

# Justice Forum Recommendations

## Thematic Group One: Judicial Independence, Professionalism, and Accountability

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## I. High Judicial Council

### A. Formation of the High Judicial Council

1. Strengthening the independence of the High Judicial Council from the executive power regarding the formation of the Council:
  - a) **Regarding the composition of the Council:** Amend Articles 2 to 4 of the proposal devoted to the composition of the Council to establish the following rules:
    - 1.1 Including an **explanatory memorandum** in the draft law that emphasizes the principle of electing members of the High Judicial Council and establishes general principles such as equality among judges, limiting the influence of the executive power and sectarian considerations over the judiciary.
    - 1.2 Adopting the following principles for electing **elected members** of the Council:
      - 1.2.1 The broadest representation of judges from all categories and levels of courts (First Instance, Court of Appeal, and Court of Cassation), while establishing the principle of equality among judges (and thus rejecting discrimination between the president and the associate judges within the same courts).
      - 1.2.2 Separating the electoral bodies.
      - 1.2.3 Electing two or three members from among the judges by the ex officio members and the elected members to correct any sectarian or factional imbalance (principle of cooptation).

For clarification, two proposals have been formulated regarding the selection of the list of co-opted judges, as follows:

Proposal 1	Proposal 2
<ul style="list-style-type: none"><li>• The three ex officio members, along with five elected members, shall elect the remaining two members to complete the Council.</li></ul>	<ul style="list-style-type: none"><li>• The three ex officio members, along with four elected members, shall elect the remaining three members to complete the Council.</li></ul>

2. **Appointment of ex officio members** of the High Judicial Council (the First President of the Court of Cassation, the Public Prosecutor before the Court of Cassation, and the President of the Judicial Inspection Authority) shall be made by decree issued by the Council of Ministers from a binding shortlist of three candidates proposed by the High Judicial Council.
  - 2.1 The High Judicial Council shall vote on the shortlist of proposed candidates for the ex officio positions.

- 2.2 The right of the Minister of Justice to propose additional candidates shall be revoked (amendment of Article 2(A) of the draft law).
- 2.3 A mechanism shall be established to prevent obstruction in the event the Council of Ministers rejects the appointment of any proposed candidate by the High Judicial Council, through the following: The decree must be issued by the Council of Ministers within one month; if the Council fails to issue the decree within one month from the date the proposed shortlist is submitted to the General Secretariat of the Council of Ministers, the appointment shall be made by a decision of the High Judicial Council through a vote.
- The Lebanese Judges' Club recorded a **dissenting opinion** to Recommendations No. 2, 3, and 4, rejecting the presence of any ex officio member appointed by the executive authority on the Council and asserting the necessity of electing all members to prevent any undermining of the Council's independence.
  - The Judicial Independence Coalition recorded a **dissenting opinion** to Recommendation No. 4, considering that the President of the High Judicial Council should be elected by the Council's elected members rather than appointed by the Council of Ministers.
- b) **On the Non-Allocation of Any Position on a Sectarian Basis:**
3. Adding a clause to Article 53 of the draft law stipulating that it is not permissible to allocate any judicial position to a specific religious sect or denomination in the formation of the Council, in affirmation of what is stipulated in Article 95 of the Constitution. This should also be mentioned in the explanatory memorandum for the draft law.
- The representatives of both the President of the High Judicial Council and the Judicial Inspection Authority registered a **dissenting opinion**, stating that there is no need to include specific corrective mechanisms in the law on Judicial Independence given that the Constitution is clear and trumps any statute.

## **B. Council Mandate and Preventing Institutional Paralysis**

4. Adopting a sufficiently long term<sup>1</sup> of office for all elected members of the Council, and implementing partial<sup>2</sup> renewal for all members of the Council (both ex officio and elected), (i.e., ensuring that the terms of all members do not expire simultaneously) to preserve institutional memory and continuity of work.
- Amending Article 2, which sets the term of office for ex officio members at four years, and Article 5 of the draft law, which sets the term of office for elected members at three years, to adopt a sufficiently long term of office for all members of the Council.

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<sup>1</sup> ENCJ Compendium on Councils for Judiciary, p. 8; VC's Legal Opinion no. 1057/202, para. 50

<sup>2</sup> CCJE, Opinion no. 10/2007, para. 35; VC's Legal Opinion no. 1057/202, para. 50

### C. General Powers of the Council

5. Ensure the effective enforcement of the obligation to consult the High Judicial Council before voting on law proposals and regulations that may impact the judiciary or affect litigants' rights.
  - The necessity of amending Article 12(2) of the draft law in this regard.

### D. Secretariat of the High Judicial Council

6. It is necessary to establish a mechanism for appointing the judges serving in the Council's Secretariat independently from the influence of the executive authority.
  - Amending Article 19 of the draft law so that the High Judicial Council appoints a maximum of three part-time judges to serve within the Council's Secretariat by decision:
    - “The Secretary of the High Judicial Council shall be assisted by:
      - A number of part-time judges, not exceeding three.
      - An administrative staff of employees.”
7. The necessity of clearly defining the powers vested in the Secretariat, in a manner that does not lead to a *de facto* expansion of the powers of the High Judicial Council and its President, which carries the risk of interference in the work of judges and does not prejudice the internal judicial independence (*i.e.*, influence originating from within the judiciary or from colleagues).
8. Enhancing the transparency in the activities of the Secretariat and ensuring access to information related to its functions.
  - Enshrining the principle of transparency in the draft law concerning the work of the Secretariat, with the addition of the phrase “in accordance with applicable laws and procedures.”

### E. Financial Independence of the High Judicial Council

9. Strengthening the financial and administrative independence of the Council from the Ministry of Justice<sup>3</sup> by establishing a separate budget with independent management for both the Ministry of Justice and the High Judicial Council. The High Judicial Council, as an independent institution, needs to be insulated from the Ministry of Justice's influence in the management of the relevant budgets<sup>4</sup>. Therefore, it is necessary to vest the powers of the Director General in the President of the Council with regard to budget management and expenditure.
  - Amending Article 20 of the draft law accordingly.

### ❖ In order to implement the recommendations on the High Judicial Council listed above:

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<sup>3</sup> CCJE's Opinion no. 24/2021, paras. 8.C.b) and 39: Many member States report a lack of personnel and financial resources of their Councils for the Judiciary. Therefore, the CCJE wishes to reaffirm the responsibility of member States to provide adequate resources for judiciaries including separate financial means and staff for Councils for the Judiciary.

<sup>4</sup> Recommendation 6, p. 10 of the summary

(A) At the legislative level – Amendment of the draft law:

- Include an explanatory memorandum to the draft law that clarifies the principle of electing members of the High Judicial Council and establishes general principles such as equality among judges and reducing the executive power and sectarian influence within the judiciary.
- Regarding the elected members, amending Articles 2 to 4 of the draft law, which are dedicated to the formation of the High Judicial Council, to adopt the following principles for the election of the members:
  - The broadest representation of judges from all categories and levels of courts (First Instance, Court of Appeal, and Court of Cassation), while enshrining the principle of equality among judges (thus rejecting any distinction between the president and associate judges within the same courts).
  - Separation of electoral bodies.
  - Election of two or three members from among the judges by the ex officio members and the elected members to rectify any sectarian or categorical imbalance (Principe de cooptation) according to one of the two proposals stipulated above.
- Regarding the ex officio members, amending Article 2(A) of the draft law:
  - The High Judicial Council shall vote on the list of names proposed for the ex officio members.
  - Repeal the Minister of Justice’s right to propose additional names (amending Article 2(A) of the draft law).
  - Establishing a mechanism to avoid obstruction in the event that the Council of Ministers refuses to appoint any of the names proposed by the High Judicial Council, by: making the issuance of the decree by the Council of Ministers contingent upon a one-month deadline; if the Council of Ministers does not issue the decree within one month from the date the proposed names are received by the General Secretariat of the Council of Ministers, the appointment shall be made by a decision issued by the High Judicial Council upon a vote.
- Adding a clause to Article 53 of the draft law stipulating that it is not permissible to allocate any judicial position to a specific religious sect or denomination in the formation of the Council, in affirmation of the text of Article 95 of the Constitution. This should also be mentioned in the explanatory memorandum for the draft law.
- Amending Article 2, which set the term of office for ex officio members at four years, and Article 5 of the draft law, which set the term of office for elected members at three years, to adopt a sufficiently long term of office for all members of the Council.
- Amending Article 12(2) of the draft law in order to activate the respect for the obligation to consult the High Judicial Council before voting on proposed and drafted laws and regulations that could have an impact on the judiciary and that concern the rights of litigants.
- Amending Article 19 of the draft law so that the High Judicial Council appoints a maximum of three part-time judges within the Council's Secretariat by decision:

“The Secretary of the High Judicial Council shall be assisted by:

  - A number of part-time judges, not exceeding three.
  - An administrative staff of employees.”

- The necessity of clearly defining the powers vested in the Secretariat within the body of the draft law, in a manner that does not lead to a de facto expansion of the powers of the High Judicial Council and its President, which carries the risk of interference in the work of judges and does not prejudice the internal judicial independence (i.e., influence originating from within the judiciary or from colleagues).
- Enshrining the principle of transparency in the draft law concerning the work of the Secretariat, with the addition of the phrase “in accordance with applicable laws and procedures.”
- Amending Article 20 of the draft law to strengthen the financial and administrative independence of the Council from the Ministry of Justice<sup>5</sup> by establishing a separate budget with independent management for both the Ministry of Justice and the High Judicial Council. The High Judicial Council, as an independent institution, needs to be insulated from the Ministry of Justice's influence in the management of the relevant budgets<sup>6</sup>. Therefore, it is necessary to vest the powers of the Director-General in the President of the Council with regard to budget management and expenditure.
  - The Justice Forum recommended consulting the Court of Audit regarding the appropriate mechanism for translating the financial independence of the Council, in line with its administrative status and the rules of public finance.

(B) At the implementation level: measures that can be adopted without the need for any legislative amendment

Concerned Party: The High Judicial Council

- Ceasing the practice of allocating judicial positions, including membership in the High Judicial Council, to specific religious sects and denominations, as this practice contradicts both the letter and spirit of Article 95 of the Constitution.
- Respecting the principle of transparency in the work of the Secretariat of the High Judicial Council in accordance with the Law on the Right of Access to Information.

