *Seeking justice for victims of Sharon*, article published in the Daily Star 16 July 2001. The complaint can be found in French at <http://www.mallat.com/complaint.htm> (visited on 18 July 2001). See also Blanford, Nicholas, *Sharon summoned to court for war crimes*, article published in the Daily Star 20 November 2001.

## 6.6 Human rights

### 6.6.1 General background

The treatment of prisoners is a question given a lot of attention by the media and NGO's in Lebanon.<sup>244</sup> A report presented by the *Human and Humanitarian Rights Association* in May outlined breaches of human rights by the government. The association singled out the *Foreign Ownership Law* as racist, since it prevents Palestinians from owning property in Lebanon. It also made reference to the detention of demonstrating students and supporters of the opposition. The arbitrary convictions of former South Lebanese Army-soldiers after the opening of Southern Lebanon were also criticised. The report pointed out that the Euro-Mediterranean Partnership presents an incentive to put a stop to human rights violations, due to its clear stand on human rights issues.<sup>245</sup>

There are reports by family members of prisoners and from NGO's that borderline systematic torture is being conducted within the prisons. The Minister of Justice, *Samir Jisr*, admitted at a seminar in July that torture does occur: "We say it honestly, some people under arrest are tortured, but it's difficult to prove because those who violate the UN Charter on Human Rights know how to escape prosecution through loopholes." He also said that legislative, administrative and judicial procedures would be introduced in order to implement the *Anti-Torture Agreement*.<sup>246</sup>

The prisons are severely overcrowded. The 6 cells of the *Zahlé Prison* are all 35 square meters, and each holds 54 (fifty four) prisoners.<sup>247</sup> A Member of Parliament estimates that there is a total number of 7230 prisoners in Lebanon, and of these are only about 2500 convicted.<sup>248</sup> Newspaper reports in July stated that a man had been detained in eight years pending trial for murder.<sup>249</sup> On the order of the Ministry of Interior, the press is not allowed to visit the prisons.<sup>250</sup>

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<sup>244</sup> See Assaf, Georges J., *The Lebanese Judiciary and Human Rights*, The Lebanon Report, No. 2, 1997, pp. 37-41.

<sup>245</sup> See *Government accused of human rights violations*, article published by the Daily Star 5 May 2001.

<sup>246</sup> See *Justice minister admits torture practiced on prison inmates*, article published at <http://www.thisis cyberia.com>, 16 July 2001.

<sup>247</sup> See *Cinquante-quatre prisonniers sur 35 mètres carrés*, article in *L'Orient-Le Jour*, 21 May 2001.

<sup>248</sup> See *Parliamentary group appalled by 'dismal' jail conditions*, article published by the Daily Star 21 May 2001.

<sup>249</sup> See *Prisoner jailed for eight years waiting for trial was innocent*, article published at <http://www.thisis cyberia.com>, 14 July 2001.

<sup>250</sup> See *Press ban: What are authorities hiding in Roumieh prison?*, article published by the Daily Star, 16 May 2001. See also Lavie, Aviv, *Never, Never Land: On Kham prison in Southern Lebanon*, article published in *Middle East Report*, Spring 1997.

There is a Human Rights Institute at the Beirut Bar Association, which deals predominantly with issues of due process and promotion of basic human rights, for example by training for legal professionals.<sup>251</sup> However, the few progresses that are made take a lot of time and effort to fully achieve. An essential element if progress is to be achieved in human rights issues is to get the judges to understand that they have the power to lead the way.<sup>252</sup>

## 6.6.2 Treatment of non-Palestinian Refugees

The *Sûreté Générale* is the public body that deals with internal security issues and foreigners in Lebanon. The treatment of non-Palestinian refugees is an issue of current interest. A lot of people from predominantly Iraq and Somalia have come to Lebanon as refugees to seek asylum. They are reportedly detained in an inhumane fashion and are systematically resettled to their countries of origin, the Iraqis usually on the platforms of trucks.<sup>253</sup>

## 6.6.3 Death Penalty

The death penalty can still be used as a punishment for severe crimes, and ten recent judgements have been given, but a *de facto* moratorium has been in effect for the last three years and none of the judgements have therefore been enforced.<sup>254</sup>

The development towards a total abolition of the death penalty is under way and should mainly be attributed to the work of Lebanese attorneys, NGO activities and diplomatic efforts undertaken by foreign countries and governmental organisations. The Parliament is divided on the issue, with a slight preponderance for those deputies who advocate the penalty. However, the Parliament recently approved a legal revision that limits the judges' ability to sentence convicts to death.<sup>255</sup>

Lebanese society is still to a great extent characterised by the passionate atmosphere that has lingered on since the end of the war, and many people still put a lot of confidence in the retaliation and deterrence factors of the death penalty (of the 14 people who were executed between 1994 and 1998, two were hanged in public). However, with the ongoing globalisation, and the impending association agreement, it will probably be difficult for its advocates to uphold the penalty.

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<sup>251</sup> See <http://www.humanrightslebanon.org/about.html> (visited on 5 August 2001).

