Reforming the Lebanese Public Administration

Context, Principles, and Priorities

Saint-Joseph University of Beirut
Faculty of Law and Political Science

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Table of Contents

Foreword

The Lebanese public administration is now one hundred years old, and it suffers from a multitude of problems that have accumulated and worsened over the years. Some of these problems are structural, while others are contextual and closely related to the scourges that have been ravaging the country since the civil war. These contingencies evoke the fact that Lebanese institutions and the laws they operate under are underpinned by political and social relations that affect their day-to-day functioning. The transplantation of the concept of 'modern state' has failed to establish institutions capable of defending public interest and transcending the numerous divisions and the multitude of private interests in Lebanese society. The economic, social, and political crisis currently affecting Lebanon is accelerating the disintegration of its institutions. This further intensifies the need for sustainable solutions that address the issues facing the administrative capacities of the Lebanese State and the quality of its public services. It is thus high time to implement significant reforms in the country's public administration.

However, many political doubts and uncertainties over this undeniable need for reform, to the point of questioning the issue altogether: How adequate is this reformist approach in a system like ours, which has managed to subvert or neutralize the majority of reform attempts throughout the past few decades? How feasible is reform amid the ongoing collapse? What is the purpose of developing new reform proposals that will simply be added to the multitude of failed reform attempts that have preceded them since 1990? The answers to these questions are beyond the scope of this report. The present report will not delve into the conditions for any eventual revolutions, the drivers of the political will to effect change in Lebanon, or the future of the crisis. Our area of focus mainly covers the desirable and feasible changes within the current legal framework in Lebanon, without offering any idealistic solutions that would most likely end up forgotten in the desk drawers of ministries and international organisations, along with all the other ideal solutions proposed.

This pragmatic focus has allowed us to perceive the limitations of reform proposals developed over the past thirty years, some of which were of high quality. These proposals have been criticised in their different variations for their excessive empiricism at times and, at other times, for being overly ambitious and lacking a certain realism that guarantees their implementation. However, the common denominator between them is the fact that they have overlooked several elements that seem fundamental to us.

These include, first, the belief that the ideal notions imported from the transnational public management of the 21st century could be applied in a hostile political context, which renders them impracticable, and to an administrative staff that remains permeable to the influences of this context and resistant to any change imposed from above and to the inefficient reformism of Lebanese and international elites. Second, all previous proposals have steered clear of political issues (confining them to the vague issue of 'political will' or lack thereof), to the point that one has the impression that the problems facing the Lebanese public administration are strictly technical. Third, and lastly, the overly organisational approach adopted by these proposals has overshadowed the legal dimension, reducing the law to a cumbersome official tool necessary

for the implementation of primarily organisational reform proposals. The outcome of these blind spots is conclusive: today, more than ever before, the public administration is spiralling further away from the main pillars of a flexible and efficient establishment – namely, productivity, effectiveness, transparency, and trust.
Having drawn lessons from the failures of previous attempts, the objective of this study is to highlight the main shortcomings in the organisation and functioning of the public administration, through an approach that is equally legal and socio-political, before suggesting possible solutions to these shortcomings. It aims to propose relevant areas for reform, adapted to the legal, administrative, and political realities of Lebanon, while taking into account internal resistance and avoiding ready-made foreign solutions that are not in tune with the local context. As a result, we have attempted to resist the temptation of drawing the outlines of an ideal public administration that is far removed from the political and judicial realities of the Lebanese context, whose dysfunction is caused by political factors and endeavours that will not be analysed in this study. Our approach of minimalist realism has enabled us to develop proposals targeting only the most necessary reforms, which should allow us to rethink the Lebanese public administration and public service system, rendering it more functional, efficient, and suitable for rebuilding the foundations of a public service system responsive to the needs and fundamental rights of the Lebanese people, in a relatively independent manner from the risks and power relations of Lebanese politics.

To attain this objective, we have selected a number of issues whose relevance has been verified both through a normative critical analysis and fieldwork. These can be divided into four parts, offering a coherent vision of the way the Lebanese public administration reform should be conducted and its main aspects. The first part is an introduction that clarifies the link between the subsequent proposals of the study and the two elements of the Lebanese context that we believe to be essential, with the purpose of overcoming the aforementioned paradoxes: positioning this effort, first, in relation to all of the reform efforts of post-war Lebanon and, second, in relation to the vision of Lebanese civil servants for the public administration's reform. The critical reading material suggested in this introduction should accompany the reader throughout this report, in a way that gives the proposals offered in subsequent parts a contextualised critical and political dimension that was absent from most of the administrative reform strategies we were able to review. The three subsequent parts will then present legal answers adapted to the socio-political context within which these questions arise.

The outline of the report will thus be as follows: after presenting the major themes of the post-war reformist approaches and identifying the most important points of the reform vision of senior civil servants and inspectors (introduction), the report will (1) emphasise the need to optimise the human resources constituting the public administration, (2) the need to revitalise the internal and external control dynamics of the public administration, which are paralysed today, and (3) the need to streamline the administrative structure, which is currently in shambles.

Introductory part

The Reformers' Administration and the Civil Servants' Administration: The Great Rift

This part offers a critical analysis of the discourse on reform, as proposed in the different reform strategies disseminated since the end of the war. This reading will be complemented by an analysis of the frameworks and challenges of reform from the perspective of civil servants who interact with them on a daily basis. This critique, which is based on empirical investigations, will highlight the limitations of the reform models proposed in Lebanon thus far, especially when comparing them to the vision of civil servants, in order to identify the reasons behind previous failures, from which we could draw lessons that can inform a politically and socially viable reform of public administration.

Part 1

Optimisation of the Public Administration's Human Resources

This part addresses issues related to the recruitment, career path, and situation of the civil servant. Equality and merit, among other conditions to access public employment, have been challenged for a long time by several constraints and practices whose limits and dangers have yet to come to an end. The balance between the principle of hierarchy and the requirements of public service, on the one hand, and, on the other, the rights and freedoms of the civil servant (participation, strike, freedom of thought, union rights, protection, etc.) is compromised at the expense of civil servants.

As for the civil servant's career, it suffers from questionable practices such as temporary suspension of employment (*mise à disposition*) or secondment (*mise hors cadre*), and the near-total lack of virtuous practices such as the rotation of civil servants. No successful reform of public administration can disregard these issues and neglect the optimisation of human resources and their management by law.

Part 2

Enhancing the Dynamics of Internal and External Control of the Public Administration

This part tackles several issues relating to the internal functioning of the public administration, as well as its relations with citizens. These issues highlight the paralytic trends that seem to be a common trait among the different administrative mechanisms. The internal mechanisms that are most affected seem to be those pertaining to oversight and control of civil servants, particularly at the disciplinary level, and of administrative processes, including strategic oversight of the latter. The external mechanisms affected are mainly those related to the personal responsibility of the administrator, be it a public employee or a minister, as well as those ensuring the transparency, effectiveness, and promptness of administrative processes. Public administration reform should breathe new life into these mechanisms, and technological tools will certainly play (and are already playing) a major role in revitalising administrative dynamics.

Part 3

Streamlining Administrative Structures

This final part addresses structural issues within the Lebanese public administration. Over the course of events, crises, conflicts, and reforms, administrative institutions have flourished and overlapped. These have stemmed either from local, circumstantial solutions and compromises or from foreign influence, in the form of dictation or poorly thought-out imitation. More often than not, this multitude of structures, administrations, public institutions, regulatory authorities, committees, councils, specialised public figures, and independent authorities has reflected a headlong rush and a tendency to establish new institutions with each reform attempt, instead of reforming the ones that already exist. This proliferation of administrations, which caused duplications, overlaps, conflicts, hindrances, paralysis and irresponsibility has contributed to the image of a State comprised of administrative islands subservient to the political factions that control them. As such, streamlining the administration is long overdue.

Introductory part

The Reformers' Administration and the Civil Servants' Administration: The Great Rift

Samer Ghamroun

Chapter 1

Twenty Years of Administrative Strategies: The Outlines of Reformist Ideology in Lebanon

By reviewing twenty years of strategies to reform the Lebanese public administration, one can write another history of the country. It is not a history of the public administration per se, but a history of the representations by the elites who wrote these texts – senior officials, Office of the Minister of State for Administration Reform (OMSAR) agents, UNDP and World Bank agents, and various consultants – regarding the reasons and the means for administrative reform. This reform, as presented in the different reports, inevitably carries other crucial representations that have shaped Lebanese history after 1990: What have been the dominant visions regarding the public sector, the State, the law, the economy, and society in Lebanon? The analysis of these strategic reports offers a unique perspective on the ideas – or rather, the ideology – of institutional change in Lebanon. It allows a better understanding of the rare successes and the many failures that have marked reform attempts since the end of the civil war and until the current crisis. It goes without saying that this understanding is crucial for the success of future reform attempts, including those presented in this study.
A few initial remarks are necessary at this stage, before delving into the critical analysis of these strategies, examined here at the level of both text and discourse.

1. We have reviewed the majority of accessible strategic texts on post-war administrative reform, with special focus on a few specific ones: the OMSAR strategies of 1998, 2001, and 2011 (the most recent one hadn't been published yet when this document was being written, and therefore remained inaccessible), OMSAR progress reports (2009, 2012, and 2015), the 2020 Anti-Corruption Strategy, and finally the advocacy strategy issued by the former President of the Council of Ministers, Fouad Siniora, offering an overview of the official approach promoted by late Rafik Hariri regarding public administration.

2. The temporality of reform: the majority of strategies seem to be outside the Lebanese political and social timeline (sometimes, it is their terminology and paradigms that give them away and not their clear historical positioning; only the 2001 OMSAR strategy includes a sequential reform dimension, without necessarily being historically positioned within the Lebanese timeline). Nevertheless, it is remarkable that these strategies share a common belief that they were produced at the optimal time for reform. The reformers always seem to consider their strategies to arrive at the right time. As such, the years 1998, 2001, 2011, and 2020 were all believed to be appropriate moments to implement reforms, although such reform never truly materialized, and the reasoning behind this belief was never laid out explicitly.

3. These strategies were not linked to each other (naturally, this was less the case for the 2012 or 2015 interim implementation reports), and each strategy sought to redesign the reformist approach entirely. Most identified issues and proposed solutions have been the same in every strategy, all of them worded in the same rhetoric of permanent innovation while often being repetitive. These have sometimes been differentiated from one another terminologically (previous strategies sought to modernise, rehabilitate, renovate, and consolidate, but only the current strategy, whatever it may be, really seeks to "reform" (2001,9)). These similar terms and concepts have been rehashed time and time again, as if all these reports were inspired by a single and universal manual on the drafting of post-Cold War administrative reform strategies. As a result, they always include a definition of the desired State (always shrunk down) and its relationship with society (which mainly consists of NGOs, or a mysterious and virtuous "private sector"), with the economy (always liberal), and with the citizen (a consumer above all). They also enumerate the issues that mostly remain unchanged (this has facilitated the critical comparison we envisioned).

4. Finally, the review of these documents gives us a vivid glimpse of the parallel universe of administrative reform, within which the OMSAR, UNDP, international organisations and donors, and experts have mobilised for twenty years, but which eventually remained largely dissociated from the day-to-day reality of the Lebanese administration and its civil servants. These two distinct universes manage to come into contact at times, at the occasion of a certain event or project, but seem to evolve separately – two different worlds, each with its own actors, knowledge, logic, power relations, ideologies, and timeline. This reality helps us understand why the dynamism and virtuosity of "administrative reform" actors have only been met with the degeneration and collapse of public institutions and the administrative body since 1995, with the exception of a few isolated experiences of relative administrative effectiveness.