## II. Judicial Inspection Authority

### A. Formation of the Judicial Inspection Authority and its Supervisory Authority

- 1- Strengthening the independence of the Judicial Inspection Authority from the executive authority in the formation of the Authority:
  - **The appointment of the Head of the Judicial Inspection Authority and the members of the Authority (including Inspectors and General Inspectors) shall be by decree issued by the Council of Ministers, based on a proposal of three names from among the**

<sup>5</sup> CCJE's Opinion no. 24/2021, paras. 8.C.b) and 39: Many member States report a lack of personnel and financial resources of their Councils for the Judiciary. Therefore, the CCJE wishes to reaffirm the responsibility of member States to provide adequate resources for judiciaries including separate financial means and staff for Councils for the Judiciary.

<sup>6</sup> Recommendation 6, p. 10 of the summary

judges chosen by the High Judicial Council. This list shall be submitted to the Council of Ministers for selection exclusively from these names, thus maintaining the mechanism stipulated in Article 127 of the draft law regarding the Head of Inspection, but amending the same article regarding the mechanism for appointing general inspectors and inspectors in accordance with the mechanism for appointing the Head.

- The majority of attendees preferred that the three names be proposed by the High Judicial Council because it is elected by the judges.
  - However, the representatives of the Judicial Inspection Authority insisted on granting the power to propose names to the members of the Inspection Authority by a decision taken by a two-thirds majority, and excluding the jurisdiction of the High Judicial Council in this matter because its members are subject to the jurisdiction of the Judicial Inspection Authority.
  - Regarding Inspectors and General Inspectors, several parties expressed their intention that their appointment be subject to the judicial appointments and transfers (the “**General Transfers**”), taking into account the principle of nomination for the vacant position (opinion of the Judicial Independence Coalition, Saint Joseph University, MP Okais).
    - It was also agreed not to limit the term of office of the Head of Inspection to a fixed period (absolute irremovability/*Inamovibilité totale*).
  - Abolishing the Minister of Justice’s right to propose additional names regarding the appointment of the Head of the Judicial Inspection Authority (amending Article 2(a) of the draft law concerning the appointment of the *ex officio* members of the High Judicial Council).
  - Establishing a mechanism to avoid obstruction in the event that the Council of Ministers refuses to appoint any of the names proposed by the Inspection Authority: making the issuance of the decree by the Council of Ministers contingent upon a one-month deadline; if the Council of Ministers does not issue the decree within one month from the date the proposed names are received by the General Secretariat of the Council, the appointment shall be made by a decision of the High Judicial Council or the Council of the Inspection Authority, voted upon by a two-thirds majority (amending Article 2(a) of the draft law concerning the appointment of the *ex officio* members of the High Judicial Council).
- 2- Removing the supervisory authority of the Minister of Justice over the Judicial Inspection Authority and amending Article 124 of the draft law to delete the reference to the Minister's supervisory authority, as well as abolishing any role for the Minister in approving the internal regulations and amending Article 138 of the draft law accordingly.

## **B. Powers of the Judicial Inspection Authority from the Perspective of Judicial Independence**

- 3- Regarding the power to suspend judges from work, separating the authority of referral from the decision-making authority in line with international standards, granting the power to propose the suspension of a judge from work to the Judicial Inspection Authority, and vesting the decision-making authority in the Disciplinary Council, while excluding any role for the Minister. Additionally, enshrining the right to appeal a decision to suspend a judge from work before the Higher Disciplinary Board.

- Amending Article 102 of the draft law.
- 4- Granting the power to dismiss complaints to the Council of the Judicial Inspection Authority as a whole and not limiting it to the Head of the Inspection Authority, thus affirming the text of Article 135 of the draft law.
- 5- Granting the Judicial Inspection Authority the power to address State authorities directly.
- 6- Addressing the problematic issue raised in the draft law that created a conflict between the powers of the Judicial Inspection Authority and the Evaluation Committee in monitoring the work of the courts, and limiting this power to the Judicial Inspection Authority.
- Reviewing Article 143 of the draft law.
- 7- Allowing the Judicial Inspection Authority to directly lift banking secrecy from the bank accounts of any individuals subject to its supervision, without going through the Public Prosecutor before the Court of Cassation, in order to avoid conflicting legislative texts regarding the lifting of banking secrecy from judges' accounts and to remove obstacles preventing the Inspection Authority from accessing judges' accounts.
- Amending Article 139 of the draft law, which stipulates that the Council of the Authority may request the Public Prosecutor at the Court of Cassation to lift banking secrecy from the bank accounts of any individuals subject to its supervision, as this may constitute a conflict with Article 2 of the Banking Secrecy Law as, amended by Law No. 306/2022.

### **C. Financial Independence of the Judicial Inspection Authority: Subordination of the Authority's Budget to the Ministry of Justice**

- 8- Allocating a budget to the Judicial Inspection Authority that is independent from the Ministry of Justice
  - Amending Article 137 of the draft law, which stipulates that the appropriations allocated to the Judicial Inspection Authority shall be recorded in the state's general budget under a separate section entitled “Budget of the Judicial Inspection Authority” within the budget of the Ministry of Justice.

#### **❖ In order to implement these measures:**

##### At the legislative level – Amendment of the draft law:

- Amending Article 127 of the draft law on the Independence of the Judiciary to adopt the same mechanism for appointing the Head of the Inspection Authority as for general inspectors and inspectors, i.e., by decree issued by the Council of Ministers based on a list containing three names proposed by the High Judicial Council.
- Amending Article 127 of the draft law on the Independence of the Judiciary so as not to limit the Head's term of office to a specific period as stated in the text, and to establish the principle of judicial irremovability.
- Amending Article 124 of the draft law to delete the reference to the supervisory authority of the Minister of Justice.
- Amending Article 138 of the draft law to abolish any role for the Minister in approving the internal regulations.
- Amending Article 102 of the draft law to grant the power to propose the suspension of a judge from work to the Judicial Inspection Authority, and to vest the decision-making authority in the Disciplinary Council, while excluding any role for the

Minister of Justice. Additionally, enshrining the right to appeal a decision to suspend a judge from work before the Higher Disciplinary Board.

- Enshrining the right of the Judicial Inspection Authority to address authorities directly.
- Reviewing Article 143 of the draft law in order to address the problematic issue raised in the draft law that created a conflict between the powers of the Judicial Inspection Authority and the Evaluation Committee in monitoring the work of the courts, and limiting this power to the Judicial Inspection Authority.
- Amending Article 139 of the draft law, which stipulates that the Council of the Judicial Inspection Authority may request the Public Prosecutor at the Court of Cassation to lift banking secrecy from the bank accounts of any individuals subject to its supervision, as this may constitute a conflict with Article 2 of the Banking Secrecy Law as amended by Law No. 306/2022. It is necessary to allow the Judicial Inspection Authority to directly lift banking secrecy from the bank accounts of any individuals subject to its supervision without going through the Public Prosecutor at the Court of Cassation.
- Amending Article 137 of the draft law in order to allocate a budget to the Judicial Inspection Authority that is independent from the Ministry of Justice.
- The Justice Forum recommended consulting the Court of Audit regarding the appropriate mechanism for translating the financial independence of the Inspection Authority in line with its administrative status and the rules of public finance.

### **III. Judicial Studies Institute**

#### **A. Appointment of the Institute's Administration**

- 1- Strengthening the independence of the Judicial Studies Institute's administration in its formation process, given the direct link between the Institute's formation and the independence of the judiciary:
  - Adopting the principle of nomination for the presidency of the Judicial Studies Institute (i.e., maintaining Article 111 of the draft law).
  - The President of the Judicial Studies Institute shall be appointed from among judges of the ordinary judiciary, in accordance with the following mechanism: candidacies shall be submitted to the High Judicial Council, which shall propose a list of names to the Minister of Justice. The decree of appointment shall be issued based on the Minister's proposal after the approval of the High Judicial Council, following the mechanism stipulated in Article 111 of the draft law.
    - The Judges' Club registered a dissenting opinion regarding the submission of judges' nominations to the High Judicial Council, the Council of State, and the Court of Audit for selection among the candidates, and the submission of the selected name to the Council of Ministers for the issuance of the appointment decree.
  - The majority of participants agreed on the principle that the President of the Institute should be fully dedicated to their duties.

- 2- Amending Article 114 of the draft law so that the president of the Judicial Studies Institute shall also chair its Board of Directors.

### **B. Appointment of Directors**

- 3- The participants considered that there was no need for three directors, in addition to the president, as stated in the draft law. The participants agreed that the Institute should have only two directors: A Director for the Graduate Studies Department and a Director for the Continuous Training Department.
- 4- It was agreed that the directors of the Institute should be appointed by a decision issued by the High Judicial Council, thus amending Articles 112 and 113.
  - The Judges' Club registered a dissenting opinion regarding the appointment of the director of studies and the heads of departments by the presidents of the High Judicial Council, the Council of State, and the Court of Audit.
  - The Judicial Inspection Authority registered a dissenting opinion regarding the appointment of the directors by an ordinary decree following the approval of the High Judicial Council and the president of the Institute.

**Note: The representative of the Judicial Inspection Authority emphasized the importance of the Judicial Studies Institute playing a leading and international role in the judicial arena and suggested activating this role by enhancing cooperation with international institutes of judicial studies.**

### **C. Financial and Administrative Independence of the Judicial Studies Institute: Subordination of the Institute's Budget to the Ministry of Justice**

- 5- Allocating a budget to the Judicial Studies Institute that is independent from the Ministry of Justice.
- 6- Abolishing the power of the Minister of Justice to issue the internal regulations of the Institute by decision.

#### **❖ In order to implement these measures:**

##### **(A) At the legislative level – Amendment of the draft law:**

- Enshrining the principle that the President of the Judicial Studies Institute shall be fully dedicated to their duties within the body of the draft law on the Independence of the Judiciary.
- Amending Article 114 of the draft law so that the President of the Judicial Studies Institute shall chair the Institute's Board of Directors.
- Deleting Article 112 of the draft law, as the position of Director of Studies is deemed unnecessary.
- Amending Article 113 of the draft law so that the directors of the Institute are appointed by a decision issued by the High Judicial Council.
- Amending Article 123 of the draft law, which stipulates that a budget shall be allocated to the Judicial Studies Institute within the budget of the Ministry of Justice.
- The Justice Forum recommended consulting the Court of Audit regarding the appropriate mechanism for translating the financial independence of the Institute in line with its administrative status and the rules of public finance.

- Amending Article 120 of the draft law to abolish the power of the Minister of Justice to issue the internal regulations of the Institute by decision.