<sup>252</sup> See Assaf, Georges J., *The Lebanese Judiciary and Human Rights*, The Lebanon Report, No. 2, 1997, pp. 41.

<sup>253</sup> See <http://www.unhcr.ch/world/mide/lebanon.htm> (visited 10 August 2001).

<sup>254</sup> See "L'Europe et la peine de mort", USJ, 15 May 2001.

<sup>255</sup> The law was passed in July and cancelled law no. 302 of 1994, which basically said that all homicides were punishable by death even if committed in the spur of the moment.

# 7 The Euro-Med partnership

## 7.1 The Barcelona process

### 7.1.1 General background

The countries south of the Mediterranean are, after the Eastern European countries, the most strategically important countries for the EU and its member states. Originally only the so-called *Maschrek* countries were actively working towards increased economic relations with the EU, but in 1995 the member states and 12 Mediterranean countries signed a Treaty establishing the *Euro-Mediterranean Partnership* in Barcelona.<sup>256</sup>

The Partnership is very ambitious and ranges from political dialogue and economic-financial cooperation to working towards stronger social and cultural ties between the two regions.<sup>257</sup> It constitutes a deepening and more stringent formalisation of the *Global Mediterranean Policy* that the EC announced in 1972 in order to coordinate the *ad hoc* agreements that previously had been concluded with the countries in the region. Since there is no desire for EU membership among most of the Mediterranean countries, the fundamental idea of the partnership is to form stronger ties between the two regions corresponding to the highest possible political influence on the part of the EU.<sup>258</sup> The basic principles and ambitions of the partnership are detailed in the *Barcelona Declaration*.<sup>259</sup>

### 7.1.2 Free trade area

The most concrete endeavour of the partnership is the setting up of a Free Trade Area comprising the 27 partner countries (and the 10 other candidate countries) by the year 2010. In order to achieve this, the EU Commission has signed, or is in the progress of negotiating, bilateral association agreements with the Mediterranean partner states.<sup>260</sup> These agreements are mainly targeting economic and trade issues between the EU and the partner states, but other areas are included as well, for instance Human Rights.<sup>261</sup>

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<sup>256</sup> Algeria, Egypt, Israel, Jordan, Lebanon, Morocco, PA, Tunisia and Syria. Cyprus, Turkey and Malta were originally partner countries but are today primarily considered as EU candidate countries. See the map in Supplement C on page 79. Libya can become a partner when the UN Security Council sanctions against the country are lifted.

<sup>257</sup> See *Euro-Mediterranean Partnership*, European Commission, pp. 1-6.

<sup>258</sup> See Bretherton, C. & Vogler, J., *The European Union as a Global Actor*, pp. 152-163.

<sup>259</sup> See [http://europa.eu.int/comm/external\\_relations/med\\_mideast/intro/](http://europa.eu.int/comm/external_relations/med_mideast/intro/) (visited on 27 June 2001).

<sup>260</sup> For details on the progress of the signings, see Supplement C on page 79.

<sup>261</sup> See section 7.3.4.

The governments of the partner countries have, by agreeing to take part in this ambitious journey, committed themselves to far-reaching reforms, affecting almost all parts of society. These reforms have to be implemented swiftly, whereas the results will probably not be noticeable for a long period of time. Substantial changes in "*judicial and administrative practices*" will be needed.<sup>262</sup> Even though there are few direct references to reforms or cooperation within these fields (perhaps as a sign of discreet political respect for the internal affairs of the partner countries), this is probably one of the major outputs of the partnership.

The signing partners also agree to respect sovereign equality, equality of the rights of peoples and their right to handle their own affairs. These references are addressed specifically in respect to the regional peace process, but they can also be analysed as a natural result of the difficulties to introduce the "European model" in the Middle East.<sup>263</sup>

### 7.1.3 MEDA programmes

The cooperation aspects of the partnership are outlined in the *MEDA programmes*. The first MEDA programme for 1995-2000 dealt with economic transition, socio-economic development and aid to civil society in the partner countries.<sup>264</sup> The MEDA II Programme funds to Lebanon for the period 2000-2006 will mainly target economic transition and stabilisation, privatisation of infrastructure and support for a balanced social development.<sup>265</sup>

The *MEDA Democracy Programme* aims at implementing the principles of the Barcelona Declaration, especially its political aspects concerning the democratic process, the state of law, civil and socio-economic rights and protection of vulnerable populations. Over 2 million euros have been allocated to Lebanon since 1995 in order to accomplish this.<sup>266</sup>

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<sup>262</sup> See Ghesquiere, Henri, *Impact of European Union Association Agreements on Mediterranean Countries*, p. 22.

<sup>263</sup> See Lannon, Erwan, *La déclaration interministérielle de Barcelone, acte fondateur du partenariat euro-méditerranéen*, R.M.C.U.E., 1996, p. 361.

<sup>264</sup> See *Le Programme MEDA*, European Commission, p. 5.