I- The Impossible Formula: Who should implement reform?

While the need for reform was quickly and widely gaining consensus in the post-war era, the identity of the actor/institution that ought to lead these reform efforts progressively became an issue. This concern, which was relatively limited in the first report under study (1998), as reform seemed obvious in the post-war era, became more apparent as of the 2001 report and increasingly raised questions: reform became the object, and the victim, of a power struggle between reformers. The period of conflict between 1996 and 2000 between the OMSAR and control authorities certainly had a role to play: the Office clashed with Central Inspection (CI) and the Civil Service Council (CSC) over the prerogatives and the legitimacy of both, and the conflict peaked when Hassan Chalak (former president of the CSC) took over the ministry of Administrative Reform in the Hoss cabinet after 1998.

From that point onwards (and as of the 2001 report), OMSAR's scope of action and legitimacy

to implement reform were called into question, which is visible in the subsequent reports that consistently tackle the issue of OMSAR's ambiguous nature, its executive weakness vis-à-vis other ministers, and the conflict over prerogatives with "other actors in the area of administrative reform," a euphemism that refers to the bureaucratic war of the late 1990s over the ownership of the reform process, which consequently led to a "decrease in internal pressure in favour of reform and acceptance thereof" (2001, 8): in the eyes of its agents, OMSAR embodied change, and it was under attack for that reason specifically. Following this recurrent diagnosis, OMSAR's strategies included propositions and reflections on the optimal reformist architecture, which progressively took precedence over the very purpose of reform. As a result, different institutional scenarios emerged as of 2001: a full-fledged ministry of administrative reform, a minister without a portfolio, or a central body affiliated with the President of the Council of Ministers. The authors of the 2001 report leaned towards the first option.

The diagnosis highlighting the lack of support and clear competencies was reiterated in 2009 (the cooperation of ministries was not guaranteed), as well as the intermittent and personal nature of the reformist approach up to that point in time (everything depends on the incumbent minister). As a result, OMSAR increasingly presented itself as a consulting and expertise firm offering recommendations to clients (2009, 4). However, the dissatisfaction with this status quo brought on by the logic of projects and funding rather than by strategic choices became clear. Institutional repositioning was thus put back on the table, along with several other proposals, but this time with a more directive role in the reform process and an elucidation/reinforcement of executive powers. At that moment, the previous 2001 scenarios seemed less reassuring, and the hybrid nature of OMSAR a lot more protective (2009, 7), which would be convenient to maintain. A new shift took place in 2011, whereby a High Committee was promoted/activated to lead the reform process. This committee had already been created by virtue of a decision by the President of the Council of Ministers in 2005, and it includes representatives of all the relevant ministries and the presidents of control authorities (2001, 41).

This uncertainty was not only institutional, but also terminological, as the ministry tasked with implementing "reform" was rebranded as the Ministry of Administrative Development. Without over-interpreting this formal amendment through which the reform process underwent a makeover, it is impossible not to see it as a toning down of ambitions relating to change to a more "modest" view of what has been and what can be achieved. This trend was confirmed by the tone of subsequent implementation reports (2012, 2015), which, in a much more reserved language, were content with aspiring for more support and cooperation from ministries, implicitly mourning the hope for stronger executive prerogatives.

This uncertainty over the identity of the main institutional promoter of reform during the last two decades explains, in part, the humble outcomes attained.

II- The State under suspicion: Reductions, cuts, and downsizing

The first report of 1998 (over 400 pages long!) appears as a guide on the neoliberal State during the era of unquestioned globalisation and the so-called 'end of history': it is surprising to behold such developments in a report of this kind, as it aims to reimagine the State through the prism of the conquering neoliberal ideology of the 1990s. Even the Lebanese Constitution (adopting liberal economy in its preamble) is used to legitimise the withdrawal of the State and the abandonment of most of its role, without any regard to the actual presence and role of the State in Lebanon: first we downsize, then we deal with the consequences. Priority is given to a limited State with limited control, and this is justified by the very nature of Lebanese economy, which is based on competition, trade openness, very low taxes on income and profit, the free movement of capital, and the freedom of the banking sector (1998, 398 onwards). The key reforms of the Washington Consensus, from Egypt to New Zealand, were also used to emphasise the need to rid the public administration of the excess weight of social policies and interventionism (one has to wonder what exactly these refer to in Lebanon) and delegate them to civil society and NGOs, who will henceforth assume responsibility for "human development" (1998, 190 onwards). The concept of "good governance" thus ruled supreme, in a perfect balance, reminiscent of market equilibrium, between the omnipotent State and the non-existent State. The desired public administration had to have minimal presence next to the market powers that will carry the country in the decades to come: it needed to be svelte, discreet enough not to disturb these powers in motion, but also efficient when these forces need it. Privatisation was necessary, inevitable, and forms the basis of this entire reflection on public administration, even if we still find a certain emphasis on the importance of a relevant regulatory framework (1998, 273, 422). Aligning Lebanon with the trend of liberal economic globalisation brought the final touch: the Lebanese public administration had to live up to the economic role that Lebanon hoped to play in the 1990s (1998, 13-14).

The 1998 report remains exceptional in its liberal tone, economistic perspective, and its praise of the limited State. Fundamentally, the subsequent strategies did not differ much, although they did nuance the most radical tendencies of the 1998 report. As of 2001, the desired State regained part of its role, due to the first post-war economic crisis in Lebanon at the end of the 1990s. The enthusiasm for the magical notion of privatisation began to recede, despite the continued obsession with the size of the Lebanese State. Its tendency to take up space while prohibiting others (the private sector and NGOs) from working is often highlighted: the public administration needed to be reformed in order to make it less cumbersome (2001, 6). Ten years down the line, the 2011 strategy still sought to elaborate a new definition of the State, for which a new role was presented (2011, 19), even if it looked exactly like the old one. The report still called for the implementation of the Washington Consensus processes in terms of reducing the size of the State (a "small and efficient" State (Siniora)), while disregarding the fact that Lebanon did not go through the elaborate State-level planification phase that justified such processes elsewhere. Everything was seen through the lens of State downsizing and economic priorities. For example, a posteriori control was highly praised because it allowed for the measurement of economic effectiveness, efficiency, and performance. The private sector continued to benefit from an aura that rose above all suspicion well into the 2010s; only the

public sector was diseased, corrupt, and needed downsizing ("reform"). Partnering with the private sector seemed like a magical solution to many issues, without ever thinking about the particularities of the porous borders between the public and private sectors in Lebanon or the way public-private partnerships unfolded on the field (interview).

III- The "New Public Management" in Beirut: A new culture for a new civil servant

Civil servants are primarily portrayed in a negative light in reform strategies. They have been placed among the "obstacles" to the recommended reform since 1998. Public sector employees were believed to be the biggest risk to reform, notably because of their bad habits, their "pride," or their lack of lucidity or training on new work processes. They are depicted as bureaucrats in the most pejorative sense of the word. These stubborn and unskilled civil servants (2001, 11) are born out of a society that does not believe in the reform process and that will not play its part (1998, 25). As such, reform cannot start from within the public administration or society, and civil servants cannot be partners in the process, but merely the object of this reform, imposed upon them by external experts and political actors (1998, 16; 230). The phantom of unskilled civil servants that need to be removed as soon as possible (1998, 233) haunted this report and all subsequent ones, alongside its consequence that should be also dealt with: an obscure public administration that is very heavy, an opaque black box whose contents are unknown to the enlightened experts (2011). Even when clientelism in public administration is mentioned (2011, 23), it is portrayed as an issue due to the allegiance of civil servants not to public interest, but instead to a leader – that is to say, civil servants are once again the ones to blame.

In contrast to this sombre diagnosis, the utopia of Lebanese administrative modernity (1998, 20 onwards) promotes a change of "administrative culture" that replaces administrators with "managers," legalism with creativity: decentralisation, bottom-up approach, field work, horizontality, anti-hierarchy, flexibility, freedom, leeway, risk-taking, inventiveness, delegation, attractiveness, training, development, accountability, empowerment, mobility, promptness and adaptability, svelteness, and many more notions which have been used abundantly over the past two decades to describe the desired public administration, while failing to have the means to reform it on the ground. The image of "the manager of the future" as a dynamic executive (but not a commercial manager (1998, 35)) is believed to allow the reshaping of the public sector, in order to adapt it to globalisation, the economic imperative, and openness towards civil society (1998, 36).

The most recent reports have consistently focused on the issue of human resources. When the domination of the high hierarchy is finally mentioned, it's not to denounce the arbitrary powers of the minister post-Taif (see infra), a crucial issue that is rarely addressed in the reports, but to talk about the repression of the civil servant's personal creativity (2011, 20), in accordance with the priorities of the new litany of neo-managerial processes. Control authorities themselves must be updated to be able to accompany (and not "control," a repressive and outdated term)

these new civil servants (2011, 2015). Fouad Siniora's report does not shy away from this approach, as he emphasises the necessity of a civil servant purge ("the first since Charles Helou") in his defence of Hariri's legacy, the late former President of the Council of Ministers who supported this downsizing: civil servants are responsible for the failure of these reformist attempts, due to their non-adherence to the reform project and their poor loyalty towards the State. The reform process is thus reduced to this act of purging, within a context of constant stigmatisation of the guilty civil servant, who is evaluated by the all-knowing expert and punished by the capable politician.

The inflated concern over human resources, coupled with this approach of stigmatisation, has led to two outcomes: the alienation of a part of the civil servants from the reform efforts (which we noticed in our interviews as a self-fulfilling prophecy) and the dissimulation of the political dimension, which has always been one of the biggest blind spots of reform strategies of the last twenty years.

IV- Waiting for the Political Will: The elephant in the room

The reader can sometimes find the political dimension in reform strategies, but only in an abstract and euphemised form. "The war" and "its residual effects" are always the culprits used to justify the state of the public administration (1998, 13; 2001, 5 and 16). Corruption, which is rarely mentioned, is also anonymous, since administrative rules are blamed for it: it is neither the fault of the infantilised civil servants, nor that of the absent politicians (1998, 494); it is a sectorial crime without a perpetrator (2020), of which the Ottoman Empire is also partially responsible (2020). The same applies to confessionalism in the country (1998, 14; 2001, 8; 2011), some aspects of which are deemed positive (2020). Even the Taif Agreement is presented as a guarantor of coexistence which must be respected (1998, 250), and not the main cause of the ministerial supremacy over the public administration, a major issue that is rarely addressed. The poor separation between politics and the administration is mentioned in passing among numerous other issues. The only explicit political reference is the one concerning President Chehab, whose 1959 administrative reform is presented as the only reform process worthy of its name (2001 and 2011).