(B) At the implementation level: measures that can be adopted without the need for any legislative amendment

**Concerned Party: Judicial Studies Institute**

- Activating the leading and global role of the Judicial Studies Institute in the judicial arena by enhancing cooperation with international institutes of judicial studies.

#### **IV. Entry into the Judicial Profession**

##### **A. Preserving the Objective Nature of the Entrance Examination to the Judicial Studies Institute**

###### **1- With regard to the oral interview:**

- Any role of the oral interview shall be limited solely to accepting the candidate to participate in the written entrance examination to the Judicial Studies Institute.
- Objective criteria for the decision of acceptance or rejection must be enshrined in the text of the law.
- The decision shall be based exclusively on information and documents included in the candidate's file, which they shall have the right to access.

###### **2- With regard to the examination:**

- Fortifying the examination by abolishing any role for an oral component following the written examination, which serves as a guarantee of objectivity in entering the profession.
- Abolishing the preparatory year intended to be established in the draft law due to its lack of effectiveness and its unjustified prolongation of the judicial training.

##### **B. Enshrining the Candidate's Right to Appeal the Decision of Admission to the Institute**

**3-** Enshrining the candidate's right to appeal<sup>7</sup> the decision of admission to the Institute, similarly to all decisions concerning individual situations<sup>8</sup>, before the State Council in the following two cases:

- The candidate excluded from participating in the entrance examination to the Judicial Studies Institute.
- The candidate who did not obtain the passing grade on the written examination, in the event of an error in the calculation of points.

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<sup>7</sup> See the Summary Report of the Practical Review of the Lebanese Judicial System, p. 7: There are no legal remedies available to candidates who are rejected.

<sup>8</sup> Recommandation CM/Rec(2010)12 § 48; CCJE, Avis n° 24 (2021), Ibid., § 21, et Avis n° 17 (2014).

- 4- In these two cases, the State Council review shall be limited (*a minima*) to the accuracy of the facts (*exactitude des faits*).

### C. Fortifying Parallel Entry Methods for the Appointment of Career Judges

- 5- Fortifying parallel entry methods for the appointment of career judges from outside the Judicial Studies Institute and from among those with experience (i.e., parallel entry methods from outside the competitive examination and the Judicial Studies Institute) through:

- The mandatory conduct of a competitive examination for appointment through this method.
- The necessity of undergoing a specific period at the Judicial Studies Institute.
- The necessity of their appointment as judges of the first instance.
- Specifying a mandatory maximum percentage for appointments in the text of the law, similar to the servants Law (Article 12).

❖ **In order to implement these measures:**

(A) At the legislative level – Amendment of the draft law:

- Enshrining a mechanism with the rules agreed upon above, to be adhered to by the High Judicial Council, which is entrusted with the power to organize the entrance examination.
- The necessity of deleting the phrase “that permits them to register with the Bar Association” which appears after “holding a Lebanese law degree” in Article 59, which defines the list of conditions for participating in the preparatory year for the entrance examination.
- Amending the texts of Articles 56-62 to abolish the preparatory year as a condition for participating in the entrance examination to the Judicial Studies Institute.
- Amending the text of Article 63 of the draft law to enshrine rules for activating the objectivity of the High Judicial Council's decision in accepting or rejecting a candidate for the entrance examination to the Judicial Studies Institute based on an oral interview.
- Amending the text of Article 65 of the draft law to enshrine the right to appeal the decision of admission to the Institute.
- Amending the text of Article 74 of the draft law to enshrine the special rules for fortifying parallel entry methods agreed upon above.

(B) At the implementation level: measures that can be adopted without the need for any legislative amendment:

- The High Judicial Council shall adhere to the principles agreed upon above concerning the preservation of the objective nature of the entrance examination to the Judicial Studies Institute.

## V. Transfers, Appointments, Assignments, Secondments, and Distribution of Work and Case Files

### A. General Transfers

#### a) Criteria Adopted for Conducting General Transfers

##### 1- Adopting objective criteria for General Transfers:

- Adopting a **precise (substantive) and non-vague definition of these criteria.**
- The importance of the judge's evaluation in this context: **the necessity of linking it to the judge's evaluation** (in terms of integrity and competence) and clarifying the role of the evaluation therein.
- The **importance of creating a personal file for each judge.**

##### 2- Enshrining a number of established rules and principles – in addition to objective criteria – when conducting General Transfers, particularly:

- **The principle of rotation** to prevent the allocation of any position to a specific religious sect.
- **The principle of regional rotation.**
- **The principle of candidacy** for judicial positions.
- **The seniority criterion as a preferential criterion** in case of equality between candidates.

##### 3- Establishing a flexible framework for the High Judicial Council to implement objective criteria while adhering to them:

- Enshrining a clear and limited list of these criteria and principles.
- Avoiding excessive detail that would restrict the High Judicial Council in their implementation = leaving discretion for the Council to elaborate on and apply the criteria.
- Streamlining these criteria by controlling their number and coherence so that they do not become an obstructive tool that undermines their purpose.
- Not binding the High Judicial Council with any hierarchy among these criteria.

##### ❖ In order to implement these measures:

###### (A) At the Legislative Level – Amendments to the Draft Law:

- **The necessity of shortening and redrafting Articles 79 to 85 of the draft law** in a way that leads to:
- Defining a concise list of objective criteria (according to the aforementioned) and leaving discretion for the High Judicial Council to elaborate on and implement them.
- Clearly presenting and announcing the principles.
- Not restricting the hands of the High Judicial Council.

###### (B) At the implementation level: measures that can be adopted without the need for any legislative amendment

##### **Concerned Party: High Judicial Council**

- Adopting an internal mechanism to limit the High Judicial Council's special discretionary power and enhance the trust of citizens and judges in the transfers and appointments project:
- Generalizing the **High Judicial Council's** experience in adopting **clear criteria** (=the 2020 General Transfers experience – reference to the document issued by the High Judicial Council on 8/10/2019).

- **Establishing explanatory memorandum for the General Transfers' project** (i.e., a reasoned project also based on the 2020 General Transfers experience).

**b) Principle of the irremovability of a judge i.e. the prohibition on transferring a judge without their consent**

- 4- **Enshrining the principle in legislation** without linking it to a specific period during which the judge benefits from this guarantee, and not adopting a specific term of office for positions resulting from General Transfers after which the judge can be transferred without their consent.
  - 5- **Defining, within the legislation, the acceptable exceptions to the principle**, in harmony with other principles, and the necessity of these exceptions being accompanied by safeguards that prevent the principle of irremovability of a judge without their consent from being emptied of its effectiveness, by following the following rules:
    - (A) The judge's obligation to accept their **first appointment** (after graduating from the Institute) in the regions, while respecting the right of graduating judges to choose preferentially according to their ranking upon graduation from the Judicial Studies Institute,
    - (B) Transfer that accompanies a **disciplinary sanction**, with the specification of the type and severity of the sanctions concerned (demotion). Here, the necessity of this being accompanied by the enshrinement of the principle of proportionality between the sanction and the severity of the fault was recalled, to prevent the establishment of a phenomenon of imposing harsher penalties to facilitate the transfer of the judge.
    - (C) Defining a **list of sensitive positions** (especially in positions that grant the judge authority over people's liberty, such as the criminal judiciary) and linking them to a maximum period of occupancy by the same judge, to prevent the emergence of networks of influence around them.
    - (D) Defining a **period after the expiry of which the judge has the right to request their mandatory transfer**.
  - 6- The necessity of harmonizing the principle with the parallel principle that calls for ensuring the **needs of the public service of justice**, through:
    - Activating the principle of judges nominating themselves for positions.
    - Raising a recommendation to the High Judicial Council to adopt an internal guideline that requires communicating with judges and seeking to encourage them to submit their nominations for positions for which no applications have been submitted.
    - Granting more significant financial incentives to fill vacancies in nominations.
- ❖ **In order to implement these measures:**

(A) At the Legislative Level – Amendments to the Draft Law:

Clarifying the principle of irremovability of judges in the text of Article 78 of the draft law and defining the **acceptable** exceptions to the **principle**, as well as the safeguards that prevent the principle of irremovability from being emptied of its effectiveness, in accordance with the aforementioned.

(B) At the implementation level: measures that can be adopted without the need for any legislative amendment

**Concerned Party: High Judicial Council**

- Adopting an internal guideline that requires communicating with judges and seeking to encourage them to submit their nominations for positions for which no applications have been submitted. Additionally, granting more significant financial incentives to fill vacancies in nominations.

**c) The Role of the Executive Authority in General Transfers - Mechanism for Issuing General Transfers**

**In the Medium Term:**

- 7- Maintaining the role of the Minister of Justice in issuing the General Transfers but, with the adoption of safeguards on the text proposed in Article 77 of the draft law on the Independence of the Judiciary to mitigate the possibility of abuse by the Minister of Justice or one of the authorities of the executive authority by not signing the General Transfers decree, through:
- Adding a clarification to the last paragraph of Article 77 of the draft law on the Independence of the Judiciary, stating that in the event that the decree is not issued within the prescribed period (i.e., one month) from the date of sending the draft to the Ministry's registry, the General Transfers shall be considered effective and shall be **issued by a decision of the High Judicial Council, thus resolving the issue of the conflict between the text of Article 77 of the draft law and Article 56 of the Constitution.**
  - Regarding the required majority within the High Judicial Council to proceed with the latter's project despite the Minister of Justice's lack of approval, the participants agreed to maintain a majority of **7/10 of the members of the High Judicial Council.**
  - **A dissenting opinion was recorded by the Lebanese Judges' Club, the Judicial Independence Coalition, and the Tripoli Bar Association, stating the necessity of reducing this majority to "the ordinary majority of the members who constitute the Council, i.e., 6/10).**
- ❖ **In order to implement these measures:**

At the Legislative Level – Amendments to the Draft Law:

Adding a clarification to the last paragraph of Article 77 of the draft law on the Independence of the Judiciary, stating that in the event that the decree is not issued within the prescribed period (i.e., one month) from the date of sending the draft to the Ministry's registry, the **General Transfers shall be issued by a decision of the High Judicial Council.**

### **In the Longer Term:**

8- After strengthening the independence of the High Judicial Council and its representation of judges, and establishing the principles accompanying the preparation of judicial transfers and appointments that lead to the appointment of the right person in the right place, such that the “process” of their preparation is the primary guarantee and the importance of the “decision” in their issuance diminishes, it becomes necessary to transcend any role for the Minister of Justice and the executive authority in issuing General Transfers, and to **enshrine their issuance by a decision of the High Judicial Council from the outset, without the need for a decree.**

➤ It is worth noting that this aligns with the position of the High Judicial Council, which it included in its observations sent to the Administration and Justice Committee regarding the proposal to amend the Law on Judicial Organization (150/83), whereby it considered it necessary that “the General Transfers become final, binding, and effective as of the date of their issuance by the High Judicial Council.”

