

**Yearbook of Islamic and Middle
Eastern Law**

General editors

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Lebanon

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1 Introduction

Lebanon continues to undergo major institutional crises.

Politically, the country has suffered for over a year from a void in the presidency. This acute constitutional crisis is borne by the full political class. In less than a year, Parliament, which is responsible for electing the president, failed in over 30 meetings to perform its duty. It managed nonetheless to extend its own mandate without elections, twice.

Environmentally, Lebanon underwent in the summer of 2015 an unprecedented 'garbage crisis.' On 18 July, the main landfill of Na'meh closed down, together with the end of a contract with the Sukleen company which had been in charge of the capital's garbage for over twenty years. The government had suggested the use of temporary landfills in various regions, but this was met with strong resistance from the inhabitants. As time passed, with the government unable to provide a solution to the garbage crisis, citizens started assembling in protest. On 28 July they met in large numbers before the Prime Minister's office at the Sérail on the invitation of the 'you stink, *tal'at rihitkum*' group. The sit-ins turned into widespread demonstrations.

The demonstrators called for the government to resign because of political corruption spread across the political representatives of religious sects. They expressed their anger at the garbage crisis as the additional sign of the slide downwards of the country since the assassination of Rafiq Hariri and the end of the Israel-Hizbullah war. Electricity was increasingly failing, the price of property was going up with flats increasingly unaffordable to the middle class, while the public debt was growing.

The malaise was compounded by the ongoing battles between the so-called Nusra front and Da'esh caliphate against the Lebanese army in the regions of 'Arsal, Ras Baalbak, in addition to the military intervention of Hizbullah in Syria.

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2 Constitutional Law

Parliament had approved on 31 May 2013 Law 246 extending its own mandate to 20 November 2014. It proceeded, in accelerated Law 16, effective on 11 November 2014, to extend the mandate another time, this time until 20 June 2017.

Upon the second extension, a group of ten deputies brought a case before the Constitutional Council asking it to reject the law for unconstitutionality. The petition argued that the law opposed paragraph b of the Constitutional Preamble (Lebanon adhering to the Universal Declaration for Human Rights) and Art.25 (b) of the Constitution which restated Lebanon's commitment to the Pact on Civil and Political Rights of 16 December 1966, a convention which Lebanon had ratified into law by Decree 3855 date 1 September 1972 (more specifically ensuring participation both in candidacy and vote in regular periodical elections on a universal basis, and freely expressing the citizens' will.) The plaintiffs also argued that the extension violated Art.4.1 of the aforementioned Pact (on the narrow interpretation of exceptional measures, and the need of correspondingly narrow legislation) as well as the Pact's Art.3 (the need for a state party to inform the Secretary-General of the UN about the reason why it violated a disposition laid out by the Pact).

The Constitutional Council examined the plea, accepting it procedurally but rejecting it on substance.² While it developed the argument over several pages in a way that suggested that the extension was unconstitutional, it concluded otherwise. All the arguments laid out by a unanimous Council pointed to the unconstitutionality of the law: the Council repeated the sacrosanctity of elections periodicity, the point that the alleged need for a new electoral law did not stand scrutiny, and that the 'exceptional circumstances' under which parliament extended its own mandate could neither be justified nor remain open-ended. Usefully for comparative jurisprudence, it held that undermining (*ta'til*) constitutional processes, including the presidency, was a central argument for considering a law unconstitutional. And yet the Constitutional Council refused to hold the parliamentary self-extension law unconstitutional.³

² *Al-Jarida al-rasmīyya* (Official Journal, henceforth O.J.), 48, 11 November 2014.

³ For a criticism of the decision's blatant contradictions between the arguments advocated and the conclusion, see Chibli Mallat, '*min wahy al-dustur*' (inspired by the Constitution), *al-Nahar*, 27 December 2014.

3 Landlord/Tenant Law

A controversial landlord tenant law was enacted by Parliament on 9 May 2014.⁴ It organises the conduct of expert evaluation committees for non-commercial leases contracted before 23 July 1992 (the previous lease law) in order to assess the market rate of rentals. The expert committee would allow a staggered increase over six years, with 15 pc of the estimate added on the first year and further increases until reaching market rent on the sixth year, together with the complete freeing of all residential rents by then.