It is noteworthy that the political dimension is always presented as this deus ex machina that everyone has been waiting for since the 1990s, and which must give its support to the reform process but has yet to do so. In all of the reports, this political "support" and "will" are always coveted, awaited, but never identified nor analysed. The political dimension remains external and mysterious, its materialization always desired but never intelligible (2001, 8). While waiting for the apparition of the political that is yet to take shape (2011, 24), the series of recommendations seems to be the same from one report to the next. The rare attempts to identify the political problem point the finger towards Parliament at times: the legislative power is not fulfilling its function of supervising the government in the area of reform (2001,

8). Certain reports only mention in passing the issues of clientelism and political interference (2001, 7), without granting them any particular importance in the long list of administrative shortcomings, along with other technical issues such as those relating to administrative buildings (2011, 25). As such, the 2011 strategy could not be implemented "due to political and non-political reasons" (2015) which are not explained. This is not a serious problem, as the incremental implementation of the strategy will help avoid, but perhaps also legitimise, the political impotence of reformers. The political dimension, in its benevolent form, is desired, required, necessary, and encouraged to sponsor the reform process in accordance with good governance theories (2011, 40); but it is also feared and dreaded in its predatory form engendered by the Lebanese regime. The lack of righteous politics has been lamented since the 1990s (2015), in some sort of a permanent justification for the failures. However, it remains beyond any questioning over its absence or weakness. Even when the voice of the politician is heard in Siniora's report (p. 20), it blames political parties and rivalries for the failure to implement Hariri-era reforms, as well as President Emile Lahoud, the Constitutional Council, Parliament, control authorities and civil servants (it is worth noting that OMSAR does not seem to exist according to the former Minister of Finance and President of the Council of Ministers). The only time that political support is deemed satisfactory is in the anti-corruption report (2020), which emphasises, unironically, an unprecedented political will to implement reforms in the country, allowing Lebanon to join the ranks of nations that place the fight against corruption at the top of their priorities.

The political blind spot, or rather the marginalisation of the political dimension in the long list of problems, has prevented the political issue of reform from being tackled seriously as a precondition to administrative reform, thus condemning the different strategies to twenty years of technical and normative headlong rush towards inefficiency.

V- Surpassing the Law: Towards a post-legal public administration

The question of the law is tackled from a generational angle in the reports: the new reign of the economy and economists must replace the old administration, which is based on the law, and the old civil servant, who is trained in law. The dominance of the so-called "literary majors" in the public sector at the time, with law at their core, has been denounced since 1998: now is the time to heavily recruit specialised experts in economy, finance, corporate management, IT and statistics (1998, 228). Beyond the issue of human resources, it is a true paradigm shift within which the law is an archaic artifact that needs to be overcome – of course, not in the totality of its manifestations and usages, but as the backbone of administrative work and civil servant training. Naturally, this dethroning of the law in favour of the economy is not specific to Lebanon and had previously been observed and commentated on in the West since the 1970s. However, the Lebanese strategists sought to make up for the delays caused by the war rapidly (1998, 228), by blaming what they perceived to be the widespread legalism responsible for the flagrant administrative inefficiency, simultaneously with the advent of a new transnational economic-administrative culture.

The freedom and the creativity of the civil servant, both crucial components of the new public administration, were therefore believed to be repressed by the excessive legalism of the a priori inspection of actions and expenses, often deemed inefficient (1998, 284; 2011) (contrary to the opinion of the senior public officials we met with, see infra). Here, "performance evaluation" is the reformers' new doctrine. This performance is essentially economic, instead of the traditional legal and financial inspection that is deemed more burdensome than useful (1998, 277). The "outdating" of the slow and inefficient legalism persisted through the new millennium (2001, 7, 10, and 15), as part of an approach that would have been relevant in advanced economies with a legitimate rule of law established for the past two centuries. In Lebanon, however, this approach seemed to promote the principles of lawless fluidity, promptness, and flexibility, at the expense of the law, in a context where the rule of law is in decline: fluidity in the vacuum of Lebanese power relations? Even the 2020 Anti-Corruption Strategy, which is built around a robust legislative program, calls for steering clear of "populist" solutions that are based on the legal principles of the Penal Code, as well as of the old solutions that involve the judicial system or control authorities (2020, 17), in favour of new, "smart" processes which, of course, are not defined or implemented. Nevertheless, we did notice a very timid comeback of the law in 2011, with an exceptional mention of the judiciary's independence, which is deemed necessary to ensure respect of the law and guarantee the credibility of the State (2011, 30).

The reader cannot help but stop and reflect upon this double-faced legality depicted in reform strategies. The reports consistently call for the modernisation of laws regulating the public sector, while at the same time calling for going beyond the law in administrative practices (1998, 428; 2011, 33). These laws are described as ancient, inappropriate, outdated, and inconsistent with international standards (2015, 2020), which highlights the need for a legislative reform process. As such, the law seems necessary to reform the public administration, but superfluous and nonessential for working within the administration: the law is necessary to free the public administration from the law's grip. This initial paradox is exacerbated by another that looks more like a gap. On the one hand, we have the strategic reports that propose a pejorative vision of the archaic legalism; and, on the other, we have the civil servants we met with who insist that the law is not the problem, that most of the laws in place are adequate, and that the issue lies in their implementation: it is therefore futile to change laws that no one in the public administration is implementing anyway. According to the senior public officials we interviewed, the true battle is at the level of the political system in charge of implementing these laws, and hence of guaranteeing the rule of law. Meanwhile, according to the reformers, the political dimension appears neutralised, making room for the battle of surpassing the law in favour of more economic efficiency and flexibility.

VI- The NGO-Society and the Citizen-Client

The reform of the public administration cannot be undertaken without a vision of society and the State in Lebanon, their respective roles, and their relations. The study of the strategic reports confirms this, since one of the recurrent themes therein is the emphasis on the need for a dialogue between the public administration and society, even if the modalities of this dialogue are almost never clarified (the office of the Ombudsman is frequently mentioned as a recommendation before its establishment by a 2005 law and as a call to implement this law post-2005). This dialogue does not give rise to any particular comments, but the content of this much solicited society is worth examining. Society is depicted as more akin to public opinion at first, which needs to be maintained and managed to ensure reform. Far from the democratic ideal upon which society – understood as the people – gives legitimacy to the reform process, reform here does not need this popular legitimacy, since its legitimacy is drawn from elsewhere, from technical expertise. Society thus becomes a tool, or at best a partner that needs to be treated properly, to increase the likelihood of adopting the proposed reforms. The public's participation is perceived in the form of a communication activity: it must be kept informed of all developments and involved as much as possible (in previously agreed and designed reforms?) (2001, 21, with some nuances in 2011). A communication plan is therefore presented (2001, 26), in which mass media plays a crucial role. Certain reports (2020) even paint a pretty picture of the role played by the elites and media outlets in combatting administrative corruption, likely to form the basis of the future reform. Once again, the world of administrative reform is not always that of administrative reality.

According to the neo-liberal perspective described above, society, as it is portrayed in the reports, mainly consists of NGOs (trade unions, for example, are often forgotten). It replaces the State in areas that the latter must withdraw from. Based on this perspective, NGOs should have the "noble motive" to fulfil the functions of the old State (1998, 185). They should participate in managing the new State by assuming responsibility for social policies, for example, driven away from the public sphere, which has become a purgatory in this new world. The objective of administrative reform thus becomes to achieve harmony with the private sector (i.e. the service and commerce sector), as well as with civil society and NGOs. This harmony can be achieved through the adaptation of the public administration to the particularities and needs of the private sector in both its associative and profit-driven dimensions (a sector that is always above suspicion), thus nourishing the enchanting narrative of the cooperation with the private sector and civil society (2012), even if the latter is not yet ready to be treated on an equal footing with (and would probably become "submissive" to) the public administration (2011, 21). It is worth noting that, in this vision, civil society protects the citizen (not the State or its judiciary), while the public administration, even in its reduced and slender shape as desired by the strategists, remains a source of danger (2011, 30).

As for citizens, they are often depicted as very busy individuals who yearn for administrative simplicity and deregulation in order to develop their honest businesses (1998, 426; 2011, 10) (which is convenient, because that is what liberal policies advocate for). The desires of citizens

are thus modelled according to the neoliberal offer, and the notion of "client" soon follows (2001, 11), implicitly transforming the public administration into an enterprise that provides services and seeks profit, and the political citizen into a client or entrepreneur who simply wants streamlined transactions, in compliance with the aforementioned neo-managerial principles (2001, 15). However, the 2015 report reverts to a more classical approach at times, equating the citizen with a user, which reminds us once again of the significance of personal variables (which minister is in office when the report was drafted, which editors produced it, etc.) in the general framework of post-war Lebanon, which largely remains neoliberal, and post-1995 strategies are clear proof of that.

VII- International Actors: The country's first reformers?

The importance given to international actors in the different fields of administrative reform cannot be stressed enough. This is abundantly clear in Lebanon's reform strategies. These actors (the UNDP, the World Bank, the European Union, to name a few) form an integral part of the reform efforts initiated in 1995 (2011, 24). It could even be said that they were the catalyst of these reform efforts, while the role of local actors was limited to adapting these international interventions to the Lebanese context. OMSAR officially presents itself in this intermediary capacity, as the party responsible for coordinating international financial, technical, and scientific support (2001, 25): the incoming "support" should necessarily be managed. The local actors involved in the process thus compete against each other to become the preferred point of contact for these long-awaited financial and technical grants (for example, who ought to draft the bill on public procurement (2015), OMSAR or the Institute of Finance?). International actors-donors thus play a central role, completely normalised and trivialised with time, in the meticulous construction of a chronic state of dependence that will prove problematic for change in Lebanon: international institutions that justify their actions by local partnerships and institutions, which in turn justify their actions with international partnerships, while the Lebanese administration continues its inevitable descent into the abyss.

The term "support" does not do justice to the exact nature of the role of international actors in administrative reform. Far from settling for a passive role in the form of financial or technical support, the reports show that these international programmes have ended up shaping the reform process and initiatives altogether, both at the level of OMSAR and certain other ministries. This pivotal role was confirmed during our interviews, but the reports themselves also explicitly recognise the reduced leeway left for local actors in the face of an ever-expanding structure of international intervention. The 2009 report states that the nature of current OMSAR interventions (in its capacity as a "consulting firm" on reform) is not the product of a public strategy or an internal political will and "was not envisioned when the government created the Ministry of State for Administrative Reform, but was rather created through a series of projects funded by donors" (2009, 4). The report makes no attempt to conceal OMSAR's frustration regarding this situation of local structural passivity, and its ambition to play a different role, while still recognising the circumstances under which its role was forged.

Subsequent reports continue to naturalise the role of donors (2011, 27), to the extent that their interventions are deemed symbolically superior to cooperation with control authorities for example (2012, introduction). At times, the reports even allude, albeit indirectly, to the Lebanese regime's takeover of these international resources, which were originally dedicated to the reform process but were locally redirected to ministers and their clientele. Hence, one of the reports recommends the readjustment of the UNDP's role in ministry recruitment, as a proposed element of administrative reform, emphasising the need to set strict recruitment standards (2011, 42).

VIII- The Trends of Reform

The analysed texts touch upon topics and concepts that all reform reports inevitably covered. We find frequently-repeated words (re-engineering, total quality management, benchmarking, best practices, learning organization, performance standards and indicators, renovate, creativity, efficiency, good governance, transparency, flexibility, etc.), derived from the official terminology of liberal reform, which convey meaning in reformist communities but have very little significance elsewhere and especially among public servants. Behind this diversity, it is possible to detect certain major themes that have marked the strategies throughout the years, with very little variation.