❖ **In order to implement these measures:**

#### **At the Legislative Level – Amendments to the Draft Law:**

Amending Article 77 of the draft law towards the issuance of General Transfers by a decision of the High Judicial Council, and that they become final, binding, and effective as of the date of their issuance by the latter Council.

**d) The Judge's Right to Appeal the part of the General Transfers Decree that concerns them**

### **Regarding the Judge's Right to Appeal the General Transfers Decree**

9- The necessity to **enshrine the right to appeal the General Transfers in the legislation**, and in particular the necessity to clarify Article 21 of the draft law to the effect that General Transfers constitute an individual decision issued by the Council that is subject to appeal.

10- The necessity of **defining the cases in which an appeal** against the decision of General Transfers is permissible, as well as **the scope of the reviewing authority in this context**, and the implications of accepting the appeal against General Transfers. Here, the participants requested clarification of the rules applied in this context before the Council of State, as well as in comparable systems, particularly the French and Italian systems.

11- Designating the **State Council as the natural authority to consider the appeal**, in accordance with its established rules and caselaw, and particularly to consider only the procedures and laws to which the General Transfers decision is subject, *i.e.*, the accuracy of the material facts, and to refrain from entering into the appropriateness of the High Judicial Council's decision except in cases of gross error. In the event of the annulment of one of the clauses of the General Transfers, the State Council shall refrain from issuing instructions to the competent administration (*i.e.*, the High Judicial Council) and shall suffice with returning the draft decree to that body.

The State Council exercises limited review over the existence of the decision, focusing on the facts and not on the appropriateness of the decision — except in cases of serious misconduct.

- **A dissenting opinion** was recorded by the President of the High Judicial Council, stating: the creation of a **special body** that would be the first instance for appeals, and the General Assembly of the Court of Cassation would be the second instance for considering appeals, in compliance with the right to review by two levels of jurisdiction.

❖ **In order to implement these measures:**

(A) At the Legislative Level – Amendments to the Draft Law:

- Clarifying Article 21 of the draft law to the effect that General Transfers constitute an individual decision issued by the Council that is subject to appeal.
- Adding an article to the draft law that **defines the cases in which an appeal** against the decision of appointments and transfers is permissible, as well as **the scope of the reviewing authority** in this context, and the implications of accepting the appeal on the General Transfers, as well as designating **the State Council as the natural authority to consider the appeal.**

(B) At the implementation level: measures that can be implemented without any legislative amendment

**Concerned Party: Judges**

- Reminding judges of their right to appeal the decree of General Transfers before the State Council, as the natural authority to consider the appeal, in the event of a material error or a gross error.

## **B. Distribution of Work**

- 1- The majority of participants supported that the distribution of work be done directly when the High Judicial Council conducts the General Transfers, as stated in the text of Article 31 of the draft law on the Independence of the Judiciary, with the addition of the phrase **“taking into consideration the opinion of the president of the relevant Court of Appeal,”** i.e., the First President.
  - Diverse opinions emerged during the discussion regarding the extent to which the First President's opinion should be binding, but the matter was not definitively decided. In this regard, the representative of the President of the High Judicial Council expressed opposition to adding the aforementioned phrase due to the impossibility of the First President, who is in their position before the General Transfers, expressing an opinion on the distribution of work resulting from the upcoming General Transfers.
  - The representatives of the Judicial Studies Institute, the Judicial Independence Coalition in Lebanon, and Saint Joseph University registered a dissenting opinion to the majority, citing the need to observe the principle of participation and reduce hierarchy. Each of them proposed that the distribution of work be handled by a general assembly of judges in each court. The representative of the Judicial Independence Coalition insisted on the necessity of considering the First President's opinion binding if the High Judicial Council's authority to distribute work during the General Transfers is decided.

❖ **In order to implement these measures:**

At the Legislative Level – Amendments to the Draft Law:

- Maintaining the mechanism stipulated in Article 31 of the draft law, whereby the distribution of work is done by the High Judicial Council when conducting the General Transfers, but with the addition of the phrase “**taking into consideration the opinion of the president of the relevant Court of Appeal**” to the text of Article 31.

**C. Distribution of Files and Respect for the Principle of the “Natural Judge”**

- 1- The participants unanimously agreed on the necessity of adopting the principle of the “natural judge” in the distribution of files, and the representative of the Judges' Club proposed enshrining it in the body of the draft law, to which the participants did not object.
- 2- The participants unanimously agreed on **the necessity of adopting the principle of randomness** in the distribution of files to ensure independence in the judicial process and protect litigants against any arbitrary practice. The attendees issued a recommendation on the need to generalize the successful experience of the electronic program adopted in the Beirut Execution Department for the random distribution of files and on the need to support the efforts of the Ministry of Justice, which is working on a special electronic program for file distribution.
- 3- The majority of participants supported that files be distributed in a balanced manner, which demonstrates the need to weigh each file individually through an electronic program that allows for random **but balanced** distribution. The attendees also recommended the necessity of reconsidering the complex mechanism adopted in the draft law regarding the weighing of files (Articles 144 and 88-89).
  - The representatives of the Ministry of Justice and the Judges' Club registered a dissenting opinion regarding the weighing of files, as each considered that there was no need for balanced distribution and entering into the complexities of weighing each file, as long as the distribution is done randomly, since randomness inherently leads to balanced distribution in the long run.

❖ **In order to implement these measures:**

At the Legislative Level – Amendments to the Draft Law:

- Amending Article 32 of the draft law towards establishing the principle of the natural judge, as well as randomness and balance in the distribution of files.

#### D. Secondments to Non-Judicial Positions

a) Regarding a Judge Holding a Ministerial Position or Running for office in the Parliament, Municipal Council, at the Presidential elections or being a candidate for the Constitutional Council membership, or Any official Position of the First Category

- 1- Prohibiting a judge from holding political functions, whether through appointment or candidacy, which practically means preventing a judge who has occupied one of these positions from returning to the judicial function, given the prejudice to the apparent independence of judges in the Lebanese context. Also, imposing a specific period between resignation from the judicial function and appointment to a ministerial position, or running for a political position, as an additional safeguard, which necessitates amending the text of Article 7 as well as Article 90 of the draft Law on the Independence of the Judiciary.
    - The representatives of the Judicial Inspection Authority, the Judicial Independence Coalition, the Ministry of Justice, and the State Council each recorded a dissenting opinion regarding allowing a judge to return to the judicial function after holding a political position, with the activation of safeguards including disciplinary prosecution in the event of conduct prejudicial to the independence of the judiciary, or adopting a recommendation requiring a decision from the Judicial Inspection Authority permitting the return of a judge who held a political position to practice their functions, or limiting the return to the judiciary to the exercise of administrative functions.
  - 2- The participants unanimously agreed on the necessity of amending the one-year period stipulated in Article 7 of the draft Law on the Independence of the Judiciary due to its conflict with Article 49 of the Constitution, which stipulates a prohibition on a judge running for presidential elections for a period of two years from the date of their resignation and actual cessation of their function or their retirement, as well as its conflict with the two-year period stipulated in Article 90 of the draft law, and adopting a two-year period in both articles.
  - 3- The participants also unanimously agreed on amending the text of Article 90 of the draft law to include within its scope candidacy for membership in the Parliament or a municipal council (and its presidency), appointment to the Constitutional Council, and holding any position of the first category.
- ❖ **In order to implement these measures:**

#### At the Legislative Level – Amendments to the Draft Law:

- Amending Article 7 of the draft law, which concerns the impediments of members of the High Judicial Council, as well as Article 90, which concerns the impediments to holding other functions or professions related to judges in general: imposing a specific period between resignation from the judicial function and appointment to a ministerial position, or running for a political position, and preventing a judge who has occupied one of these positions from returning to the judicial function, given the prejudice to the apparent independence of judges in the Lebanese context.
- Amending the one-year period stipulated in Article 7 of the draft law and replacing it with a two-year period to prevent its conflict with Article 49 of the Constitution, which prohibits a judge running for presidential elections for a period of two years from the date of their resignation and actual cessation of their function or their retirement.
- Amending Article 90 to include within its scope candidacy for membership in the Parliament or a municipal council (and its presidency), appointment to the Constitutional Council, and holding any position of the first category.

#### **b) Secondments of Judges to Non-Judicial Positions Within the Administration (Détachement)**

##### **In the Medium Term:**

- 4- Adopting a general principle that prohibits the secondment of judges to non-judicial positions, particularly within the administration, with an exclusive exception for the possibility of secondment to independent administrative authorities (autorités administratives indépendantes) that are not subject to the supervisory authority of a minister, accompanied by a set of safeguards in the event of secondment:
  - The secondment shall be by a decision of the High Judicial Council (when the law permits the appointment of a judge thereto).
  - The prior consent of the judge is necessary.
  - The simultaneous occupancy of a judicial position and a position within the administration, independent bodies, or the Bank of Lebanon is prohibited, in respect of the principles of separation of powers and the independence of the judiciary.
  - The secondment shall be linked to a specific, but sufficient, duration (e.g., three years) or renewable (two years renewable).
  - The salaries received by the judge shall be specified in the published secondment decree, in furtherance of transparency.
  - Enshrining the principle that a judge shall not receive two salaries simultaneously, but rather one salary (the higher one, for example, or the salary determined by the administration for this function).
  - Defining a maximum acceptable percentage of secondments to positions within the administration.
  - Implementing objective criteria for selecting judges for these secondments, linking them to the judge's evaluation or their rank.
  - The judge shall exercise their advisory functions from their office: unnecessary requirement.

- Upon the expiry of the secondment period, the judge shall be prohibited (and a period for this prohibition may be specified) from occupying certain judicial positions (e.g., judgment positions or positions of responsibility such as the position of the First President of the Court of Appeal): to be reconsidered for approval.
  - The representatives of the Lebanese Judges' Club, the Beirut and Tripoli Bar Associations, and Sagesse and the Holy Spirit University of Kaslik Law Faculties recorded a dissenting opinion calling for the prohibition of any secondment of judges to non-judicial positions, given the Lebanese context and the danger this poses to their independence.
- 5- The necessity of reconsidering Article 90 of the draft law due to the lack of clarity and contradictions in some of the expressions and adopted rules, i.e., clarifying the meanings and distinguishing between secondment (where the judge does not exercise judicial functions during their secondment) and assignment (where the judge occupies an administrative position alongside their judicial function), and also ensuring that the term “assignment” includes the appointment of a judge as an advisor to a specific minister.