The law favors landlords against long-standing tenants, and was subject to a constitutional challenge before the Constitutional Council on 11 July 2014.⁵ The petitioners asked the Council to void the law on the grounds that the Council of Ministers had not carried its authority properly in the absence of a President. Considering the presidential void, the Council of Ministers should have substituted itself to the President under Art.62 of the Constitution, the argument went. The law went to the Official Journal without the full consent of the Council of Ministers, it was further alleged, and violated therefore proper constitutional procedure, in addition to the absence of the countersignature of the President. Arguments were also made on various procedural points, as well as the alleged contradiction of the law with various social considerations mentioned in the Constitution. The decision of the Constitutional Council, which was handed down in August, further muddied the waters. The law was rejected as unconstitutional on two points. The first was the lack of proper due process, as the Council considered the committees entrusted with the assessment of the increase not to be sound procedurally. It also expressed some concern with the social argument, but the decision is not clear on this point. With the unconstitutionality of evaluation committees, the law appeared inapplicable without Parliament stepping in, which it did not. The courts started applying the law haltingly in 2015, but the situation continues to be confusing to lawyers and the larger public alike.

⁴ O.J., Annex 27, 25 June 2014, stating under Art.58 that it would be effective six months after publication.

⁵ Decision of the Constitutional Council handed down on 6 August 2014, and carried in full by the major newspapers.

4 Labour Law

Parliament amended maternity leave for two articles of the Labour Code of 1946. Under new Art. 28, working mothers have the right to ten weeks of maternity leave, allowed before and after giving birth. A medical certificate must be produced confirming the expected birthdate. Under Art.29, a mother gets full pay during maternity leave. She remains entitled to the full allowance for annual leave under Art. 30 of the Labour Code. Employers may not dismiss female employees for taking maternity leave, so long as there is no evidence of them using their leave to work at a different place.

Parliament also approved a decision allowing permanent employees in the union of state employees to benefit from the system of pensions and dismissals enjoyed by civil servants.

In other developments, the Ministry of Labour approved, in Decision 1/199, the establishment of the union of taxi owners in Lebanon.

5 Law of Oil and Gas

Amidst confirmed reports of the existence of oil and gas extractable resources off the Lebanese Coast, the year has seen much concertation and no action, mostly because of the deadlocks in the Lebanese system that gripped it at all levels. This is the more embarrassing in the country considering a public debt of over 54 billion dollars, and the start of the drilling process by Israel and Cyprus in their part of the oil and gas fields discovered.

A template for tenders was approved nonetheless for a trial period of six months for prospective companies. The Ministry of Energy issued a general statement which avoided specifying whether the government will enter direct negotiations with each prospective company, or whether the tender would be handled collectively. The Ministry also mentioned specific tax breaks to encourage drilling and extraction. By end 2015, no tangible action had been taken.

In other developments, the Ministry of Energy issued a decision to substitute used gas bottles available in the local market to avoid their adverse ecological effects. The decision was taken on the recommendation of a parliamentary committee and after the approval of the Council of State.⁶

⁶ O.J., 9, 24 September 2015.

6 Criminal Law

Parliament passed Law 286 on 30 April 2014, amending Art. 186 of the Criminal Code of 1943. The new article rejects traditional forms of parental violence against children, and states that the law authorizes parents to use only 'non-violent disciplinary action, so long as it does not leave any mark on the children's body and does not impair their physical or mental well-being.' While the 'leaving a mark' limit remains open to appreciation, the amendment allows questioning how 'un-gentle' disciplining children by their parents may be.⁷

Parliament also passed Law 293 for the protection of women from household violence.⁸ It also amended the law on the medical doctors' profession (Law 313 of 2001), preventing any doctor performing medicine in Lebanon as a specialist except after fulfilling the following two conditions: a medical degree and specialization for at least three years; membership in one of the two recognized medical profession syndicates.⁹

7 Traffic Code

A new, comprehensive Traffic Code (*qanun al-sayr*) was promulgated on 22 October 2012. It replaces any former laws which stood at a variance with the Code, notably Law 67/76 of 26 December 1967 and its amendments. The Code was made effective upon its publication in the Official Journal.¹⁰

Decree 124, issued on 27 February 2013 by the Council of Ministers, requested the public authorities to continue working partially with the old code. A lawsuit was lodged by a consumer association (Association for the roads of life, *jam'iyyat turuqat al-hayat*) before the Council of State (*majlis al-shura*), arguing that the Council of Ministers had acted ultra vires, this being a matter for the legislature. In a decision rendered on 2 July 2014, the Council of State agreed with the plaintiffs.¹¹ It considered any delay in the application of the law illegal. This forced the Council of Ministers to issue another decree, effective on 22 April 2015, putting the new Code in full application. The decree was

⁷ O.J., 20, 8 April 2014.