The technological dream no doubt constitutes a main element of these themes, as it promised, since the end of the 1990s, a bright future with a digitised administration free from the shackles of law and politics. This technological fantasy was born just in time for its utopic vision to be included in the first report, as it identifies Information and Communication Technology (ICT) as a major tool in the future of the Lebanese administration (1998, 477). It even expresses the hope that technology would offer an escape route away from politics (and corruption), which would have to give way in the face of this new language that it has yet to learn. This idea became the leitmotif of the depoliticised vision of successive reform reports, in which technology provides the opportunity to evade the trend of politicisation that is gradually getting out of hand. The technological dream accompanied the rapid growth of the internet, and it promised to build a magical administration immune to politics, corruption, and sluggishness. These dreams persisted well into the 2000s and 2010s, in parallel with the stalemate of reform efforts across the country, and with them persisted that hope that ICT would eventually make change possible. The e-government narrative hence took centre stage (2011, 17), promising a complete makeover: a smooth interaction with citizens, unprecedented transparency, and much more robust barriers in the face of corruption. New online platforms (Dawlati) were announced in the process (2012), but these seem to have stopped working when we tried to access them in 2022: technological dreams seem to be short-lived.

The technological faith was not the only ambition to absorb Lebanese reformers. It was soon coupled with the fantasy of magical cooperation between the private and the public sectors, as previously mentioned (2011, 31; 2012), which went as far as celebrating "outsourcing" (2015). The reports boast (to whom?) so many notions that have become markers of administrative

modernity to show a job well done. The slightly more classical mirage of decentralisation is always at the forefront of the reports, listed as a top priority, while the civil servants rarely mention it (2011; 2011, 19). The concept of "change management" then took centre stage in 2012, after which we started hearing of "agents of change" and "awareness and persuasion strategies" to reform public administration. The final item on the list seems to be the fight against corruption: the 2020 report announces a prosperous society governed by the rule of law (the reader has trouble seeing where, when, and how this could be achieved in Lebanon), thereby setting the seal on the enchanting narrative of the reformist universe, at a time when the country was already at the edge of the crisis.

These different themes are no doubt relevant in the context of any reform process, and our purpose here is not to diminish their importance. It is simply to rise above these utopian ideas that have been recycled since 1995 to explain why it would be delusional to assume that the political dimension could be cast aside in favour of information technology or the managerial approach (2011, 39). "Trends" (interview) are paraded one after the other, with every new imported concept, to frame "similar ideas with a new, updated terminology" (interview). This delusion neither questions the new role of politics in this promised technological utopia, nor the new (and sometimes more dangerous) forms of politization that could emerge, certain signs of which are already apparent. What remains is a twenty-five-year-long spectacle of recurrent attempts to evade politics, which have made a comeback today with even more vigour. This serves as a reminder to us that we can continue to produce reform reports, but administrative reform will not happen in the absence of politics, for administrative reform itself is the product of politics.

Chapter 2

Public Administration in the Eyes of Civil Servants: A frail structure hindered by its politics

The interviews carried out with current and former public administration actors (civil servants, senior officials, central inspectors, OMSAR agents, etc.) paint a much darker picture than the one presented in the reform reports and strategies we examined in the previous chapter. Here, we find negligeable traces of the reformist, and often optimist, voluntarism that characterised the strategies from 1998 to 2020, in which problems are often standardised and euphemised and mainly serve as a tool to suggest ambitious innovations borrowed from the liberal manual. Lebanese civil servants, who have spent years behind the scenes of public administration, draw a chilling portrait of a body ravaged by diseases that seem more and more incurable. It is important to note that this situation was not the product of the crisis, which came to deliver the fatal blow to this already sick body, while offering a pretext to all those who wish to justify the current state without naming the culprits: the crisis becomes an excuse to justify the problems of the Lebanese public sector without a political cost. If reform strategies draw a picture of how the State and public administration should be (according to their authors), the civil servants and agents we interviewed describe the practical state of public administration thirty years after the Taif Agreement, and, therefore, what it should not be anymore.

It should be noted, at this stage, that the majority of civil servants we met with share fundamental doubts regarding the reformist approach, at least in the way it was expressed for the past twenty-five years through a series of strategic reports, whose implementation has remained a mystery for most of them. “You will work hard, but nothing will happen”: These are the disillusioned words we have heard repeatedly from civil servants who have already seen dozens of experts coming in to meet them to draft their recommendations since the 1990s, without “the slightest result.” This scepticism has been reinforced by the current crisis, which further demonstrates the “futility” of the strategic reports which have not been applied, amid an unprecedented collapse of the public administration since 2020: “We do not need reform now, we need to survive” (Director General (DG)). The lack of faith in the will to reform and the recent precarity of civil servants make it even harder, or even less desirable, to justify a reform process. Rather, the most radical options seem more attractive than a sterile reformism whose inefficiency exceeds that of the public administration that is the subject of all the reports: One must either leave (the administration, or even the country altogether) or change everything all at once: “heads must roll” (former DG). The prospects of immigration and the desire to revolt leave little room for the grey areas of a reform that always seems to remain mere ink on paper.

I- Despondent and Nostalgic Civil Servants: What reform?

The first takeaway from the interviews with the civil servants is the nostalgia in their discourse: their take on the current situation (the collapse, inefficiency, and crisis) is impregnated with the image of a better past and the search for the moment when everything came crashing down, when the train of State-building was derailed. The civil servants' responsiveness to the upcoming potential reform processes seems highly affected by these sentiments.

The long gone "respect" for and "prestige" (الهيبة) of the inspector and civil servant were mentioned frequently in the interviews, as they are part of a glory that has faded into oblivion amid the current circumstances – thus the need to constantly remind the listener of it. The image that civil servants have of themselves has been tainted significantly, which is a symptom of what is described as a social and professional decline: "In the past, it was very difficult to join the public sector, since you had to pass a difficult examination, unlike today" (Inspector). Similarly, the general "ambiance" used to be one of reform and change (جو إصلاحي), and people adhered to "values," "while today, there are no more values in the public sector" (Inspector). The "ethical" dimension of the problem facing the public administration today was emphasised repeatedly, since the same laws were in force previously, but with very different results.

> *"We had momentum, projects in the pipeline, civil servants that did their job, someone to talk to in the administration" - Former OMSAR agent*

> *"We had plenty of authority, and our decisions were definitive. When we visited a public administration, the employees would tremble with fear. Today, they don't even look at us" - Inspector*

It should be noted that the exact historical moment of this glorious past is not always the same. It could range from the pre-war era to 2018. But aside from dates, it is this nostalgic perspective towards the past that reveals a public administration that is on the brink of surrender, crushed by a present that offers no more resources, and always escaping towards a revered past that still allows civil servants to preserve what is left of their self-esteem.

Furthermore, the civil servants keep searching for the precise moment that heralded the administrative collapse: When did everything go wrong and lead us to this deplorable present? The events leading up to this administrative decline differ according to each civil servant we spoke to, varying in nature and importance: A 1978 decree cancelling the regulation of public tenders, the Taif Agreement that instilled ministerial tyranny over the administration (see *infra*), a 2001 circular by Rafik Hariri demanding the Central Inspection to refrain from exercising

its powers over ministers, the creation of the Council for Development and Reconstruction (CDR) or its post-war activation outside of usual controls, political Harirism, or, on the contrary, its abrupt end. Public agents mention many key events in the history of Lebanon that could well be the trigger, the exact moment when the seed of corruption was planted in the public administration. From these well-defined moments onwards, "things could only go downhill, fast, descending from bad to worse" (several interviews). The challenge is therefore to make sense of a present that is devoid of any meaning, to try and understand how we got to this point, and to restore a logical and linear coherence to a situation that civil servants have a hard time comprehending.

II- The Origins of Administrative Decay: The arbitrary nature of the all-powerful minister

The civil servants' description of the minister is enough to understand the severity of the problem caused by the excessive powers allocated to ministers after Taif: master of his administration, king, wielder of crushing powers, a prince ruling over his principality, a gift from God… the image of the omnipotent minister at the expense of administrative rules appears as the root of all evil within the public administration. The senior officials unanimously agreed on this designation, placing the minister at the origin of most dysfunctions: "99% of the problems within the administration emanate from this" (former DG). The minister holds the characteristics of an absolute monarch: arbitrary decisions that attach no importance to the issue of legality, privatisation of ministerial processes, and extreme personalisation of the minister's actions by interfering in all matters, even minor ones, based on the minister's relations and interests, within an exceedingly explicit context of neopatrimonialism. All boundaries are crossed by the minister of the Taif Constitution: those between the public and the private, the professional and the personal, the legal and the illegal, the political and the administrative.

One of the most evident manifestations of the devastating ministerial arbitrariness according to the civil servants is, without a doubt, that of *"taklif,"* through which the minister disregards recruitment regulations and procedures, appointing more and more individuals himself. These hundreds of loyal individuals transform the public administration into an obedient tool in the minister's hands. Contrary to the civil servant who draws his legitimacy and position from civil service law, the employee appointed by *"taklif"* relies mainly on the minister's goodwill. The minister sees in these individuals devoted servants that he could easily replace at the slightest sign of insubordination or lack of loyalty. This marks the end of the administrative hierarchy provided for by the law, which is supposed to guarantee a system of cascade control, and which is replaced by multiple individual and personal relations, linking each employee to the minister. Another similar issue is that of the "insistence" (إصرار وتأكيد) that the public employee must ask of his minister when asked to perform an act that the public employee deems illegal. Besides the burden it places on the solitary civil servant's shoulders ("they want civil servants to be heroes" (Inspector)), this practice clearly shows the paralegal state the Lebanese administration is in, since "the law never mentioned that the minister can insist on the performance of an illegal act" (former DG).

> *"I must have asked for a ministerial insistence or confirmation around 300 or 400 times, but it is a joke. What does it mean for a minister to insist? It means they are breaking the law. I will therefore be forced to do as the minister wishes, even if it is illegal, which is disturbing …. In fact, that entire process is illegal"*
> *- Former DG*

The illegality of this practice does not seem to be lost on ministers, who avoid resorting to it as much as possible, as it leaves behind a possibly incriminating paper trail. As such, they prefer calling their subordinates directly (who are often employed through *taklif*) and asking them to "take extra care" of a certain file or a person. The employee seldom has a say, given the actions that his minister could take against him in case of refusal (arbitrary transfers, all sorts of punishment, withholding a bonus, etc.). The minister no longer has to violate the law himself; he could simply ask his loyal employee to do it on his behalf. There are numerous manifestations of this ministerial power, as described by the civil servants, that occur on a daily basis: refusing to sign, cancelling sanctions imposed by the DG against a corrupt but protected public employee, depriving departments of necessary material to obstruct the workflow as a form of pressure to obtain a signature, rejecting travel authorisations or bonuses, and asking other administrations to boycott a rebellious DG. All is fair for the sake of forcing civil servants who are a little too legalistic to yield.

All ministers since Taif think "that they can do whatever they want. They even tell each other about it" (former DG). Even control authorities have been complicit in this at certain points, according to senior officials, due to a lax and "on-demand" decisions, based on the belief that "those who can do more can do less," and whose fragility only illustrates the compromises that various institutions have to make when met with the de facto ministerial hegemony. The post-war minister is "an entrepreneur" to whom "the public sector is an investment to make a profit off of" by all means (former DG). He is described as being above the law and immune to inspection, and "he can break the law every day and intervene wherever he wants, when he wants." What does administrative reform mean in this context?