<sup>265</sup> See *Bilateral Relations between the EU and the Mediterranean Partners: Lebanon Country Profile*, p. 14, at [http://www.europa.eu.int/comm/external\\_relations](http://www.europa.eu.int/comm/external_relations) (visited 18 May 2001).

<sup>266</sup> See <http://www.dellebn.cec.eu.int/europ/cooperation/summary.htm> (visited 27 June 2001).

## 7.2 The EU Commission in Lebanon

The EU Delegation in Beirut represents the EU Commission in relation to the Lebanese Government when it comes to matters within the EU's competence. The main objective is to achieve better relations in cooperation and trade. It also deals with the member state's diplomatic missions in Beirut concerning all matters within the *Common Foreign and Security Policy* and is responsible together with the member state holding the Presidency for executing measures in that respect.<sup>267</sup>

The relations between the EU and Lebanon fall under the context of the Euro-Mediterranean Partnership, and the main activity at the Delegation is therefore to administrate the funds of the MEDA programme allocated to Lebanon. Since the conclusion of the partnership, Lebanon has benefited from around 435 million euros in grants and loans.<sup>268</sup> In addition to this, the Delegation assisted the EU Commission in negotiating the Euro-Med Association Agreement with the Lebanese Ministry of Economy and Trade.

According to the Commercial Attaché at the Delegation, when giving the Lebanese government financial aid, the terms of the aid need to be thoroughly detailed and the handling needs to be supervised.<sup>269</sup>

## 7.3 The Association Agreement

### 7.3.1 General background

The negotiations for the association agreement between the EU Commission and Lebanon began in 1995. Until the conclusion of the agreement, both parties remain bound to the co-operation agreement concluded in 1977, which superseded the original bilateral trade agreement from 1965.<sup>270</sup>

The finalisation of the current agreement depends on the recent Lebanese budget and tax reforms to allow dismantling of customs tariffs to prepare for the free trade area.<sup>271</sup> The negotiations were prolonged several times, but on 10 January 2002 the agreement will be concluded at a meeting in Brussels -

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<sup>267</sup> See <http://www.dellbn.cec.eu.int/europ/delegation/index.htm> (visited on 26 July 2001).

<sup>268</sup> See <http://www.dellbn.cec.eu.int/europ/cooperation/index.htm> (visited on 26 July 2001).

<sup>269</sup> Interview with Mr. René Milas, 18 June 2001 (note 15).

<sup>270</sup> See *Cooperation Agreement between the European Economic Community and the Lebanese Republic*, Official Journal L 267, 27/09/1978 p. 0002-0088.

<sup>271</sup> See *2000 Annual Report – Delegation of the European Commission to the Republic of Lebanon*, Delegation of the EU Commission to the Republic of Lebanon, Beirut 2001.

and will be signed and implemented by the concerned Community institutions and the partner states during the rest of the year.<sup>272</sup>

The 1977 co-operation agreement and the GSP give the result that 85 per cent of all Lebanese exports to the EU benefit from preferential treatment whereas Lebanon does not have to apply the same to EU exports to Lebanon.<sup>273</sup>

### 7.3.2 Community legislation

The EC-Treaty outlines some specific external powers of the Community institutions. Hence, it does not give any general legal authority to the institutions in their relations to other states. But in order to prevent the member states from conducting their own agendas on the international trade scene to the detriment of the Community, title IX of the EC-Treaty gives the common market protection by a *Common Commercial Policy*. This excludes national measures in the field of external policy on commercial issues. Following this, the Commission negotiates commercial agreements by the authority of the Council.<sup>274</sup>

The customs union of the Community is regulated by *article 131* of the EC-Treaty, and this is the provision that gives the Community the competence to handle matters of trade for the member states with non-member states, as well as to formulate the trade policy of the union. The Community also has sole competence to conclude bilateral and multilateral trade agreements, according to *article 133* of the EC-Treaty.

The right to conclude association agreements is regulated in *article 310* of the Treaty. One of the most comprehensive association agreements is the *Lomé Convention*, concluded with a large number of developing countries, including Lebanon. The original purpose of the agreement was to maintain trade relations with former colonies of the member states.<sup>275</sup>

The association agreements within the Barcelona process are so called *Mixed Agreements*, since the scope of the agreements fall both within the competence of the Community and the competence of the member states.

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<sup>272</sup> See Fleyhane, Khalil, *Le Liban impatient de signer l'accord de partenariat avec l'UE*, article in L'Orient-Le Jour, 6 June 2001, and Kawas, Nafez, *Paris takes bow for Euro-Med success*, article in The Daily Star, 13 December 2001.

<sup>273</sup> See *Bilateral Relations between the EU and the Mediterranean Partners: Lebanon Country Profile*, p. 13, at [http://www.europa.eu.int/comm/external\\_relations](http://www.europa.eu.int/comm/external_relations) (visited on 18 May 2001).

<sup>274</sup> See Lenaerts, K. & van Nuffel, P., *Constitutional Law of the European Union*, pp. 621-624.