❖ **In order to implement these measures:**

At the Legislative Level – Amendments to the Draft Law:

- Amending Article 90 of the draft law to prohibit the secondment of judges to non-judicial positions, with an exclusive exception for the possibility of secondment to independent administrative authorities (autorités administratives indépendantes) that are not subject to the supervisory authority of a minister, accompanied by the set of safeguards stipulated above.
- Clarifying certain expressions and adopted rules, i.e., elucidating the meanings and distinguishing between secondment (where a judge does not exercise judicial functions during their secondment) and assignment (where a judge occupies an administrative position alongside their judicial function) within the body of Article 90, and also ensuring that the term “assignment” includes the appointment of a judge as an advisor to a specific minister.

**In the Longer Term:**

- 6- Expanding secondment to include all cases where secondment is justified, i.e., when there are benefits that can be achieved for both the administration and the judiciary from these secondments, as confirmed by best practices in comparable systems (the need for judicial expertise in drafting legal texts, the judge gaining experience in a highly specialized field such as financial markets, etc.); in this case, it is necessary to clearly define the criteria for “justified need” in the legislation. It is also necessary to clarify the meanings and distinguish between secondment (where a judge does not exercise judicial functions during their secondment) and assignment (where a judge occupies an administrative position alongside their judicial function), and also ensure that the term “assignment” includes the appointment of a judge as an advisor to a specific minister, and to exclusively open the field for secondment (détachement), i.e., the transfer of a judge to occupy a position within the administration for a specific period while leaving their judicial function, and to prohibit any occupancy of a position within the administration, independent bodies, or the Bank of

Lebanon concurrently with their judicial function, in respect of the principles of separation of powers and the independence of the judiciary.

- 7- Attaching to the secondment the set of safeguards stipulated above, which must be enshrined in the legislation.

## **E. Secondment**

### **❖ In order to implement these measures:**

#### At the Legislative Level – Amendments to the Draft Law:

- The necessity of enshrining a rule in the legislation that permits the secondment of a judge with a maximum duration (e.g., 5 years), while emphasizing its importance in addressing the current crisis and as a means of preserving judicial capacities.<sup>9</sup>

## **F. Judicial Appointments to Committees**

- 1- The participants agreed on the possibility of appointing judges to committees, but with the necessity of linking this to a set of clear safeguards that must be enshrined in the legislation, namely:
  - The appointment of a judge to a committee shall be by a decision of the High Judicial Council.
  - The selection of the judge shall be based on the criterion of rank and linked to their evaluation.
  - The selection shall respect the principle of equality among judges.
  - The selection shall respect the principle of rotation among judges.
  - A judge shall be appointed to a maximum of one committee.
  - Appointment to the committee shall be for a sufficient and reasonable period (délai raisonnable).
  - Work within the committee shall not conflict with the judge's primary duties.
  - Appointment to the committee shall, in principle, be considered part of the general workload expected of every judge. Additional work should be the exception.
- 2- Regarding the allowances received by the judge for their work within the committee:
  - While respecting the conditions establishing the committee that determine these allowances, the judge shall only receive allowances for additional work performed beyond their expected general workload.
  - The allowances shall not exceed a maximum percentage of the salary and shall not be a substitute for it.
  - In all cases, the principle of equality among judges shall be taken into account when selecting judges, considering the additional allowances they will receive.
  - The allowances received by the judge for their work within the committee shall be specified in the text of their appointment decision, which shall be published to enhance transparency.

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<sup>9</sup> Article 52 of the Civil Service Regulations is insufficient in this regard, as it imposes very narrow conditions for secondment.

❖ **In order to implement these measures:**

At the Legislative Level – Amendments to the Draft Law:

- Amending Article 90 of the draft law, which stipulates the possibility of appointing a judge to judicial committees, to add the safeguards stipulated above, including the safeguards related to allowances.

## **VI. Individual Evaluation of Judges**

### **A. Bases of Evaluation**

- 1- The participants recommended the necessity of defining the bases and main elements of evaluation in the legislation:
  - The current system for evaluating judges in the draft Law on the Independence of the Judiciary does not satisfy the participants. The importance of agreeing on bases and a mechanism for evaluation that aligns with international standards and receives the support of the Forum's document is heightened by the fact that many fundamental stages of a judge's professional career path are linked to the result of their evaluation (e.g., General Transfers, secondment of the judge, their appointment to committees, etc.).
  - **Furthermore, no system for the individual evaluation of judges can be implemented before its principles and related guarantees are enshrined in the law**. In this sense, it is necessary to start from the drafts prepared by the committee appointed by the President of the High Judicial Council, considering them as a starting point from which the fundamental principles of an evaluation system that reflects its intended purpose can be derived, agreed upon by the participants, and the necessary amendments introduced to the text of the draft Law on the Independence of the Judiciary to implement it.
- The Judicial Inspection Authority recorded a dissenting opinion regarding the possibility and obligation to work with a system for the individual evaluation of judges pursuant to the provisions of Legislative Decree 150/83 under the supervision and authority of the Inspection Authority.

### **B. Fundamental Principles that Should Govern the Individual Evaluation of Judges**

- 2- Regarding the aim and function of the evaluation:
  - The aim and function of the evaluation must be clarified.
  - Its aims and function must include motivating the judge and encouraging the development and improvement of their working conditions, so that the evaluation of judges plays a role in highlighting more structural problems in the work of the judiciary.
- 3- Regarding the authority of evaluation, given its function: the evaluation result should be issued after taking two dimensions into account: a local/close dimension to the judge's work, i.e., the viewpoint of their colleagues and the head of the judicial division<sup>10</sup> who are

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<sup>10</sup> It is necessary to pay attention to the status of the judges of the Special Military Court.

in regular contact with their activity, in addition to a more distant, more objective dimension, undertaken by a dedicated evaluation committee for this purpose.

- The local dimension of evaluation/the first level: A local evaluation committee shall undertake the evaluation at the first level. This committee shall be formed at the level of **each governorate** and shall include **the First President of the Court, a member from the Judicial Studies Institute, and two members elected** by the general assemblies of judges in the courts.
- The objective dimension of evaluation/the second level: The evaluation at the second level shall be undertaken by a specialized committee composed of judges (**“the Evaluation Committee”**), **under the joint supervision of the High Judicial Council and the Judicial Inspection Authority**, which shall be independent in its work, and the evaluation result it issues shall be binding on both the High Judicial Council and the Judicial Inspection Authority.
  - The President of the High Judicial Council recorded a dissenting opinion and adhered to the High Judicial Council's authority to appoint the Evaluation Committee for the following reasons:
    - It is the body concerned with ensuring the proper functioning of the judiciary (...) and the proper conduct of work in the courts and takes the necessary decisions in this regard (Article 4 of the Law on the Organization of the Ordinary Judiciary, Legislative Decree 150/83).
    - The High Judicial Council is primarily concerned with evaluation, as it allows for placing the right judge in the right place.
    - The tasks of the Judicial Inspection Authority are not the administration of the judiciary, but rather the oversight of judges and their disciplinary prosecution. It is inappropriate to conflate the authority of individual evaluation of judges with the authority of their disciplinary prosecution. The spirit of evaluation is very different from the spirit of inspection and disciplinary prosecution. This is the trend of best practices<sup>11</sup>. The Inspection Authority retains the power to evaluate the work of the courts (as a form of audit)<sup>12</sup>.
    - This option obviates the need to form new bodies, which is important given the current situation of the judicial system and the available capabilities and resources.
    - The Judicial Inspection Authority recorded a dissenting opinion and adhered to the Judicial Inspection Authority's authority to appoint the Evaluation Committee for the following reasons:
      - It is the body that oversees the proper functioning of the judiciary and the work of judges (...). It has the authority to draw the attention of those subject to inspection to any deficiencies in the conduct of their work (Article 98 of the Law on the Organization of the Ordinary Judiciary, Legislative Decree 150/83).

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<sup>11</sup> The French expert's intervention on this point: Since the judicial inspection is responsible for pre-disciplinary investigations, it is not possible in the French system to join the bodies responsible for disciplinary investigations and the individual evaluation of judges.

<sup>12</sup> For this reason, the issue of file weighing in the draft Law on the Independence of the Judiciary (Article 144) should be placed under the supervision of the Judicial Inspection Authority.

- This option allows for preventing the concentration of functions in the hands of a single authority, which is the High Judicial Council. The latter conducts General Transfers and is concerned with disciplinary accountability, forms the Higher Disciplinary Board that considers disciplinary appeals, and has the authority to declare a judge's incapacity based on Article 95 of Law 150/83. In this sense, it is important that the evaluation authority be a body different from the one that makes the final and decisive decisions regarding a judge's professional career path.
- Within the Judicial Inspection Authority, two completely independent bodies can be formed regarding: evaluation on the one hand (for judges and for courts, allowing for the best use of resources as the two evaluations are interconnected), and disciplinary prosecution on the other hand.
- Given the limited number of judges in Lebanon, there is no need to create a separate, dedicated evaluation committee, and the Judicial Inspection Authority can undertake this task within its human resources.
- Given the specificity of Lebanon, evaluation work should be accompanied by confidentiality, which is consistent with the role and working mechanisms of the Judicial Inspection Authority.
- The Judges' Club recorded a dissenting opinion, supporting the linking of the Evaluation Committee to the Judicial Inspection Authority.
- Composition of the Second-Level Evaluation Committee:
  - A member from the Judicial Studies Institute, jointly appointed by the High Judicial Council and the Judicial Inspection Authority.
  - Members elected by the body of judges.
  - Members appointed by the High Judicial Council.
  - Members appointed by the Judicial Inspection Authority.
- The opinions varied regarding the status of the members appointed by the High Judicial Council and the Judicial Inspection Authority as follows:

<p>Members appointed by both the High Judicial Council and the Judicial Inspection Authority, provided <b>they are not among their own members, to prevent conflicts of interest</b> (Ministry of Justice – Council of State – Parliament).</p>	<ul style="list-style-type: none"> <li>▪ <b>Members from among the elected members of the High Judicial Council.</b></li> <li>▪ <b>Members from among the members of the Judicial Inspection Authority</b> (Judicial Studies Institute – Holy Spirit University of Kaslik – Tripoli Bar Association).</li> </ul>
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- The independence of the Evaluation Committee from the executive authority must be guaranteed.
- The working mechanisms of the Evaluation Committee shall be defined in internal regulations.
- The committee can be supported by experienced retired judges, if legally permissible. However, safeguards must be put in place regarding age, the enjoyment of the capacity to

perform the tasks, and not engaging in any political activity or activity that affects their independence.