> *"It is not a question of political intervention. It is about what the head of the administration – the minister – is doing. His daily interventions could ruin everything and cover the most corrupt practices. With one stroke of his pen, he could write: sanction cancelled" - Former DG*

In the face of this omnipotence tolerated by a poorly written and interpreted Constitution, control authorities are impotent, paralysed by the law, the aforementioned Hariri circular, or the balance of power. The all-powerful minister is also untouchable, and the Central Inspection's procedures, even in its dynamic phases, are stripped of all their powers at the threshold of a minister's office. Even the civil servant who is executing the illegal orders of a minister prefers to receive the hypothetical punishment of the inspector rather than disobeying his minister. The inspector's sanctions take time to be decided upon and implemented and will probably never materialize, while those of the minister are generally immediate, more severe, and further compromise the employee's place in the administration. Also, the civil servant has no defence against an angry minister, contrary to the guarantees provided by the Central Inspection's procedures (Inspector).

The civil servants we have interviewed unanimously agree that there can be no administrative reform without restraining the arbitrary powers of the post-Taif minister. Reforming rules and regulations that a minister could easily toss aside would be pointless.

III- The Heart of the Matter: Diluting the legal and the administrative dimensions in the political

The importance of the political dimension in the discourse of civil servants is inversely proportional to the place it occupies in reform strategies since 1998: according to the civil servants, politics permeate the public administration, to the point where even the term "administrative reform" was questioned, as it gives the impression that the problem is technical and administrative, while in fact it is political. Senior officials draw the image of an administration engulfed by politics, highlighting a considerable lack of autonomy of the administrative body. They describe themselves as victims of the hegemony of a political class that is "out of control," above all administrative and legal rules, and one that only tolerates the administration as long as it fulfils its needs: the "princes of war" simply became the "princes of administration" (former DG).

> *"I can be poetic and talk about the human resource problem and the size of the administration and the State, which everyone could tell you about. But the core of the issue is political" - Inspector*

The symptoms of this pervasiveness of politics are numerous: transactions within the Council of Ministers legalising all sorts of practices with no regard to regulations, public tenders subverted by implicit political agreements, inopportune recruitments that undermine internal hierarchy and control, and so on. Politicians no longer try to respect the rules, even in form; they disregard the rules so flagrantly that a former DG said: "We do not need administrative reform, we need political reform." The political system changed in 1990, but the public administration and control authorities did not keep up with or adapt to this change, which created discrepancies between the two that resulted in the practices decried herein (former DG).

The problem of corruption within the administration was thus inflated to hide its corollary and raison d'être – i.e. the outrageous politicisation of administrative work, submitting to the most direct private interests of ministers representing their factions. Using imprecise designations (corruption) to diagnose issues deters reform efforts by pointing the finger at the "corrupt" civil servant instead of the system and the patrons that are at the origin of this corruption. The ultimate proof, according to the interviewed civil servants, is the fact that when a good minister is in charge, which is unusual, the ministry "is rebuilt in one day and work is quickly resumed." Many of the DGs we met with placed at the top of their reform wishes for 2022 "to have a competent and honest minister," in stark contrast with the lengthy reformist sophistications of the strategic reports that rarely and very briefly touch upon this issue, often euphemised by the issue of the lack of "political support."

Indeed, this is one of the main differences between the reformers' discourse and that of civil servants. According to reform reports and their authors, the political dimension is mentioned only to emphasise its detrimental absence: the absence of support, will, and strategy. As for inspectors and senior officials, they describe the political dimension as having a pervasive and daily presence, interfering in every nook and cranny of administrative work, from the level of the Director-General to the civil servant of the lowest grade, to the extent where it dilutes all the rules and regulations that were supposed to limit and structure it.

IV- The Zombie Administration: The civil servant and his double

The Lebanese public administration is filled with competing, parasitic, or simply parallel bodies that affect or interfere with administrative work at all levels, sometimes for the better, but often for worse. The role of the UNDP, the World Bank, and other international actors within the ministers' circle is mentioned frequently in our interviews (see *infra*). The same applies to the role of certain public institutions (Council for Development and Reconstruction (CDR), OGERO), as well as that of the commissions and programmes of all sorts (such as the National Poverty Targeting Program funded by the World Bank and affiliated with the President of the Council of Ministers' office, for instance), not to mention OMSAR. IMPACT and its various

programmes (DAEM and others) recently emerged to further complicate the situation. The resulting image, as illustrated in one of our interviews, is of an old, decrepit, and abandoned edifice (the administration), next to which large, modern, and bright buildings (the parallel programmes) are being erected, or an image of an old building only partly renovated, while the rest of it, as well as its foundations, is degrading.

Another recurrent theme in our interviews was the feeling of frustration and solitude experienced by civil servants, who are beset by better-paid agents, experts, and consultants, with a much more significant social capital. Many questions emerge from this situation and are recurrent in the civil servants' discourse: Who would have an interest in reforming this administration while it is much easier to build a better one elsewhere, or nearby? Don't these partly chaotic (and for the most part non-coordinated) constructions create more serious problems in the future, "by building where it is unnecessary" (expert)? Isn't the implementation of short-term, disparate objectives compromising the entirety of the administrative edifice and the possibilities of long-term positive structural change?

One of the main manifestations of these permanent overlaps is the issue of ministerial consultants who flood ministries and torment civil servants, according to the latter: "Who are these people? What are they doing? Why are they not subject to inspection?" (Inspector). The "spies" of the minister within the public administration are "a true catastrophe" (former DG), "some of them are polite, but others are not at all" (DG). The consultant, who has no clear legal status nor capacity, benefits from the aura of the minister or the party supporting him to bend intimidated civil servants to the minister's will. Some even have more power than the minister-puppet and maintain their positions within the ministries for years on end to represent their political parties, as ministers come and go: "They have enormous power, they make ministers sign whatever is placed before them, and they never assume responsibility for anything" (former DG). Consultants are the minister's real assistants in (and sometimes against) his administration: "They help the minister with everything, including attacks on the DG. If they could act without the administration, they would" (former DG). In Lebanon, it is no longer this parallel administration that complicates the work of civil servants, but rather the official administration itself that complicates the work of the informal one, which is henceforth the true holder of administrative power: How can this informal administration be reformed if it is non-existent in any organigram or text? The role of the UNDP in supporting these shadow armies was repeatedly pointed out: "With the UNDP, the minister pretends that there is a recruitment process, but, in reality, they appoint their relatives and friends to perform a job they are not qualified for, without informing the directors-general and the employees of their plans. They even talk to the IMF behind the administration's back" (former DG). Certain civil servants did not hesitate to explain that international actors "were a primary cause of the administration's destruction; they know it, and they tell you: What can we do? That's what the minister wants." Reflecting upon this incredible international legitimacy granted to such unhealthy dynamics within the administration (ministerial hegemony, nepotism, etc.), civil servants come to the conclusion that these individuals must be ousted from the administration.

Upon realising that this degradation of the public administration was happening with the blessing of international actors, at a time when the hiring freeze of civil servants was rendering the administration anaemic, we can better understand the takeover of the State post-Taif. In

light of this outcome, it also becomes easier to evaluate the relevance of the proposals that saturate all post-war reform strategies, which call for the "downsizing of the administration" and rendering it "slimmer." Besides the number of civil servants or their training, the systematic fragmentation of the public administration has resulted in a lifeless body, an ensemble of isolated good intentions in a sea of bad practices, a stateless administrative archipelago.

V- Absent Control Authorities

The statements of the civil servants paint the picture of an administration without any control, subject to the whim of good intentions that are few and far between, as well as to disproportionate power relations. Institutions such as the Central Inspection, the Civil Service Council, the Court of Accounts, and the High Disciplinary Council continue to exert their control, with their own set of legal and practical problems (see *infra*, Part 2, Chapter 1), but the civil servants are highly critical of the validity and efficiency of this control. These critical assessments derive equally from within and without control authorities. And while the interviewed public agents almost unanimously recognise the achievements of IMPACT's collaboration with the Central Inspection over the past two years, they also agree that these advantages are related to "external" activities (vaccination campaigns, social assistance, etc.), which are distinct from the inspection process itself: "They enabled the State to save face," even if the administration itself still needs to wait (Inspector).

The conditions of the daily inspection process also seem to be hit hard by the long-term institutional decline, in addition to the impact of the recent crisis (see *infra*). Inspectors mentioned a severe lack of human resources and means, work processes that differ significantly from one inspection body to another with little coordination, a near-total lack of responsiveness by ministries, who formally play the inspection game while voiding it of its content ("we draft reports and recommendations and send them, but nothing happens" (Inspector)). We must not forget that the scourge of political intervention is not always directly related to the inspectors' work: it can also occur at the different stages of the inspection process. Therefore, many cases were simply "brushed aside" since the end of the war. When this reality is coupled with the long-term internal paralysis of the board of the Central Inspection, preventing the processing of cases, we reach a point where even the most enthusiastic inspectors are reluctant to perform their functions: why confront ministers, political parties, or powerful public employees by implementing inspection duties properly if this will almost never lead to substantial disciplinary sanctions? On the one hand, inspectors-general will "have trouble convincing inspectors to work, since nothing ever happens in the end:" "We never know what actions are taken based on our investigations once we submit them to the Central Inspection… probably none at all" (Inspectors). On the other hand, the erring civil servant no longer respects the inspector and his investigation nor takes him seriously "because he knows it will lead to nothing" no matter how tenacious the inspector may be. This loss of the inspector's charisma "has paralysed the Central Inspection and sullied its image" (Inspector) and, hence, its effectieness.

> *“I do my job, but what more can I do? Can the Central Inspection send out planes to drop bombs?” - Inspector*

Inspectors are certainly motivated by the recent dynamism of their institution, which has been active on all fronts over the past two years through IMPACT – a platform that partially restored the confidence of a demotivated body – even if they do not always know how to translate this motivation into action in their daily inspection duties, during this difficult crisis and political stagnation.

Outside these control authorities, the criticisms and judgements are much more severe. According to the interviewed civil servants, control authorities have been absent for a very long time: “We send complaints, but no one responds” (DG). The Court of Accounts is perceived as permeable to political influences, despite having excellent judges in its ranks. This is mainly due to its heavily politicised presidency, which has reduced the institution to “a conciliation committee between political factions” (former DG). The Central Inspection is given a similar diagnosis: “Unfortunately, I do not believe that the Central Inspection is doing its job, despite the good work it is doing with IMPACT. But it has a much more important role” (DG). The civil servants who have worked for many years within the public administration, since 1990, speak of control authorities that have progressively switched sides, becoming accomplices in the destruction of the public administration and the State and the strengthening of ministerial hegemony: “I fought these control authorities for many years to protect public interest” (former DG).

Other civil servants denounce inspection procedures that primarily focus on small aspects of corruption perpetrated by fourth degree public employees, or even the issue of work hours, while turning a blind eye to the ministerial practices that have put the country in ruin. This is partly due, according to them, to the legal framework, which, following the constitutional amendments of the Taif Agreement, rendered inspection institutions completely harmless to such practices. The significant responsibility of the judiciary in contributing to the dissolution of control over the administration should also be highlighted: civil servants have also condemned the considerable lack of cooperation on the part of the judiciary, notably the Public Prosecution and its head, the Public Prosecutor at the Court of Cassation, which rarely follows up on cases referred to it and which “does not respond to update requests” (Inspector). Similarly, the State Council, in its jurisdictional, but, most importantly, its consultative function, is subject to significant criticism for its passivity towards (or even its contribution to) the fragmentation and weakening of the administration.

VI- National, Administrative, or Reform Crisis?