<sup>275</sup> See Bernitz, U. & Kjellgren, A., *Europarättens grunder*, pp. 156-158.



This is the reason why both the Council and the individual member states must ratify the agreements.<sup>276</sup>

When talking of Community law or the EC legal order, one refers to the legal framework made up by the legal instruments included in the first of the three pillars that constitutes the EU. The Barcelona Process is administered within the second pillar: *the Common Foreign and Security Policy*. An interesting issue in this respect is the concept of parallelism: how does the external powers of the Community reflect the internal powers? There is no definite answer to this and it is probably too early to evaluate how the Barcelona Process and the free trade area will affect the parallelism and the implied powers of the EU.<sup>277</sup>

The Community has, since the outset, first and foremost been seen as an economic collaboration. The legal integration of the member states is an essential aspect of the Community that has been put somewhat in the background. However, the aspirations of achieving legal harmonization on civil law have recently received a place higher up on the European agenda. The Parliament suggested a *European Civil Code* in 1989, but most legal commentary suggests that this (or a similar) piece of legislation will probably not replace the national codes in the foreseeable future.<sup>278</sup> However, it can function as a model code, or “soft law”.<sup>279</sup>

The founding countries of the EU were France, Germany, Belgium, the Netherlands, Luxembourg and Italy. These countries constitute the epicentre of the civil law tradition, so it is therefore no exaggeration to claim that the origin of Community law can be found in Roman-German law. The most striking example is the Court of Justice of the European Communities, which derive most of its characteristics, in terms of both formal and material procedure, from the French legal tradition.

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<sup>276</sup> See Hakura, Fadi S., *The Euro-Mediterranean Policy: The Implications of the Barcelona Declaration*, C.M.L.R., Vol. 34, 1997, p. 354.

<sup>277</sup> For an interesting discussion on this note, see Craig, P. & de Búrca, G., *The Evolution of EU Law*, pp. 137-152.

<sup>278</sup> See European Parliament Resolution of 26 May 1989, OJ 1989 C 158.

<sup>279</sup> See Möllers, Thomas, *The Role of Law in European Integration*, A.J.C.L., Vol. 48, 2000, pp. 681-682.

### 7.3.3 The World Trade Organization

The Community is working within the scope of the GATT, and consequently WTO, in matters relating to trade with non-member states, following the Common Commercial Policy.<sup>280</sup> These regulations therefore play a major role in the negotiations for the association agreement.<sup>281</sup>

At the Barcelona Conference, the EU member states held that the free trade area was to be fully compatible with the provisions of the WTO.<sup>282</sup> At the recent Euro-Mediterranean Ministerial Meeting on Trade the Ministers pledged their support for an early accession to the WTO by Lebanon.<sup>283</sup> Lebanon has applied for membership in the WTO, and has enjoyed observation status in the organisation since 1999.<sup>284</sup>

The agreement calls for no new customs duties to be introduced between Lebanon and the EU and that no quantitative restrictions be imposed upon products in either direction.

The two parties pledge through the agreement to gradually implement greater liberalisation of trade in agricultural and fishery products. The main objective for the Lebanese government is to gain full access to the common market for agricultural products.<sup>285</sup>

The right of establishment and services constitute a large part of the agreement. In the former case, EU companies will receive national treatment in Lebanon whereas Lebanese companies will receive *MFN Treatment* (or “non-discriminatory treatment”) in the EU.<sup>286</sup> The agreement refers to a great extent to the provisions of the GATS, in matters concerning services.

The liberalisation of services has been central in the discussions for the agreement. Since a governmental goal is to regain Lebanon's position as a

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<sup>280</sup> See Santa Maria, Alberto, *EC Commercial Law*, pp. 326-334. See also [http://www.wto.org/english/thewto\\_e/whatis\\_e/inbrief\\_e/inbr01\\_e.htm](http://www.wto.org/english/thewto_e/whatis_e/inbrief_e/inbr01_e.htm) (visited on 9 August 2001).

<sup>281</sup> See “*L’adhésion du Liban et des pays arabes à l’Organisation Mondiale du Commerce (OMC): opportunité et problèmes juridiques et économiques*”. USJ, 11-12 March 2001.

<sup>282</sup> See Joffé, George, *Perspectives on Development: The Euro-Mediterranean Partnership*, p. 3.

<sup>283</sup> See “*Presidency Conclusions on the Euro-Mediterranean Ministerial Meeting on Trade, Brussels, 29 May 2001*”, at <http://www.eu2001.se> (visited on 29 July 2001). See also Euro-Med Special Feature – No. 22, p. 1-6, at [http://www.europa.eu.int/comm/external\\_relations](http://www.europa.eu.int/comm/external_relations) (visited on 29 July 2001).

<sup>284</sup> See <http://www.economy.gov.lb/EngMoe/frame/latestnews.htm> (visited 8 August 2001). For further information on the future WTO membership, see “*L’adhésion du Liban et des pays arabes à l’Organisation Mondiale du Commerce (OMC): opportunité et problèmes juridiques et économiques*”, USJ, 11-12 March 2001.