- 4- **Regarding the judge's right to request a review of their evaluation decision:** The evaluation decision issued by the Evaluation Committee shall be subject to review before the State Council, similarly to other administrative decisions.
  - The President of the High Judicial Council recorded a dissenting opinion whereby the judge shall have the right to review their evaluation decision before a higher body composed of 5 judges from the Court of Cassation. The decision of the Higher Evaluation Body shall not be subject to any means of appeal.
- 5- **Regarding the evaluation mechanism:** the following principles shall be observed in the evaluation process:
  - **Principle of participation and adversarial proceedings:**
    - Enshrining the judge's role in their evaluation process. This enhances the legitimacy of the evaluation process and reduces the number of reviews concerning the judge's evaluation result.
    - Enshrining the judge's right to submit written comments on their evaluation and on how it was conducted.
  - **The role of litigants and legal professionals:** The necessity of relying on the opinions of litigants (within forms where information is filled in, to reduce randomness in expressing opinions) and bar associations as sources of evaluation.
  - **Comprehensiveness of the evaluation:** The necessity that the evaluation includes all judicial ranks.
  - Importance of **creating a special file for each judge** with the authority responsible for the evaluation.
    - The details governing the implementation of these principles shall be defined by decision of the “body responsible for appointing the Evaluation Committee”, on agreed practical bases
- 6- **Regarding the evaluation criteria:**
  - **The quantitative and qualitative criteria determined by the Evaluation Committee shall be taken into account in the evaluation process and shall be published within the evaluation system on the official website of both the High Judicial Council and the Judicial Inspection Authority at least one month before the launch of the judges' evaluation process.**
  - The following principles shall be observed in determining these criteria:
    - The necessity of limiting them, i.e., defining a reasonable number of criteria (avoiding a large number of criteria that make the evaluation system too complex).
    - The necessity of defining their meaning and content<sup>13</sup> precisely.
    - The necessity of weighting them and adopting an objective and scientific criterion in doing so, taking the following rules into account:
      - Adopting an exclusionary mark for some fundamental criteria such as independence and impartiality: these criteria shall be a necessary prerequisite, where obtaining a score below

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<sup>13</sup> For example, the criterion of legal culture needs to be broadened to include social sciences.

a certain average in them does not allow the evaluation to be completed with respect to subsequent criteria.

- The necessity of reconsidering the weighting of quantitative and qualitative criteria so that the weighting is balanced.
- For example, the criteria of integrity, independence, respect for fundamental rights, and guarantees of a fair trial shall have great importance in this weighting.
- The set of criteria (their definition, scope, and weighting) must be reviewed every five years, to allow for necessary updates and improvements.
- The necessity of activating continuous training for the judge (formation continue) and including its results in some form in the individual evaluation of the judge.
- The criteria shall take into account the judge's working conditions.
- The necessity of linking the quantitative criterion (number of judgments) to a pre-known average that is published and reviewed every 5 years, as well as to the quality of the judgments issued.
- Regarding the inclusion of elements from the judge's personal life in the evaluation:
  - The principle: **no criterion related to the judge's personal life may be adopted in their evaluation process**, given the danger this poses to the judge's independence and in line with international standards.
  - Exceptionally, the evaluation criteria may address some aspects of the judge's personal life if they affect the evaluation criteria of their judicial work, precisely defined, or their independence.
- The representative of Saint Joseph University recorded a dissenting opinion regarding the danger of introducing exceptions to the principle if the formulation of the exception framework remains vague and general, as it may consequently allow its use as a tool for undue interference in the judge's personal life and work, and prejudice their independence.

7- **Regarding the periodicity of the evaluation:**

- The period should not be short (e.g., two years), to avoid transforming the process into a form of undue pressure on judges.
- In principle, a judge shall be evaluated every 4 years + with the addition of an additional evaluation that occurs in certain cases, for example:
  - Before the appointment of the judge to a specific (important) judicial position or to a committee, or before their secondment to an administrative function (as defined by the new law: e.g., in independent administrative authorities).
  - If the judge receives an unsatisfactory evaluation result (below a certain threshold), they may be subjected to a more frequent evaluation until they obtain the minimum acceptable level.

❖ **In order to implement these measures:**

#### At the Legislative Level – Amendments to the Draft Law:

- Amending Articles 142 - 148 of the draft law, which concern the individual evaluation of judges, in accordance with the aforementioned:
  - The aim and function of the evaluation should be clarified, which is to motivate the judge and encourage the development and improvement of their working conditions.
  - The evaluation shall be based on two dimensions: the local dimension (first level) and the objective dimension (second level), with the formation of the two committees in accordance with the participants' proposal.
  - Granting the judge, the right to review the evaluation decision issued by the Evaluation Committee before the State Council.
  - The aforementioned principles should be clearly enshrined in the body of the text, and it should be specified that the details of the application of these principles shall be issued by a decision of the “body that appoints the Evaluation Committee,” on agreed practical bases.
  - Reviewing the evaluation criteria based on the guidelines agreed upon by the participants as mentioned above and incorporating them into the text.
  - Enshrining the procedure for evaluation every 4 years in the body of the text, with the exceptions stipulated above (periodicity of evaluation).

## **VII. Judicial Specialization and Continuous Training**

### **A. Specialization of Judges:**

- 1- **Maintaining the successful Lebanese system** of not adopting the principle of initial specialization of judges upon their appointment as career judges, given the enhancement of the judge's competence and the intellectual flexibility resulting from changing specializations and the multiplicity of knowledge resources that this system provides.
  - 2- **Activating the possibilities of judges' specialization** by providing optional training in specific fields<sup>14</sup>.
  - 3- **Clarifying the results or outcomes of the specialization/continuous training of judges:** without making specialization a generalized condition for occupying a judicial position:
    - Taking specialization into account when appointing judges to their positions;
    - Making judges' specialization a condition for occupying certain designated positions, through obtaining the appropriate training.
  - 4- **Linking specialization to a maximum period** and adopting rotation among judges within specializations (i.e., encouraging the judge not to remain in a specific position/specialization).
- ❖ **In order to implement these measures:**

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<sup>14</sup> The possibility of a judge choosing a specialization by attending a certain number of educational units was raised.

(A) At the Legislative Level – Amendments to the Draft Law:

Amending Article 109, the last paragraph, as well as Articles 82 and 84 of the draft law in order to:

- **Clarify the outcome of the specialization/continuous training of judges**, without making specialization a generalized condition for occupying a judicial position, such that:
  - Specialization is taken into account when appointing judges to their positions.
  - Judges' specialization is made a condition for occupying certain designated positions, through obtaining the appropriate training.
- **Link specialization to a maximum period** and adopt rotation among judges within specializations (i.e., encouraging the judge not to remain in a specific position/specialization).

(B) At the implementation level: measures that can be implemented without any legislative amendment

**Concerned Party: High Judicial Council**

- **Activating the possibilities of judges' specialization** by providing optional training in specific fields.

## **B. Continuous Training**

### **1- Annual Training Program:**

- **Activating continuous training for judges through an annual training program**<sup>15</sup> that addresses judicial needs<sup>16</sup> and aligns with the established vision<sup>17</sup> for judicial training.
- **The annual program shall specify:**
  - The subjects and themes to be addressed;
  - Training mechanisms, including optional and/or mandatory educational units (if adopted).
  - Training methods, through the adoption of a diverse approach in continuous training methods that includes, for example:
    - Paralleling university teaching, scientific research, or providing training sessions for fellow judges, with some required training units.
    - Considering judges' participation in conferences/seminars/training workshops held outside Lebanon as a framework for continuous training<sup>18</sup>.
  - **Including judicial assistants in part of the training** to standardize the method of managing judicial files.

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<sup>15</sup> This aligns with the recommendations of the Venice Commission (Opinion of the Commission on the draft law on the independence of the judiciary No. 1057/2021, paragraph 9).

<sup>16</sup> I.e., identifying training that addresses a specific judicial need (a recurring issue), or a general or individual judicial deficiency observed through judicial inspection or evaluation, etc. Participants, for example, encouraged the adoption of the Venice Commission's recommendation (the aforementioned opinion, paragraph 99) that a deficiency in a judge's competence could be addressed through appropriate training, separate from disciplinary prosecution.

<sup>17</sup> Participants suggested, for example, that training should ensure the updating of knowledge and open horizons for developing new knowledge, with the Institute adopting a teaching methodology that presents different legal viewpoints rather than a single perspective. The importance of judges' access to various precedents through the creation of a database accessible to judges was also recalled. The idea of making training mandatory after each judicial formation, with outgoing judges sharing their experiences with new judges taking their positions, was also raised.

<sup>18</sup> See below for specific recommendations regarding conferences/seminars/training workshops held outside Lebanon.

## 2- Entity Responsible for Continuous Judicial Training\*:

\*The Forum tasked the representatives of the President of the High Judicial Council and the Judicial Studies Institute with following up between the two institutions to clarify their respective roles in delivering continuous judicial training. This resulted in the distribution of responsibility between the two bodies as follows:

*“At the beginning of each judicial year, the High Judicial Council shall decide on the topics for which continuous training courses should be organized for career judges, and shall specify the targeted category of judges.*

*The training courses shall be organized by the President of the Judicial Studies Institute, following consultation with the President of the High Judicial Council.”*

## 3- Human and Material Resources Required for Training:

- **Ensure the availability of the human and material resources** necessary to implement an effective continuous judicial training program.

## 4- Mechanism for Selecting Judges to Participate in International Conferences/Seminars/Training Workshops

- **Enshrining the High Judicial Council as the competent authority for selecting judges**, in furtherance of the principle of the independence of the judiciary.

- **Adopting a transparent mechanism with clear criteria for selecting judges** participating in conferences/seminars/training workshops held outside Lebanon, the details of which shall be determined by a decision taken by the High Judicial Council.

### ❖ **In order to implement these measures:**

#### (A) At the Legislative Level – Amendments to the Draft Law:

##### ▪ **Amending Article 12, paragraph (3) of the draft law to include the following text:**

*“At the beginning of each judicial year, the High Judicial Council shall decide on the topics for which continuous training courses should be organized for career judges, and shall specify the targeted category of judges.*

*The training courses shall be organized by the President of the Judicial Studies Institute, following consultation with the President of the High Judicial Council.”*

##### ▪ **Amending Article 109, the last paragraph, of the draft law to establish the principle of adopting an annual training program that specifies:**

- The subjects and themes to be addressed;

- Training mechanisms, including optional and/or mandatory educational units (if adopted).