Within the public administration, where work conditions have only been deteriorating since 2020 (purchasing power, electricity, stationery, internet, fuel, etc.), the reformers' traditional tools are also on the verge of breaking down: How to organise seminars on "change management" or "risk assessment" for civils servants who work in the dark for a salary that is worth next to nothing? A former OMSAR employee explains: "Now is not the time for reform. It is the time to count those who have left and those who have remained, and for how long. Certain administrations are no longer staffed." The current situation has been frequently compared to the state of the administration in the wake of the civil war; thirty years later, it has once again become a black box, the contents of which are unknown: "No one knows what it encompasses anymore." Even the authorities tasked with reform, like OMSAR, are being drained. This might be the ultimate sign of the end of the reformist approach that had been on the rise for the last twenty years: "We had around 70 projects in the past; today, we are working at 5% of our capacity" (OMSAR employee).

The Central Inspection is not to be envied, since the crisis is manifesting itself first and foremost as a series of daily dilemmas for the inspector: Does he or she have to artificially increase the number of kilometres travelled during a mission to make his laughable compensation the slightest bit fairer? How can she inspect an administration that no longer functions? How can the inspector perform her task properly when she is told that there is no electricity or ink to print a document she requested? Could an Inspector-General ask a subordinate to go to Akkar to conduct an inspection? How is it possible to organise performance evaluation workshops for civil servants who have no electricity to perform their tasks in the first place? How to monitor productivity or even work hours in such a context? These are only some of the numerous questions facing well-intentioned inspectors in the daily performance of their duties, which are considerably hindering their work or voiding it of any meaning. The Central Inspection is also suffering from the departure of some competent inspectors for personal reasons or due to the economic crisis (Inspector), in a context where reformers and inspectors are crumbling faster than those subject to reform and inspection.

Senior officials are concerned not only about the current impact of the crisis on the administration, but also, and more so, about its long-term consequences: "Everyone is trying to leave. If the administration collapses, we would need a century to rebuild it. What can we say to these people? Be heroes and stay to starve to death?" (Former DG). Even OMSAR lives in the fear of suffering an irreparable loss of knowledge and skills, given the departures plaguing its structure: "Our institutional expertise is being lost. We have expertise and knowledge accumulated over the span of decades. We have been here since the 1990s, we know the actors, the language, the laws. All of this is being lost" (former OMSAR employee).

But behind all this destruction, the crisis doesn't seem to only produce negative attitudes within the administrative universe.

> *"We cannot wait two or three years to start working. We must start now, during this period of stagnation, so we can be ready when all of this is over."*
> *- Inspector*

It even offers an excellent justification for certain frustrations and failures, and it reconciles good-willed civil servants with their autobiographical narrative interrupted by the current state of the administration. One of them elaborates by saying: "We were doing a remarkable job, but the crisis halted everything," while another admits that, due to the crisis, "all our work has been compromised." All beliefs are legitimate to allow those who have stayed to survive.

Part 1

The Optimisation of Human Resources within the Administration

Rizk Zgheib

The Lebanese public administration, whose current statutory foundations were forged over 60 years ago, is at its last breath. While it is true that the current crisis has accelerated its disintegration, the fact remains that the public administration suffers from structural flaws that the prevalent circumstances have only amplified. Clientelism and corruption are spreading like wildfire within the collapsing administration, which is overwhelmed and maladjusted to the requirements of a modern State. A substantial reform of the public administration, as part of a broader reform process of public institutions and economic and social structures, is therefore necessary to revive the State. For this reform to succeed and achieve its goal, it should not disregard the fact that civil service is not an abstract notion; it is the embodiment of human resources that are reluctant to undergo a radical and brutal change that is both structural and normative. The reform approach should also not be limited to providing stereotypical solutions and remedies that are not aligned with the Lebanese reality. In other words, the revolution must give way to an evolution founded on a sustained and continuous effort, which is the only guarantee for reaching the two major objectives that any reform worth its salt must consider: an administration that is politically independent and technically efficient. By way of example, it is imperative to adopt a new recruitment policy that ensures a better selection of employees and values quality over quantity. It must not, however, completely replace the current selection processes, but rather restructure and complement them. Moreover, if the career system is to be maintained, in terms of the guarantees it provides to civil servants, certain elements relating to the employment system must be incorporated in it.

According to this line of thought, the hierarchal nature of the civil service system would benefit from the addition of certain democratic and legal considerations. However, this approach should not lead to the abolition of the principle of hierarchy altogether, as the latter ensures the cohesion of the Administration and is the ultimate defence against its disintegration. It would thus be interesting to outline the elements of reform while successively tackling these topics.

Chapter 1

The Recruitment of Civil Servants

The recruitment of civil servants is governed by conditions stipulated in their general regulations adopted by virtue of Decree No. 12 of June 12, 1959. It is also carried out according to several different procedures. The abovementioned conditions present certain challenges, while the recruitment procedures need to be modified, complemented, and structured.

I- Conditions to Access Civil Service in Light of the Equal Access to Public Employment Principle

The principle of equal access to public employment, derived from the broader principle of equality of citizens before the law, is guaranteed by Article 12 of the Lebanese Constitution. As such, the rules regulating civil servant recruitment must ensure respect of this article and guarantee that in accessing public employment, which must solely be based on merit, all citizens are treated equally. Any discrimination on the basis of gender, religion, social status, or political affiliation of candidates is thus prohibited.

Nevertheless, this principle is not absolute. It has its limitations, which allow for discrimination based on the notion of public interest or difference in legal status. The imperative of national accord among religious communities imposes certain constraints on this principle. Moreover, while the prohibition of any form of discrimination based on gender seems unequivocally guaranteed by the relevant texts, the legal remnants of a bygone era and flawed procedures cast a dark shadow on this picture.

A- Reconciling Merit with the Requirements of National Accord

The principle of equal access of Lebanese citizens to all public positions is strictly tied to that of the proportional representation of religious communities within the administration, as stipulated by Article 95 of the Constitution, the provisions of which, following the first substantial amendment of the Constitution on 9 November 1943 allowing the country to achieve its independence, reads as follows:

> *"During the transitional phase, and in the spirit of justice and harmony, religious communities shall be equitably represented in public positions and in the composition of the cabinet, provided that this does not undermine the interests of the State."*

Article 96 of the aforementioned civil servant regulations stipulates that these provisions must be taken into account when appointing public employees. The need to ensure representation of religious communities within the administration has come at the expense of merit and competence, which are nonetheless guaranteed by Article 12 of the Constitution. As a result, this requirement, by its very nature, is contrary to the process of recruitment by way of examination, where the appointing authority is bound by the conditions of merit established by the selection committee. The State Council (Lebanese State Council Resolution No. 1197 of November 4, 1966) has endorsed the administrative practice consisting of injecting a small dose of confessional representation, by appointing the highest-ranking applicants of each religious community, instead of strictly respecting the ranking order. In doing so, the State Council considered that the rule enjoining respect of the ranking order does not contradict the application of Article 96 combined with Article 95 of the Constitution, if it were to be applied to a ranking of candidates within their own religious communities, thus appointing the highest-ranking applicants from each community.

Consequently, equal access to public employment seems to apply to religious communities rather than to Lebanese citizens, with the goal being to guarantee equality between communities rather than individuals. Some believed that this practice, which does not consider merit to be the sole criterion for accessing public positions, would automatically end with the amendment of Article 95 of the Constitution following the Taif Agreement. This amendment eliminated the rule of confessional representation and enshrined the principles of specialisation and competence in civil service, the judiciary, the military and security institutions, as well as in public, autonomous, and mixed (public-private) institutions and entities. However, this amendment is still bound by the "necessities of national accord" and does not apply to appointments in Grade 1 and equivalent positions, which remain equally divided between Christians and Muslims, without a specific confessional distribution, a measure intended to avoid confessional patrimonialism in senior positions within the civil service.

In reality, however, more than thirty years after the constitutional amendment of 1990, it is clear that this is not the case. The new distribution of Grade 1 and equivalent positions among confessions following this amendment, with the aim of rebalancing confessional power relations to the detriment of the Maronite sect, which had been the dominant sect until that point, has since remained virtually static and untouchable, indefinitely postponing rotation in these positions, despite a project by the Civil Service Council to this end.

Moreover, and above all, the elimination of the confessional representation rule in the recruitment of other civil servants was only partially and periodically applied. In fact, military and security institutions keep careful watch on Christian-Muslim parity in their appointments. As for the civil administration, this rule was temporarily applied for appointments through competition and examination.

However, the massive and frequent confessional imbalances resulting from these processes prompted the appointing authority to refuse to make these appointments, arguing that they would contradict the requirements of national accord set out in Article 95, which must be respected as long as the process of the abolition of confessionalism has not been initiated. This has caused a *de facto* return to the prevailing situation pre-1990, whereby only the

results of competitions and examinations that more or less respect proportional confessional representation have been taken into account and have led to appointments. The President of the Republic even went as far as addressing Parliament, through correspondence, in the summer of 2019, urging it to look into the interpretation of this article in light of paragraph (j) of the Preamble to the Constitution, which states that "There shall be no constitutional legitimacy for any authority which contradicts the ‹pact of mutual existence.'" However, this initiative never materialized.

This situation, which sacrifices merit and competence and violates the principle of equality, cannot persist. The suggested remedy lies in the solution advocated by the Chairman-Rapporteur in the case of Mrs. Chamas in 1966 and endorsed by the Deputy Government Commissioner in his conclusions. It consists of applying proportional confessional representation within the administration only in cases where it possesses, by virtue of the law, the freedom of choice, which would allow it to carry out appointments in a discretionary manner. Even examinations as a recruitment method would fit under this category, insofar as the competent appointing authority is not bound by the ranking order of candidates. However, this rule must be discarded if appointments are carried out through examination. In fact, the ranking order, a true guarantor of merit and competence, must be given priority over confessional balance and national accord imperatives, which should not nullify the legislative provisions regulating the examination and its results, on the one condition that this process be subject to review and ensure transparency and impartiality. We will have the chance to address these conditions later on. This interpretation of national accord imperatives has the advantage of managing the requirements of merit, competence, and specialization, while also being realistic. It is also in line with the intention of the legislators who drafted the 1990 amendment following the Taif Agreement (Mansour, 1993).

B- Limitations to the Prohibition of Gender-Based Discrimination

It is worth noting that the principle of equal access to civil service positions prohibits any form of gender-based discrimination. In principle, women have the right to access all public positions under the same conditions as men.

As such, women in Lebanon have the legal capacity to access public sector employment, and the relevant laws do not impose any absolute or general legal exception to this. The number of women in the judiciary, in the civil administration, and even in the military is growing steadily.

However, there is one loophole at the level of recruitment guarantees. The danger it poses lies in the fact that it could be used as a reactionary tool to stop this progression in its tracks, under the pretext that female employees are unstable and that their excessive predominance in certain areas of the public sector would compromise the functioning of the civil service. These excuses do a poor job at hiding a form of latent antifeminism.

Indeed, paragraph 5 of Article 8 of the General Regulations for Civil Servants renders the decision of the Civil Service Council to set the list of candidates admitted to undergo the examination immune to any appeal, including appeals on the grounds of abuse of power before

the administrative judge. This prevents the latter from banning any form of discrimination to the detriment of female candidates and eliminates one of the fundamental guarantees in the recruitment process. The same applies to the decisions of other recruitment authorities, such as the Supreme Judicial Council, the State Council Bureau, etc. This scenario is not hypothetical, as there have been precedents. The Court of Audit in 1968 and the Supreme Judicial Council in 1973, 1977, 1993, and 1999 did not retain any female candidates for the examinations conducted in these years. Revoking this immunity to appeal for abuse of power thus seems necessary to reinforce the rule of law.