<sup>285</sup> Interview with Ms. Alia M. Moubayed (note 211).

<sup>286</sup> For a brief description of MFN Treatment, see for instance a Fact Sheet released by the US State Dep., [http://www.state.gov/www/regions/eap/fsmfn\\_treatment\\_970617.html](http://www.state.gov/www/regions/eap/fsmfn_treatment_970617.html) (visited on 10 November 2001).

regional centre for services, activities need to focus on drawing foreign investment to the country. And because of the openness of the Lebanese economy, more focus can be put on this area compared with other countries in the region.<sup>287</sup> One of the important areas where harmonisation of rules and regulations would facilitate trade is intellectual property.<sup>288</sup>

Since Lebanon has a significant trade deficit, and hence limited tradable goods production relative to imports, the main impact of the agreement will probably be to raise consumption, and not to stimulate production (which must probably be seen as a long-term goal).<sup>289</sup>

One concrete objective in the signing of the agreement for the Lebanese government is to achieve stability in the legal framework. The private sector is involved in the drafting of new laws. The main factor is pushing for the reconstruction (or revision) of the institutional framework. The process of administrative reform will have a more regulatory role and less emphasis will be put on enforcement.<sup>290</sup>

### 7.3.4 Human Rights

The last 50 agreements that the EU has concluded with non-member states have all included so called “*Human Rights Clauses*”, which means that the EU can suspend the agreement if the other party commits serious human rights violations. Since 1995, after a decision by the EU Council, this practice is mandatory when concluding agreements with non-member states, and is therefore a non-negotiable part of the association agreements.<sup>291</sup>

The agreements with Morocco and Jordan include the following wording of the Human Rights-clause:

*“Respect for the democratic principles and fundamental human rights established by the Universal Declaration of Human Rights shall inspire the Parties’ domestic and external policies and shall constitute an essential element (underlined by the author) of this agreement.”*<sup>292</sup>

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<sup>287</sup> See Ghesquiere, Henri, *Impact of European Union Association Agreements on Mediterranean Countries*, p. 11-12.

<sup>288</sup> See ESCWA, *Euro-Mediterranean Partnership Agreements – A Critical Assessment*, p. 12.

<sup>289</sup> See Ghesquiere, Henri, p. 11 (note 287).

<sup>290</sup> Interview with Ms. Alia M. Moubayed (note 211).

<sup>291</sup> See Chammari, K. & Stainer, C., *Guide to Human Rights in The Barcelona Process*, pp. 92-93.

<sup>292</sup> Article 2 of the Association Agreement with Morocco. The full text of the Agreement can be found at [http://europa.eu.int/eur-lex/en/lif/dat/2000/en\\_200A0318\\_01.html](http://europa.eu.int/eur-lex/en/lif/dat/2000/en_200A0318_01.html) (visited on 5 august 2001).

This wording is slightly different from the one in the agreement with Tunisia, Israel and the PA (which were all concluded prior to this), and it will probably be included in the agreement with Lebanon.

It is still uncertain how severe a breach of human rights in a partner country must be for the EU to suspend an agreement. So far, the EU has been fastidious about taking such severe action, and has as a rule instead tried to settle the problem through other diplomatic means. The “threshold” is high, and a great amount of faith is put on the deterrence factor of the clauses.<sup>293</sup>

In the concluding remarks of a civil conference on the Barcelona Process, reference was made to the structural differences between European and Eastern Mediterranean societies.<sup>294</sup> In Europe, civil society came before the creation of the nation state, whereas the opposite occurred in most Mediterranean countries. Furthermore, in Arabic there is a difference between the traditional “civil society” and the modern “civic society”. The result of the conference on this area was therefore a suggestion that political dialogue should focus on issues and not lock its aim on ideology.

In conclusion, one might suppose that the political means of influence are more effective in protecting human rights than the legal power to enforce them by the clauses in the agreements.

### **7.3.5 Approximation of legislation**

Article 52 of the agreement with Tunisia, with the header “*Approximation of legislation*”, has the following wording:

*“Cooperation shall be aimed at helping Tunisia to bring its legislation closer to that of the Community in the areas covered by this Agreement.”*

The interpretation of this provision is uncertain. One might suppose that it is not intended to be a justification for forced reception, with implied disrespect for the sovereignty of the Tunisian legislator, but merely an expression of the long-term goal of achieving a Free Trade Area consisting of states with similar legislation.

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<sup>293</sup> See Rösiö, N. & Wieslander, C-J, *Mainstreaming Human Rights in the EU’s External Relations – Recent Trends*, Europarättslig tidsskrift, Nr. 4, 1999, p. 657.

<sup>294</sup> See Conference Proceedings of “*Is the Barcelona Process working? – EU policy in the Eastern Mediterranean*”, p. 32.