- Training methods

- The target groups for each training (career judges and/or judicial assistants).

##### ▪ **Amending Article 12 of the draft law to enshrine the power of the High Judicial Council to select judges** participating in conferences/seminars/training workshops held outside Lebanon according to a mechanism, the details of which shall be determined by a decision of the High Judicial Council.

\*Ideas resulting from the discussion within the Forum that can be included in this selection mechanism:

- Consulting the Judicial Studies Institute in this regard.

- Consideration of the roles of the competent institutions in addressing international entities.
- Adopting the principle of nomination for participation in a conference/seminar/or training workshop held outside Lebanon as the mechanism.
- Taking into account the judges' specialization and the nature of the files they are working on.
- Respecting the highest standards of transparency by publishing information about the conferences/seminars/training workshops, the country in which they are held, their subject matter, as well as the judges who have been selected to participate.
- Respecting the principle of rotation of judges in participation, given the importance of the latter for the judge's development and broadening their horizons, especially in comparative law.
- Requiring a judge participating in conferences/seminars/training workshops held outside Lebanon to prepare a report that benefits their colleagues and the judicial body as a whole.

(B) At the implementation level: measures that can be implemented without any legislative amendment

**Concerned Party: High Judicial Council**

- **Activating continuous training for judges and judicial assistants by establishing an annual training program that specifies:**
  - The subjects and themes to be addressed;
  - Training mechanisms, including optional and/or mandatory educational units (if adopted);
  - Training methods;
  - The target groups for each training (career judges and/or judicial assistants and/or notaries public<sup>19</sup>).

**Concerned Party: The High Judicial Council and the Ministry of Justice**

- Allocating the necessary human and material resources for the continuous training of judges.

**Concerned Party: High Judicial Council**

- **Adopting a transparent mechanism for selecting judges participating in conferences/seminars/training workshops held outside Lebanon.**  
\*Ideas resulting from the discussion within the Forum that can be included in this selection mechanism:
  - Consulting the Judicial Studies Institute in this regard.
  - Consideration of the roles of the competent institutions in addressing international entities.
  - Adopting the principle of nomination for participation in a conference/seminar/or training workshop held outside Lebanon as the mechanism.
  - Taking into account the judges' specialization and the nature of the files they are working on.

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<sup>19</sup> Article 54 of Legislative Decree 150/83 (organizing the judicial system).

- Respecting the highest standards of transparency by publishing information about the conferences/seminars/training workshops, the country in which they are held, their subject matter, as well as the judges who have been selected to participate.
- Respecting the principle of rotation of judges in participation, given the importance of the latter for the judge's development and broadening their horizons, especially in comparative law.
- Requiring a judge participating in conferences/seminars/training workshops held outside Lebanon to prepare a report that benefits their colleagues and the judicial body as a whole.

### C. The Judge's Personal File

Developing the part related to the judge's professional development and competence within their file through:

- 1- **Considering the file as a tool that facilitates the relevant authorities' knowledge of the judge's competencies.**
  - 2- **Distinguishing** within the "judge's file" between:
    - The administrative part related to general information concerning their occupancy of the judicial function (positions held, duration, etc.);
    - The part related to the judge's competence: i.e., the results of their evaluation, the training they have attended, the certificates they have obtained, etc;
    - The part related to judicial inspection and the judge's conduct.
  - 3- **Specifying the type of information and the authorities that feed** one or more parts of the file, the rules of confidentiality/publicity of the different parts of the file, and the authorities that are granted the right to access it.
  - 4- **Defining the periodicity of updating the data and information** contained in the file.
- ❖ **In order to implement these measures:**

(A) At the Legislative Level – Amendments to the Draft Law:

- **Amending Article 76 of the draft law to incorporate the following provisions:**
  - **The judge's personal file shall serve as a tool to assist relevant authorities in assessing the judge's competencies.**
  - **Distinguishing** within the "judge's file" between:
    - The administrative part related to general information concerning their occupancy of the judicial function (positions held, duration, etc.);
    - The part related to the judge's competence: i.e., the results of their evaluation, the training they have attended, the certificates they have obtained, etc;
    - The part related to judicial inspection and the judge's conduct.
  - **Specifying the type of information and the authorities that feed** one or more parts of the file, **the rules of confidentiality/publicity** of the different parts of the file, and **the authorities that are granted the right to access it.**
  - **Defining the periodicity of updating the data and information** contained in the file.
  -

(B) At the implementation level: measures that can be adopted without legislative amendment

**Concerned Parties: The High Judicial Council, the Judicial Inspection Authority, and the Ministry of Justice**

- **Establishing a file for each judge and adopting and defining a cooperation mechanism among the three authorities:**
  - **The judge's personal file shall serve as a tool to assist relevant authorities in assessing the judge's competencies.**
  - Distinguishing within the "judge's file" between:
    - The administrative part related to general information concerning their occupancy of the judicial function (positions held, duration, etc.);
    - The part related to the judge's competence: i.e., the results of their evaluation, the training they have attended, the certificates they have obtained, etc;
    - The part related to judicial inspection and the judge's conduct.
  - **Specifying the type of information and the authorities that feed one or more parts of the file, the rules of confidentiality/publicity of the different parts of the file, and the authorities that are granted the right to access it.**
  - **Defining the periodicity of updating the data and information** contained in the file.
  - **Granting the judge the right to access** the documents or papers contained in their file.

## VIII. Judicial Competence and Judicial Ethics

### 1- Adoption of a New Judicial Code of Ethics

A new Judicial Code of Ethics should be adopted, in alignment with the updated legal framework and international standards<sup>20</sup>, particularly the Bangalore Principles of Judicial Conduct. **This code must clearly define the freedoms of expression and assembly** for judges, along with appropriate conduct in relation to the media.<sup>21</sup>

**Limitations on the freedoms of judges** to express themselves or assemble shall **only be permitted as exceptions**, narrowly interpreted in accordance with the principles of necessity and the preservation of judicial neutrality and independence.<sup>22</sup>

### 2- Institutionalizing Participatory Approaches

The principle of participatory involvement of all judges in drafting the new Judicial Code of Ethics should be upheld. While the law may not explicitly outline the mechanisms for participation, the High Judicial Council may be guided by the following practices:

<sup>20</sup> Recommendation No. 5, p. 13 of the Summary of the Practical Review of the Lebanese Judicial System.

<sup>21</sup> Recommendation No. 13, p. 11 of the Summary, the aforementioned reference.

<sup>22</sup> Venice Commission, Opinion, § 106: "restrictions related to respect for the duty of impartiality of judges"

- Distributing a questionnaire to all judges to collectively define the ethical values that should guide judicial conduct (see the Legal Agenda’s initiative and its willingness to assist).
- Publishing a draft of the code on an official website (e.g., the High Judicial Council’s site) or circulating it among all judges, including trainees, with a request for feedback within a set timeframe.
- Consulting judicial associations that include a significant proportion of judges, given their representative nature.

### 3- Mechanism for Issuing the Code of Ethics

The issuance of the code must conform to the principle of judicial independence. Two primary approaches have emerged:

- **First View:** The code is issued via a circular or decision by the High Judicial Council. This approach preserves judicial independence and allows for flexibility and updates.
- **Second View:** The code is adopted following a vote by the General Assembly of Judges.

#### ❖ In order to implement these measures:

##### (A) At the Legislative Level – Amendments to the Draft Law:

###### ▪ Amending Article 11 of the draft law to enshrine the following principles:

- The principle that the new code of ethics aligns with the new legal framework and international standards<sup>23</sup>, particularly the Bangalore Principles.
- The principle of participation of all judges in drafting the new judicial code of ethics.
- Eliminate the requirement for the High Judicial Council to refer the draft to the Minister of Justice and for it to be enacted by law<sup>24</sup>, thereby preventing interference by the legislative or executive branches and allowing for easier updates.

##### *\*Two approaches remain relevant:*

- **First View:** The code is issued via a circular or decision by the High Judicial Council. This approach preserves judicial independence and allows for flexibility and updates.
- **Second View:** The code is adopted following a vote by the General Assembly of Judges.

##### (B) At the implementation level: measures that can be adopted without any legislative amendment

**Concerned Party: High Judicial Council**

<sup>23</sup> Recommendation No. 5, p. 13 of the Summary of the Practical Review of the Lebanese Judicial System.

<sup>24</sup> According to the proposal, the High Judicial Council drafts it with the participation of the Judicial Inspection Authority, the Judicial Evaluation Authority, and the Board of Directors of the Judicial Studies Institute. The draft is referred by the Council to the Minister of Justice, who proposes it to the Council of Ministers to prepare a draft law on the matter to be referred to the Parliament, within a period of six months from the date of its referral to the Minister of Justice.

And, Venice Commission, Opinion, § 96: “It is not clear whether the government or, later, Parliament can modify the content of the code drawn up by the High Council of the Judiciary or whether they can only approve it.”

- **Adopting the principle of participation** of all judges in drafting the new **Judicial Code of Ethics**.

The Council may be guided by the following initiatives:

- Sending a form to all judges to contribute to shaping a collective vision of the ethics that should accompany the exercise of judicial duties (see the initiative by Legal Agenda in this regard and its willingness to provide assistance in this field).
- Publishing the draft of the code on a website (e.g., the website of the High Judicial Council) or sending it to all judges (including trainees) and requesting their feedback within a specified period.
- Consulting the Judges' Associations whenever a certain percentage of judges are members, due to its representative nature.

## IX. Fundamental Freedoms and Rights of Judges

### A. Freedom of Expression and Assembly

- 1- **Principle:** The law must explicitly affirm that judges enjoy the freedoms of expression and assembly as do other citizens, with an emphasis that judicial freedom is the rule.
- 2- **Restrictions for these freedoms:** The limitation of these two freedoms comes as an exception, which is interpreted narrowly in connection with the principles of necessity and the preservation of impartiality and independence of the judiciary<sup>25</sup>.
- 3- **Legal Framework Governing Judicial Associations:** Two views emerged:
  - Some believe judges' right to assemble should be regulated by a special law rather than the outdated 1909 Associations Law;
  - Others argue judges' associations should fall under the same legal framework as other associations (i.e., the 1909 Law).