Moreover, within the diplomatic and consular corps, the draft law that went into effect by virtue of Decree No. 1306 of 18/06/1977 on the Organisation of the Ministry of Foreign Affairs and Emigrants sets the recruitment conditions for third-grade vacant positions and requires female candidates to be single in order to be admitted for the examination. This provision forfeiting the rights of women seems foreign to the particular needs that may result from the nature of the functions or even the conditions of their performance. It must therefore be abolished.

II- Recruitment Process

A- Limitations of Competition and Examination Procedures

By virtue of the Regulations for Civil Servants of June 12, 1959, competition has become the standard recruitment process for civil service in Lebanon. It has been adopted as the selection method for Grade III and IV civil servants. Moreover, the Regulations also set forth the possibility (not yet implemented) to apply this process for technical Grade II hires, with the remaining positions which are supposed to be filled with lower-grade civil servants.

It is basically a recruitment process by which a selection committee – that is, an independent panel of colleagues – classifies candidates based on merit. The appointing authority is then required, even without specific provisions to this end, to respect the resulting ranking.

During the period of decentralization, every ministry was tasked with organizing its own recruitment competitions and exams, thereby preventing the development of a true recruitment policy and standardized selection criteria. This role was later assigned to the Civil Service Council (Decree No. 8337 of December 30, 1961, on the establishment of the Civil Service Council and amendments thereto).

The examination process, meanwhile, is reserved for recruiting Grade V civil servants (Decree No. 5580 of November 25, 1960, on the Conditions for the Admission of Grade V Applicants). What sets examinations apart from competitions is the fact that candidates are not ranked based on merit. The competent authority is not obligated to appoint the list of candidates elaborated by the selection committee. Instead, it retains the right to fill the positions at its

own discretion. Furthermore, successful completion or admission to the competition or examination does not give candidates whose names are selected the right to be appointed, but rather the opportunity to be appointed. However, the appointing authority can only choose from the list of candidates admitted to the competition or examination.

Although competitions – and, by extension, examinations – have been adopted by several countries, including Lebanon, because they ensure the highest level of respect for the principles of equality and objectivity as a method of selection, this does not mean they are exempt from criticism. Competitions are accused of relying on an overly academic logic. Given that competitions are based on the university model, they favour studious, conformist candidates with a good memory. They do not enable a fair and true assessment of the personal aptitudes of candidates and fail to reveal their human qualities. Therefore, competitions leave much to desire in choosing the most suitable and qualified candidate for the vacancy, as they are almost exclusively dependent on memory. In this vein, this process would be unable to consider certain personal qualities that are quite telling in choosing the right civil servant, such as courage, integrity, tenacity, the sense of duty, and the capacity to assert oneself and to command. These qualities can only be revealed in practice (Viau, 2003; Eymeri-Douzans, 2012).

While this criticism is relevant, it is not sufficient to dismiss competitions as a method of recruitment, since they offer significant guarantees against arbitrariness, nepotism, and favouritism.

However, it is advisable to review both the content of the tests as well as the modalities of the process. The written exam should be supplemented by one or more personal interviews allowing the selection committee to assess the candidate's personality and their various assets. The Anglo-Saxon experience is paramount in this area. Indeed, assessing the professional know-how and «soft skills» of candidates would enable the examiners to achieve a better match between the selected candidates and the skills sought by the public entity, much like in the private sector (Taillefait, 2018). Moreover, if a large number of candidates have applied to the competition, a preselection process is necessary.
As for the composition of the selection committee, Paragraph 4 of Article 8 of the Regulations for Civil Servants Regulation merely stipulates that some members must be civil servants, while others should be higher education professors or specialists, without identifying the respective numbers of these members. An amendment to this provision would ensure parity between members and non-members of the public administration. Such an amendment could draw on the prior regulations set forth by Legislative Decree No. 13 of January 7, 1953. This balanced, multidisciplinary configuration could produce an optimized assessment of the candidate in oral and written tests. This would require not only in-depth knowledge, but also experience, general culture, and critical thinking. A civil servant, however competent, may not necessarily possess these qualities, just as they may not be familiar with managing competitions and examinations. Furthermore, their job conditioning (*"déformation professionnelle"*) prompts the civil servant to focus on technical details rather than the general patterns of thinking. University professors should be exclusively selected from those tenured in private institutions with a least 50 years of history. This requirement would be a definite guarantee against the rampant mediocrity.

The content of tests should promote the capacity to analyse and synthesise instead of bookish regurgitation, as well as the command of at least one foreign language. If applicable, tests need to be professionalized because this would favour practical cases and psychotechnical texts. However, this professionalisation process would need to identify in advance the profiles which the administration would need to make successful "profile-position matches." Therefore, it would be helpful to identify the "fundamentals" for a Grade I, II, or III civil servant, the professional knowledge needed, and the values common for all civil servants, as well as those specific to certain positions (Report of the President of the Civil Service Council (2004)). A public employment classification would undoubtedly help in this regard. The modalities of such an endeavour will be discussed later on.

B- Dangers of External Hires

External hiring is when a position in the administration is filled from outside the cadre. This is a parallel recruitment process reserved for certain jobs, surpassing the standard procedures in place. The process is more akin to an appointment from outside the cadre, which is supposed to equip the administration with people with substantial experience and knowledge, thus curbing the caste system.

This process was introduced in the Regulations for Civil Servants of 1959 as an exceptional measure and according to a well-structured mechanism. After consulting the Civil Service Council, the Council of Ministers is authorised to fill Grade I positions from outside the cadre, while respecting a maximum ratio of one third of vacancies. The first iteration of Article 12 of the decree-law had required appointees to meet two conditions: to have experience and a specialised higher education diploma. However, a 1972 amendment to this article stipulated that a bachelor's degree would be sufficient to be eligible for the position, a condition still in force for Grade III positions. This amendment rendered this recruitment process pointless. It no longer served to reinforce public service with high-level, competent civil servants with multiple degrees who have made their mark in the private sector for their knowledge and experience, i.e. people whom the administration lacks. This process is hence seen as a circumvention to appoint cronies, establishing a spoils system eroding entire sectors in the administration to the benefit of political leaders and clans. As a result, a sense of frustration reigns over high-level Grade II civil servants, who ought to be the natural candidates for these director positions.

Criticised for their flagrant political dimension, external hires sometimes even served as a consolation prize for supported candidates who had failed the public service entrance exam.

Reverting to the conditions stipulated by the Regulations for Civil Servants, in its first iteration of 1959, is paramount to end clientelist practices. These conditions should also be made stricter by specifying the type of specialised higher education degrees required. They should be limited to a few cutting-edge scientific, financial, or other disciplines on the one hand, and to the fields closest to the position to be filled, on the other.

III- Summary of Recommendations:

- Limit the implementation of proportionate confessional representation in civil servant recruitment to cases where the appointing authority has the freedom of choice without being bound by a merit-based ranking.
- Authorize appeals challenging the list of candidates admitted to the competitive examination process by the Civil Service Council.
- Repeal the provision in the regulations of the Ministry of Foreign Affairs requiring that applicants for Grade III vacancies be single.
- Diversify the competition tests, which should include written exams and personal interviews.
- Amend Paragraph 4 of Article 8 of the Regulations for Civil Servants to ensure that the composition of the selection committee in charge of the examinations respects parity and requires that university professors be tenured at private institutions with at least 50 years of history.
- Professionalize competitive examinations to favour the capacity to analyse, synthesise and require the command of a foreign language.
- Render the external hiring process more ethical by imposing stricter conditions for appointments.

Chapter 2

Civil Servant Careers

I- Arbitrary Nature of the Employment System

There are two main civil service tracks in Lebanon: the career track and the employment track.

Under the first track, the civil servant is not generally recruited to fill a certain position, but rather joins the administration for an indefinite period of time, where they embark on a career within a statutory and regulatory framework.

By entering a specific entity and cadre, the civil servant progresses based on merit and seniority across the hierarchal grades and ranks, each of which includes several levels, by filling the corresponding positions.

On the other hand, the employment track is basically an open structure, whereby the civil servant, who is contractually tied to the administration, occupies, based on their competencies, a specific position for the period set in the contract. This system promotes technicality by adapting human resources to the service objectives and by assigning every civil servant a well-identified task based on their profile. It is reminiscent of the management style of the private sector. However, it is also quite precarious: to have their contract renewed, civil servants can only count on the goodwill of the employer, who happens to be the political appointing authority.

Some have criticized the career track, which has been a staple of the Lebanese administration since its inception. Believed to be rigid and costly, it promotes a caste system, bureaucratization, and lethargy in a paralyzed administration where the civil servant spends peaceful days without worrying excessively about their performance, since they will climb the ranks or even the grades and categories in an almost mechanical way. Several reform projects have called for the transition to an employment-based system for civil service in Lebanon.

Parliament even passed a law (No. 363 of August 16, 2001 (Special Provisions on Appointments in Category I and II of the Civil Service)), providing for the possibility of filling Category I vacancies (two thirds of Category I – Level A positions) and Category II vacancies (half of the Category II – Levels B and C positions) from non-cadre candidates. Appointments approved by the Council of Ministers after a selection process are made under contracts with a maximum duration of 3 years, which may be renewed for a similar period. At the end of this period, the civil servant could become tenured in the civil service. This law, which contributed to the contractualisation of Category I and II positions, was strongly criticised at the draft stage by the Civil Service Council (Civil Service Council, Opinion No. 1184 of May 26, 2001). It was also rejected by the Constitutional Council (Lebanese Constitutional Council, Decision No. 5/2001 of September 29, 2001) on the grounds that the candidate selection process infringed on

the powers of the Council of Ministers in fundamental matters (this reasoning has also been disputed). Another draft law was presented to Parliament in 2002, only to be withdrawn and re-submitted on September 9, 2005, but it was never promulgated. It included the same provisions as the previous annulled law, with some amendments limited to Category I positions.

This transition to the employment system in Lebanon is dangerous amid the prevailing context. It will hang over the heads of civil servants recruited on fixed-term contracts like the sword of Damocles wielded by the authorities, given their precarious situation. This would completely subjugate civil service to partisan and private interests.

By contrast, the career system offers certain set-in-stone guarantees for civil servants by the very nature of their status. It would prevent any abusive severance of their ties with the administration and any infringement of their rights. Respect for these guarantees must be ensured *a priori* through the intervention of the Civil Service Council, and *a posteriori* by recourse to the Council of State.

II- Changes to the Career System

Given the guarantees it offers, the career system should be maintained. However, it could immensely benefit from some modifications that would prioritize productivity and effectiveness. "Nothing can be more damaging to the administration, the citizen, and public interest than a career structure without any appeal. Civil servants should not be dragged into 'despair' from the beginning of their career by sentencing them to a life in a position of unchanging tasks" (Lachaume and Virot-Landais, 2017). Furthermore, the sense of patrimonialism in civil service resulting from the career system should also be prevented. Civil servants should not find themselves in an unchanging professional status throughout their career, thus fueling the image of an ossified administration eroded by corruption. Permanently monopolizing a position can only promote preferential treatment and free passes.