With speculations on the EU's motives – as to why it embarks upon this economic master plan – mainly leaning towards economic imperialism in order to create a counterweight to similar trade areas in North America and South East Asia, the conclusion that the union would adhere to openly forcing its legislation upon economically striving developing countries seems farfetched.<sup>295</sup>

Since the agreement focus on trade, the provision most certainly mainly targets future adoption of the trade-related regulations of the Community. ESCWA holds out two areas of commercial law where harmonization is most probable: competition law and intellectual property law, both mainly covered by the WTO in this respect.<sup>296</sup>

For many of the legal systems in the Middle East where the commercial tradition is still to a large extent based on Islamic law, the concept of “*limited company*” does not mix with “*the strict individuality of the commercial transaction*” of the Muslims. In those systems it may also be difficult to understand the blind replication of rules and underlying legal principles that normally occur in the commercial partnership in capitalist countries.<sup>297</sup>

In Lebanon, however, the commercial tradition has been influenced by the French legal tradition since the introduction of the Ottoman commercial code in 1850. This, together with the open market-based economy and the strife for economic growth, might indicate that the Lebanese legislator will be no stranger to adhering to possible future Community demands on reforming commercial regulations in Lebanon.

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<sup>295</sup> René David has said the following on this note: “*In the field of international legal relations it is clear that the will of the ruling class of one state cannot make the law. It is therefore desirable, if not indeed necessary, that states with common interests participate in the conclusion of agreements. In this way, the will of those governing one state asserts its sovereignty only to impose or refuse to impose the state's power of enforcement and coercion within its territory.*” However, he was following up on a bantering statement that the Marxist-Leninist doctrine holds that “*law is nothing but the political will of those who govern*”. Whether this holds to be true in this context is to be seen in the future, at least when the free trade area is in place. See David, René, *The Methods of Unification*, A.J.C.P., Vol. 14, 1968-69, pp. 13-14.

<sup>296</sup> See ESCWA, *Euro-Mediterranean Partnership Agreements – A Critical Assessment*, p. 12.

<sup>297</sup> Mallat, Chibli, *Commercial Law in the Middle East: Between Classical Transactions and Modern Business*, A.J.C.L., Vol. 48, 2000, pp. 101.

## 8 Concluding remarks

The Lebanese legal system is mainly influenced by the French system, the Ottoman system, Canon Law and the Islamic legal order of *Shari'a*. With this in mind it would be easy to define it as a mixed legal system, difficult to place in any system of law families, and simply characterise it *sui generis*. Taking into account that the majority of legislation is constructed in the same way as in France, that most judicial institutions are modelled from their French equivalent and that *le droit commun* often can fill legal gaps, it would be almost impossible to claim that the French influence is not dominant.

Even though the legal system *per se* should be characterised as mainly French, one should not forget that a large proportion of the population are *Shiite* Muslims, and that the official legal environment is often considered being secondary to their internal and organic religious rules and routines, at least for the more fundamental followers. However, with the exception of personal status law, it would be unfair to say that the legal traditions in Lebanon make it easy to place the system among the more fundamentalist Muslim systems. It is possible to note some influence of the *Shari'a*, but the Western influence is simply too strong for it to uphold its position.

The only field of law still explicitly governed by the Ottoman *Majelle* is land law, and even though that is an important and substantial field it does not influence the other parts of the legal system as to also render them Islamic.

The legal tradition in Lebanon is not characterised by continuity. There was a rupture in the organic development during the 19<sup>th</sup> century when the French traditions started to be introduced. Even though one should not talk of a revolutionary change, the core of the current legal system is built up during the time following this rupture. In this respect, one can characterise most of the legal codes as adapted receptions of French Law.

Also bearing in mind the confessional structure and the multitude of different nationalities in the country, the in-built practice of the *zuama clientelism* and the wide-spread corruption, it would probably be fair to make the assumption that the respect for the rule of law and the official legal institutions are not very high. There are different legal traditions in Lebanon, but the framework of the official state backed legal environment can best be characterised as belonging to the French tradition.

In conclusion, the Lebanese legal system is most accurately characterised as a system belonging to the Roman-German civil law family, following the traditions of the French legal system, but with an oriental flavour. The main characteristic in this respect is the confessional structure that influences all

fields of society, the legal system specifically by the fact that personal status is governed by religious affiliation.

The French influence started during the Ottoman period in the 19<sup>th</sup> century, but came to full effect during the mandate in the 20<sup>th</sup> century. During this period the Lebanese legal system came to be very much like the French system. After the civil war, the EU has made its mark on the country, and with the intensified trading collaboration, the legal system will most likely conform itself to Community law in the same manner as other countries that have moved towards the EU in recent history. The area that will be mostly adapted to Community regulations is most likely commercial law, and more specifically competition and trading aspects. The general civil law, as well as constitutional law will also probably be affected by the rapprochement to Community law, but because of the French influence in these fields the anticipated revisions will not have to be substantial. The main reason for this conclusion is that Community law is to a large extent based on French legal traditions in these fields. Hence, the Lebanese legal development will have gone a full circle.