#### 4- **On the Purpose of Judicial Associations:**

Two positions emerged in this regard:

- One supports defining the objectives and scope of judicial associations to avoid conflicts with the High Judicial Council's jurisdiction.
- The other recommends removing any provision (e.g., "provided it does not conflict with the powers of the High Judicial Council") that could undermine judges' freedom of assembly or render it ineffective. Comparative experiences show that competition in defending judicial independence benefits society.
  - The Judicial Studies Institute recorded a **dissenting opinion** regarding not enshrining these constitutionally protected freedoms in a legal text, due to the negative experiences of legislative texts that codify freedoms, and the danger that any text may lead to limiting what is permissible.

#### ❖ **In order to implement these measures:**

<sup>25</sup> Venice Commission, Opinion, § 106: "Restrictions related to compliance with the duty of impartiality of judges"

(A) At the Legislative Level – Amendments to the Draft Law:

- **Amending Article 91 of the draft law in order to:**

- **Enshrining the principle** that judges’ freedoms of expression and assembly are guaranteed, just like other citizens, with an emphasis that judges' freedom is the fundamental rule.
- **Defining the limitations to these two freedoms as exceptions**, which should be interpreted narrowly and only in relation to the principles of necessity and in protection of judicial neutrality and independence.<sup>26</sup>
- **Resolving the legal framework governing judicial associations:**

*\*Two perspectives emerged in this regard:*

- Some participants emphasized the need to regulate judges’ right to assemble through a special law, rather than referring to the Associations Law of 1909;
  - Others considered that judicial clubs should be subject to the same legal framework as other associations (i.e., the 1909 Law).
- **Decide whether the subject matter of judicial associations should be specified in the law.**

*\*Two perspectives emerged in this regard:*

- One view held that it is necessary to specify the purpose and objectives of judicial associations in order to define their powers and avoid confusion or overlap with the powers of the High Judicial Council;
- Another view argued for the removal of the phrase “provided that it does not conflict with the powers of the High Judicial Council” from Article 91 of the draft law, considering it a threat to the effectiveness of judges’ right to assemble and a means of emptying it of its substance. It was further argued that a conflict between the role of judges’ associations and the powers of the High Judicial Council is impossible. Moreover, competition in defending judicial independence reflects positively on society, as demonstrated by comparative experiences.

*Proposed Text for Article 91 (by the Judges Club and Judicial Independence Coalition):*

*“Judges shall enjoy freedom of expression and assembly. They have the right to form and join professional associations and to affiliate with legally established associations pursuing lawful objectives.”*

*These freedoms must be exercised in a manner consistent with judicial independence. Judges are prohibited from engaging in political activity or participating in any group or association based on sectarian or partisan grounds.”*

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<sup>26</sup> Venice Commission, Opinion, § 106: “Restrictions related to compliance with the duty of impartiality of judges”

## B. Freedom of Movement

- 1- **Judges must have the right to travel freely**, without requiring prior authorization from the Minister of Justice. This should be managed through administrative leave procedures.

### ❖ In order to implement these measures:

(B) At the implementation level: measures that can be adopted without any legislative amendment

#### Concerned Party: Ministry of Justice

- **Not restricting the freedom of movement of judges by abolishing the requirement to obtain travel permission.**

## X. Disciplinary Prosecution of Judges

### A. Defining Misconduct

- 1- **Strengthening the principle of “no penalty without a law” through:**

- **Defining the disciplinary offense specifically<sup>27</sup> in the law:**
  - **Establishing clear standards that define and constitute a disciplinary offense** without listing an endless catalogue of hypothetical scenarios.
  - **Ensuring that the law itself includes all the criteria for defining such offenses**, without relying on non-legislative texts—particularly the Code of Conduct—except for interpretive purposes.<sup>28</sup>
  - **Clarifying the relationship between the Judicial Code of Ethics and the disciplinary accountability of judges<sup>29</sup>**, based on the differing goals and levels that each addresses. Not every violation of ethical rules should necessarily constitute a disciplinary offense, but only when certain criteria are met—for example: the severity of the violation, its recurrence, or its impact on public confidence in the judiciary.<sup>30</sup>
  - **Promoting the publication of disciplinary decisions, especially** their reasoning sections (Article 98 of the draft law), given the role of case law in clarifying the nature of disciplinary offenses and their relation to the obligations set forth in the Code of Judicial Ethics.
- **Enshrining the Principle of Proportionality Between the Penalty and the Severity of the Offense:<sup>31</sup>**

<sup>27</sup> Recommendation No. 11, p. 10 of the summary report, *ibid.*; Venice Commission, Opinion, §§ 94-106

<sup>28</sup> According to the Venice Commission, Opinion, § 96

<sup>29</sup> Venice Commission, Opinion, § 96: “Article 92 refers to violations of the “provisions of the moral code” as grounds for disciplinary liability. (...) The grounds for disciplinary liability and in particular the grounds for dismissal of a judge must be formulated in legislation; any sub-legislative act can only develop and explain the statutory provisions within the limits set by the legislation.”

<sup>30</sup> See the French system for an example (in the appendix).

<sup>31</sup> Recommendation No. 11, p. 10 of the summary report, *ibid.*; Venice Commission, Opinion, §§ 97-106

- In this context, offenses could be classified into three categories according to their severity and the corresponding sanctions for each category.

❖ **In order to implement these measures:**

(A) At the Legislative Level – Amendments to the Draft Law:

▪ **Amending Article 92 of the draft law in order to:**

- **Define clear criteria that adequately regulate the definition and elements of an offense**, without establishing an exhaustive list of hypotheses (catalogue) and without the need to refer to another non-legislative text, particularly the code of conduct.
- **Clarify the relationship between the judicial code of ethics and the disciplinary accountability of judges**, such that any breach of the rules of conduct does not constitute a disciplinary offense unless certain criteria are met, for example: the seriousness of the breach, its repetition, or its impact on public trust in the judiciary.

▪ **Amending Article 96 of the draft law in order to:**

- **Enshrine the principle of proportionality between the penalty and the severity of the violation**, by classifying offenses into categories (e.g., 3) according to their degree of seriousness and the penalties applicable to each category.

(B) At the implementation level: measures that can be implemented without any legislative amendment

**Concerned Party: High Judicial Council**

- **Activating the publication of disciplinary decisions, particularly** the reasoning sections thereof (Article 98 of the draft law), given the role of jurisprudence in clarifying the nature of disciplinary offenses and their relationship to the obligations of the judicial code of ethics.

## **B. Judges' Rights During Investigation**

1- **Guarantee judges' rights during referral or summons by the Judicial Inspection Authority**, including:

- Written summons;
- Timely access to the complaint and sufficient time to prepare a defense;
- Right to be represented by legal counsel (lawyer or fellow judge);
- Right to be informed of the investigation outcome, with due regard to confidentiality.

❖ **In order to implement these measures:**

(A) At the Legislative Level – Amendments to the Draft Law:

▪ **Amending Article 132 of the Draft Law to:**

- Clarify that the judge **must be summoned to the investigation in writing**;
- Clarify that **the 72-hour period begins after the judge has been notified of the complaint and has reviewed the case documents, in order to allow adequate time to prepare their defense**;
- Enshrine **the judge's right to be represented by a defense counsel (either a lawyer or a fellow judge)** during the investigation before the Judicial Inspection Authority;
- Enshrine **the judge's right to be informed of the outcome of the disciplinary process** before the Judicial Inspection Authority.

### C. Appeals of Disciplinary Decisions:

- 2- **Assigning Jurisdiction Over Appeals Against Disciplinary Council Decisions to the Administrative Judiciary:** This is based on the premise that the administrative judiciary is the natural forum (*juge naturel*) for such matters. It also aligns with the recommendation of the Venice Commission, which advocates for assigning appeals to a permanent judicial body (rather than to an *ad hoc* body), or at the very least, avoiding the inclusion of members who were involved in the prosecutorial authority from taking part in the decision on the appeal.<sup>32</sup>

#### ❖ In order to implement these measures:

(A) At the Legislative Level – Amendments to the Draft Law:

- **Amending Article 101 of the Draft Law to:**
  - **Assign jurisdiction over appeals against the decisions of the Disciplinary Council to the administrative judiciary, considering it the natural judicial authority for such matters.**

### D. Suspension of Judges Under Disciplinary Review

- 1- **Remove the Minister of Justice’s authority to suspend judges referred to the disciplinary council<sup>33</sup>.** This power should reside solely with the **High Judicial Council<sup>34</sup>** or the **Judicial Inspection Authority** upon referral.

#### ❖ In order to implement these measures:

(A) At the Legislative Level – Amendments to the Draft Law:

- **Amending Article 102 of the Draft Law to:**
  - **Abolish the Minister of Justice’s authority to suspend a judge referred to the Disciplinary Council from performing their duties.**

### E. Parallel Means to Disciplinary Prosecution

Preventing the use of the declaration of a judge's incapacity as a parallel or disguised means of disciplinary prosecution, which deprives the judge of safeguards during such prosecution<sup>35</sup>, by:

- 1- **Defining the concept of “incapacity” and limiting it to cases of mental or physical incapacity that impede judicial work,** determined based on a medical report.

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<sup>32</sup> Venice Commission, Opinion, § 71

<sup>33</sup> Venice Commission, Opinion, § 100

<sup>34</sup> Venice Commission, Opinion, § 106

<sup>35</sup> Venice Commission, Opinion, §§ 99-106

- 2- **Specifying the rules of quorum and the required absolute majority for voting within the general body of the Judicial Inspection Authority** on the decision to propose a declaration of a judge's incapacity.
- 3- **Establishing the principle that the head of the Judicial Inspection Authority shall not participate in the voting within the High Judicial Council on the decision to declare a judge's incapacity.**
- 4- **Recalling that the decision to declare incapacity is an administrative decision subject to the oversight of the State Council.**

❖ **In order to implement these measures:**

(A) At the Legislative Level – Amendments to the Draft Law:

- **Amending Article 104 of the Draft Law to:**
  - **Defining the concept of “incapacity”** and limiting it to cases of **mental or physical incapacity that impede judicial work**, determined based on a medical report.
  - **Specifying the rules of quorum and the required absolute majority for voting within the general body of the Judicial Inspection Authority** on the decision to propose a declaration of a judge's incapacity.
  - **Establishing the principle that the head of the Judicial Inspection Authority shall not participate in the voting within the High Judicial Council on the decision to declare a judge's incapacity**
  - **Recalling that the decision to declare incapacity is an administrative decision subject to the oversight of the State Council.**