⁸ O.J., 21, 15 April 2014.

⁹ O.J., 17, 22 April 2014.

¹⁰ O.J., 45, 25 October 2012.

¹¹ *Al-Adl*, 4, 2 July 2014,, at 1999.

probably unnecessary, considering the conclusion of the Council of State that the law was effectively in force upon its promulgation in 2012.

The main innovations of the Code are a system of points, and higher, sometimes significant penalties on traffic violators.

8 Health Law

Considering the deadlock at all levels in the institutional system, a health campaign carried out by Minister of Health Wael Boufaour received particular attention. It led to the closing of a number of restaurants, hospitals and water bottlers for ignoring national health directives.

The Ministry also issued Decision 557 on 3 April 2015 unifying the format of the medical prescription. This followed the work of the relevant parliamentary committee on Arts. 46 and 47 of the law on pharmacy practice, with the effect that the unified medical prescription be henceforth made in three copies (one for the physician, one for the patient, and one for reimbursement by Social Security). A distinction was specified between generic (letter /n/ for generic) and non-generic (letters /ns/) medication. The pharmacist can help the patient opt in the case of /n/ prescribed medication for less expensive substitutes that fall within the generic nature of the product.

9 Industry and Agriculture

To protect Lebanese industrial goods, the Ministry of Industry issued Decision 1/119 requiring a permit for the importation of craftsman products involving Lebanese symbols such as the cedar or the flag.¹²

In turn, Parliament approved Law 248 on 15 April 2014, dispensing exported Lebanese-sourced industrial products from 50 p.c. of taxes on profits.¹³

As a sample of health-related decisions, the Ministry of Agriculture issued Decision 1/1325 forbidding the importation of live stock from Parana state in Brazil.¹⁴

¹² O.J., 39, 24 September 2015.

¹³ O.J., 17, 22 April 2014.

¹⁴ O.J., 2, 10 January 2013.

10 International Public Law, Investment Laws

Parliament enacted a number of international agreements, many related to loans and investments, including:

- Law of 1 October 2014 accepting the loan agreement between the Lebanese Republic and the International Bank for Reconstruction and Development to support innovation in small and medium-sized enterprises.¹⁵
- Law 282 on 30 April 2014 for a loan agreement between the Lebanese Republic and the French Development Agency, for the preservation of heritage and urban development in the cities of Tyre and Tripoli.¹⁶
- Law 284 on 30 April 2014 to approve the conclusion of an Islamic manufacturing agreement (*istisna'*) between the Government of the Republic of Lebanon and the Islamic Development Bank on financing the expansion and rehabilitation of the road link between the Hadath al-Jebbe and Bqerqasha towns.¹⁷
- Law 252 of 15 April 2012 for a loan agreement between the Republic of Lebanon and the Kuwait Fund for Arab Economic Development (sewage in Marjayoun, al-Khiyam, and Shaqra) worth 13.5 million dinars.¹⁸
- Law 254 on 15 April 2014 approving the accession to the Protocol of Cooperation in Preventing Pollution from Ships and Combating Pollution in the Mediterranean Sea Emergency (Prevention and Emergency Protocol).¹⁹
- Law 260 on 15 April 2014 for a loan agreement between the Lebanese Republic and the French Development Agency worth 70 million euros for the implementation of collection and treatment of waste water in the district of Kisrawan.²⁰

11 Commercial Law

No significant legislative developments in the field.

¹⁵ O.J., 46, 3 November 2014.

¹⁶ O.J., 8 May 2014.

¹⁷ O.J., Annex 20, 8 May 2014.

¹⁸ O.J., 22 May 2014.

¹⁹ O.J., 22 April 2014.

²⁰ O.J., 22 April 2014.

12 Intellectual Property

No significant legislative developments in the field.

13 Private International Law

No significant legislative developments in the field.

Finally, and for the legal profession, a useful index of indexes for the Beirut Bar journal *al-Adl*, covering the period 2003–2013, helps referencing cases from all courts in Lebanon, as well as articles and comments in Arabic, English and French.