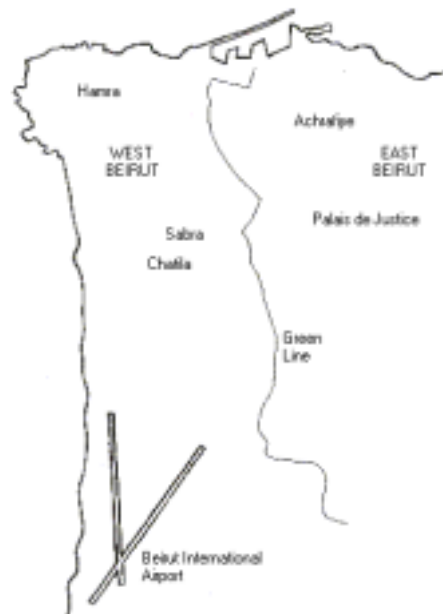
Lebanon has a long history of being under the auspices of foreign powers. The Ottoman Empire made its distinct marks on the region and the French mandate is still very present in the minds of the Lebanese. The regional security situation and the Arab-Israeli conflict are tangible realities and the population is still struggling to recover from the recently ended civil war. Even though the suspicions of European imperialism as a motive for the Euro-Mediterranean Partnership understandably cannot be neglected, the overall economic and legal benefits and progresses hoped to be achieved by it can probably, if introduced properly, lead Lebanon into peace, stability and prosperity.

# Supplement A

## Map of Lebanon



## Map of Beirut





### **Officially recognised sects**

(Number of Deputies within brackets)

#### *1. Islam*

- Sunni (27)
- Shiite (27)
- Druze (8)
- Ismaili
- Alawite (2)

#### *2. Christianity*

- Maronite (34)
- Greek Orthodox (14)
- Greek Catholic (8)
- Armenian Orthodox (5)
- Armenian Catholic (1)
- Syrian Orthodox
- Syrian Catholic
- Assyrien
- Kaldéen
- Latin
- Protestant (1)
- Orthodox Kopter

#### *3. Judaism*

- Jewish

### **Political Parties**

- Armenian Revolutionary Federation
- Al-Baath Party
- Al-Harakiyines al-Arab
- Al-Hayat al-Wataniya
- Bloc National Libanais
- Constitutional Party
- Christian Social Democratic Party
- Parliamentary Democratic Front
- Phalangist Party
- Mouvement de l'Action Nationale
- The Helpers
- National Struggle
- Lebanese Communist Party
- Democratic Party
- National Liberal Party
- Syrian Social Nationalist Party
- Socialist Progressive Party
- Waad Party
- The Lebanese Front

# Supplement B

## Schematic layout of the Lebanese judiciary

### Civil and Criminal Courts

*Court of Cassation*

*Court of Appeal (5)*

*Court of First Instance (14)*

*Single Judge Court (85)*

### Administrative (Public) Courts

*Council of the State*

*Individual Lebanese Authorities*

*Constitutional Council*

*Judicial Council*

*Superior Council (Government)*

*Superior Council of the Magistrature*

### Religious Courts

Usually two instances (18 different systems)

### Military Courts

*Military Court of Cassation*

*Military Court of First Instance*

*Tribunal of Conflicts*

*Court of Audit*

*Central Inspection Board*

### Criminal Procedure System

Contraventions and Delicts:

1. *General Prosecutor – (Police)*
2. *Instruction Judge*
3. *Single-Judge Court*
4. *Court of Appeal*
5. *Court of Cassation*

Crimes:

1. *General Prosecutor – (Police)*
2. *Chamber of Accusation*
3. *Criminal Chamber (Court of Appeal)*
4. *Court of Cassation*

## Important Lebanese legislation

### - *The Constitution of 1926*

#### Preamble

1. Lebanon is a sovereign, free and independent country. It is a final homeland for all its citizens. It is unified in its territory, people and institutions within the boundaries defined in this Constitution and recognized internationally.
2. Lebanon is Arab in its identity and in its association. It is a founding and active member of the League of Arab States and abides by its pacts and covenants. Lebanon is also a founding and active member of the United Nations Organization and abides by its covenants and by the Universal Declaration of Human Rights. The Government shall embody these principals in all fields and areas without exception.
3. Lebanon is a parliamentary democratic Republic based on respect for public liberties, especially the freedom of opinion and belief and respect for social justice and equality of rights and duties among all citizens without discrimination.
4. The people are the source of authority and sovereignty; they shall exercise these powers through the Constitutional institutions.
5. The political system is established on the principle of separation, balance and cooperation among the various branches of Government.
6. The economic system is free and ensures private initiative and the right of private property.
7. The even development among regions an the educational, social and economic levels shall be a basic pillar of the unity of the state and the stability of the system.
8. The abolition of political confessionalism shall be a basic national goal and shall be achieved to a gradual plan.
9. Lebanese territory is one for all Lebanese. Every Lebanese shall have the right to live in any part of it and to enjoy the sovereignty of law wherever he resides. There shall be no segregation of the people on the basis of any type of belonging and no fragmentation, partition or colonization.
10. There shall be no Constitutional legitimacy for any authority which contradicts the "pact of communal coexistence".

### - *The Property Law of 1930*

### - *The Code of Obligations and Contracts of 1932*

### - *The Code of Civil Procedure of 1933 (major revisions in 1983)*

### - *The Code of Commerce of 1943*

### - *The Penal Code of 1943*

### - *The Military Penal Code of 1946*

### - *The Code of Labour of 1946*

### - *The Maritime Code of 1947*

### - *The Code of Penal Procedure of 1948*

### - *Personal Status Law of 1959*

### - *Income Tax Law of 1959*

### - *The Code of Social Security of 1963*

### - *Insurance Law of 1968*

### - *Loi relative a la Profession d'avocat au Liban de 1970*

### - *The Code of Money and Credit of 1963*

### - *The Constitutional Law Nr. 18 of 1990*

# Supplement C

## The Barcelona Process – map, facts and figures<sup>298</sup>



Nov. 1995	Euro-Mediterranean Conference in Barcelona
Apr. 1997	Second Euro-Mediterranean Conference in Malta
Jul. 1997	Entry into force of the Association Agreement with the PA
Mar. 1998	Entry into force of the Association Agreement with Tunisia
Jun. 1998	Ad Hoc Euro-Mediterranean Conference in Palermo
Jan. 1999	Euro-Mediterranean Conference in Valencia on Regional Cooperation
Apr. 1999	Third Euro-Mediterranean Conference in Stuttgart
Mar. 2000	Entry into force of the Association Agreement with Morocco
Jun. 2000	Entry into force of the Association Agreement with Israel
Nov. 2000	Fourth Euro-Mediterranean Conference in Marseille
May 2001	First Meeting of Trade Ministers within the Barcelona Process
Jan. 2002	Initiation of the Association Agreement with Lebanon

<sup>298</sup> Source: "Euro-Mediterranean Partnership", EU Commission, Luxembourg 1998.

	<b>Population</b> (millions)	<b>GNP per capita</b> (€)	<b>Growth</b> (per cent)	<b>Unemployment</b> (per cent)	<b>Investments</b> (Mill. €)
<b>Algeria</b>	29.3	1 443	5.1	26.4	6
<b>Cyprus</b>	0.752	12 107	5.0	3.3	30
<b>Egypt</b>	61.3	1 072	5.6	8.4	960
<b>Israel</b>	6.1	14 786	2.2	8.6	1 650
<b>Jordan</b>	4.8	1 385	1.3	1.3	318
<b>Lebanon</b>	4.0	2 577	-	8.5	132
<b>Malta</b>	0.379	8 216	3.6	5.1	227
<b>Morocco</b>	27.8	1 143	6.5	17.8	293
<b>Syria</b>	15.6	1 011	7.8	8.9	71
<b>Tunisia</b>	9.3	1 922	5.0	15.7	600
<b>Turkey</b>	63.5	2 792	2.8	6.3	876
<b>West Bank/Gaza</b>	2.9	1 323	-	14.6	175

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- Ms. Rita Boutrous*           Attorney at Law (Interview 2001-06-20)
- Mr. John Bell*                 Deputy at OPRGS for Southern Lebanon  
(Interviewed 2001-05-31)
- Dr. Richard Chémali*         Dean of the Faculty of Law and Social Sciences at Saint  
Joseph University (Interview 2001-06-05)
- Mrs. Anne Dismorr*           Ambassador for Sweden to Lebanon and EU Member  
States Representative (Interviews 2001-01-20 to 06-08)
- Mr. Bruno Dubois*             Deputy Consul at the French General Consulate in Beirut  
(Interview 2001-06-15)
- Ms. Aline El Khoury*         Attorney at Law (Interviews 2001-06-07 and 2001-06-20)
- Dr. Simon Karam*             Attorney at Law and former Ambassador of Lebanon in  
Washington, D.C. (Interview 2001-06-04 and 2001-06-11)
- Dr. Antoine A. Khair*         President of the Conseil d'Etat, Professor of Constitutional  
Law at USJ, former member of the Constitutional Council  
(Interview 2001-06-18)
- Dr. Ibrahim Kobehsi*         Director of the Lebanese University and Dean of the  
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- Dr. Chibli Mallat*             Professor of European Law, Director of CEUE and  
Attorney at Law (Interview 2001-04-05)
- Mr. René Milas*                Commercial Attaché at the EU Delegation in Lebanon  
(Interviews 2001-05-31 and 2001-06-18)
- Ms. Alia M. Moubayed*        Advisor to the Minister of Economy and Trade  
(Interview 2001-06-19)
- Judge Omar Al Natour*         Director General of the Lebanese Ministry of Justice  
(Interview 2001-06-15)
- Mr. Mohamad Ramadam*       Attorney at Law (Interview 2001-06-16)

<i>Dr. Georges Saad</i>	Professor of Administrative Law at the Lebanese University (Interview 2001-06-13)
<i>Mr. Nabil Tobia</i>	Attorney at Law and Commissaire de la Palais de Justice (Interview 2001-06-07)
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