To remedy this situation, it is essential to ensure stimulating and effective mobility within administrations, cadres, and even the different departments making up the administration. This mobility should be primarily ensured by the rotation of civil servants. Therefore, global and periodic transfer schedules (every 3 years) should be established by the Civil Service Council. The implementation of these schedules by the competent authority (Articles 41-43 of the Regulations for Civil Servants Regulations the transfer of civil servants) would ensure staff flexibility in a civil service consisting of a pool of civil servants classified in categories and grades and organized under corresponding positions, each having an analogous career.

This would therefore reduce the administration's compartmentalized and technocratic nature, caused by the exaggerated compartmentalization of administrative units where civil servants gradually feel themselves becoming masters of their positions. However, there should be safeguards in place to structure such a mechanism. Prior notice should be given to the civil

servant to be transferred, and due consideration should be given to their wishes as much as possible and within the requirements of the proper functioning of service. Significant geographic transfers which entail a change of residence should be avoided. If not, they should be managed with reasonable deadlines to allow the transferred employee time to prepare. This horizontal mobility among positions governed by the Regulations for Civil Servants offers a way to train and develop the skills of young civil servants, enabling an exchange of ideas and multiple perspectives on problems, as well as renewed energy.

Along these lines, it would be beneficial to enforce the provisions of Article 95 of the Constitution prohibiting the reservation of any high-level position to any particular religious community by establishing a periodic rotation of high-level civil servants, thereby eliminating sectarian patrimonialism. Realistically, this rotation would benefit from focusing exclusively as a first step on Category I positions subject to the Regulations for Civil Servants (the draft law which entered into effect by virtue of Decree No. 3169 of April 29, 1972, on Special Provisions regarding Category I Civil Servants). At a later stage, the rotation can be expanded to other equivalent positions.

The Civil Service Council has repeatedly suggested this rotation. On 11/12/2001, the Council of Ministers tasked the Civil Service Council with drafting a report on the confessional distribution of Category I positions, Chairpersons of Boards of Directors, and Directors-General of Public institutions in order to proceed with the necessary transfers. The report issued on 2/1/2002 did not yield any outcomes.

The temporary assignment (mise à disposition) of Category I officials, directors-general and directors of public institutions was introduced by the draft law that entered into effect by virtue of Decree No. 3169 of April 29, 1972. This text is at odds with the Regulations for Civil Servants, which it derogates from. In fact, it grants the Council of Ministers the power to relieve a senior official of their functions by placing them at the disposal of the President of the Council of Ministers, the minister to whom the concerned official normally reports, or even another minister. As such, this provision should be abolished altogether. Applied to disgraced senior civil servants, it allows political authorities to downgrade them without respecting disciplinary guarantees. This measure also contributes to the squandering of public funds because the civil servant assigned elsewhere is not generally appointed to their new post; rather, they continue to receive their original salary. This process, therefore, encourages idleness.

Similarly, the illegal practice of temporarily assigning a civil servant to a vacant post based on the principle of service continuity must be stopped. This often-used procedure constitutes a flagrant violation of the provisions of Article 49 of the Regulations for Civil Servants, which exhaustively lists the regular positions in which a civil servant may be placed – namely, their original position, acting as proxy, transfer, temporary suspension from employment, and secondment. All other positions – including being assigned a job – are expressly considered illegal. Besides being illegal, this practice, inherited from the years of the Civil War, is dangerous, as it allows the upper echelons of the administrative hierarchy to ensure the docility of the official in charge of a specific job because of the precariousness of this position, whose continuity depends on the goodwill of the hierarchical superior.
Therefore, on 21/1/1999, the President of the Civil Service Council issued a circular to all

administrations, public institutions, and municipalities instructing them to abandon this practice, which had become widespread at the time. Twenty-three years later, it is clear that this circular did not have the desired deterrent effect.

In addition to boosting horizontal mobility, we must also discuss vertical mobility, which gives access to hierarchically superior posts through promotion from category to category and grade to grade. The linchpin lies in passing from Category III to Category II, the antechamber of senior civil service, which turns out to be *de facto* a pure advancement left to the discretionary power of the appointing authority. In this case, seniority does not entitle the employee to be promoted, but is required to be eligible for a promotion. However, in the relevant texts, this freedom of choice is limited by the need for the civil servant to be registered in advance in a promotion schedule that should be prepared annually by the administrative hierarchy. The promotion is contingent on the results of the evaluation and the validation of the Civil Service Council (Article 34, Paragraph 3 of the Regulations for Civil Servants).

However, this procedure was never implemented, thus giving political authorities free rein to award promotions in a discretionary or even an arbitrary manner. In this context, Article 11 (paragraph 1) of the Regulations for Civil Servants requires officials being promoted from Category III to Category II positions to pass a training course at the National School of Administration. This formal condition constitutes a real restriction to the discretionary power of the competent authority to grant promotions.

The activation of this article is highly necessary, as it will make promotions contingent on objective criteria. Nevertheless, this requires amendments to overcome the shortcomings and disadvantages in the article and to strengthen the guarantees of objectivity and impartiality.

At first glance, the promotion schedule is based on an assessment of eligible civil servants by means of a performance assessment system. This is a regular report prepared annually about the civil servant, highlighting their professional aptitude and conduct as well as their manner of performing their work, in accordance with the laws and regulations in force, thus allowing an assessment of their qualities and merits. This score sheet is thus the starting point of the process of preparing the promotion schedule. According to the regulations on the assessment of permanent civil servants in public administrations established by the Civil Service Council, this task is entrusted to the direct supervisor and hierarchical superior of the civil servant, thus effectively excluding the Minister from the process. It is based on three essential components: performance of functions, professional conduct, and personal capacities and qualities. These components are in turn based on criteria such as the volume of work done, the quality and speed of work, organizational and management capacities, etc. Each of the criteria is rated from 1 to 10. The overall numerical score corresponds to an appraisal (five appraisals were selected: excellent, good, average, below average, and mediocre) as a qualitative general assessment of the concerned individual's professional value.
However, it should be noted that this system does not include distinct elements for the assessment of civil servants based on the category to which they belong (senior or junior

positions), although the required competencies for each category are different, as every type of employment involves specific requirements. Even the set components and criteria are ambiguous and imprecise, which grants the relevant authority significant leeway in the assessment given the lack of tangible and quantifiable parameters to objectively carry out the necessary assessments. This plethora of considerations have made the assessment process ineffective, although it should be a cornerstone of personnel and human resource management. This is evidenced by the fact that no promotion schedules have been prepared in over sixty years.

Article 35 of Law No. 46 of April 21, 2017, is relevant in this regard. It imposed upon the government the obligation to prepare, within a period of six months, a modern system of assessment for civil servants, taking into account performance and capacity criteria in light of the job descriptions in various administrations. This project has yet to be implemented. It should be put in motion, and it could draw on the techniques offered by the Inspection and Assessment of Sectoral and Institutional Performance Program developed by the Central Inspection and the Office of the Minister of State for Administrative Reform (Central Inspection Annual Report (2018)). Thanks to technological tools, this program was able to identify primary and secondary performance indicators linked to specific measures and objectives. Therefore, the assessment can be systematic, organized and objective, thereby drastically reducing the relevant authorities' leeway in the assessment in terms of their arbitrariness or leniency with regard to the assessed person.

This project should also develop a technique for professional interviews which would not substitute, but rather complement, the assessment process.

Furthermore, paragraph 3 of Article 34 of the Regulations for Civil Servants should be amended to reinforce the role of the Central Inspection in drafting the promotion schedule. It should be mandatory for the promoting authority to consult with the Central Inspection, rather than being optional as is currently stipulated in the Regulations.

Most importantly, the composition of the promoting authority should be reviewed. In addition to the President and members of the Civil Service Council, who are assigned to undertake this task, staff representatives elected by civil servants for a non-renewable mandate should also be included in the promoting authority membership.
On the other hand, and in line with efforts to make the career system more dynamic and less static, the classification of public jobs is necessary. This is not meant to eliminate the administrative hierarchy, consisting of categories corresponding to a level of professional qualification. Instead, it is intended to coexist with and change the hierarchy by allowing a distinction between positions under the same grade, thus enabling a recruitment process that is more adapted to the administration's needs, as well as a more targeted and objective assessment of personnel, a better division of tasks and functions, and, lastly, a justified overhaul of remuneration and salaries.

This project is not alien to the Lebanese public service. Since 1966, the Council of Ministers has mandated the Civil Service Council with preparing an inventory of the division of public

positions under categories and grades according to the nature of tasks (Decree No. 14522 of May 24, 1966), defining and evaluating public functions, and, ultimately, setting a pay scale consistent with this classification.

The Civil Service Council set about this mission and proceeded to classify public positions according to several key elements: the level of education and experience, the level of responsibility, and the level of difficulty and complexity. It also undertook the development of three draft pay scales. A draft law was also prepared but yielded no outcomes, probably because of its radical approach.

A second attempt saw the light in the 1990s. The Minister of State for Administrative Reform announced on 22/7/2002 that a draft job classification for public administrations, except for military and educational cadres, was presented by the Civil Service Council. This draft identified public positions, their respective tasks and responsibilities, as well as the required effort and qualifications, then went on to classify the position and set the adequate salary. This process also failed. Nonetheless, a job classification remains essential. For this initiative to come to fruition, it should make the career system more dynamic, as its positions are still divided by categories and grades, rather than eliminate and replace the system altogether. The classification should safeguard the system by making adjustments and subtly becoming embedded in its structure.

III- Summary of Recommendations:

- Avoid contractualisation in civil service.
- Reinvigorate the horizontal mobility of civil servants through a comprehensive rotation schedule applied periodically.
- Activate dsconfessional rotation for higher-level Category I posts exclusively.
- Eliminate the secondment process for Category I civil servants.
- Repeal the practice of temporarily assigning a civil servant to fill a vacant position.
- Standardize vertical mobility by activating promotion schedules and enforcing the mandatory participation of the Central Inspection in their preparation.
- Reconsider civil servant assessment procedures by basing the rating on performance indicators linked to specific measures and objectives and complementing the process with a professional interview.
- Change the composition of the promoting authority by enshrining the principle of participation.
- Classify positions without forsaking the career system.

Chapter 3

The Hierarchal Nature of the Public Administration

The Lebanese Administration is highly hierarchal. By virtue of the Regulations for Civil Servants, civil servants are placed in a state of subordination to their superiors (Article 14, paragraph 2 of the Regulations for Civil Servants). Beyond these texts, the principle of the superior authority wielding hierarchal power is a general legal principle. This power, along with the obedience it implies, is the very condition of the unity, continuity, and effectiveness of administrative processes. It draws from the power of ministers administering the services of the State entrusted to their respective departments by virtue of Article 66 of the Constitution. It also represents the prerogative of heads of administrations to manage the actions and situation of their subordinates by mandatory decisions (Plantey, 2012). Thus, it ensures the structural cohesion of public service and is meant to be a final barrier against the disintegration of an administration subjected to confessional or local interferences, given the socio-political structure of the country. Although maintaining the hierarchal nature of public service goes without saying, more flexibility with respect to legality and ization would not hurt. By contrast, the inspection and disciplinary tasks assigned to the hierarchal superior should be boosted and expanded.

I- Potential Areas for Loosening the Hierarchical Structure

A- Compliance with the Requirements of Legality

The hierarchal structure of public service forces civil servants to carry out the orders and instructions of their hierarchal superior. However, if these orders are blatantly and clearly illegal, the subordinate must draw the attention of their superior to the alleged violation in writing. If these orders and instructions are confirmed in writing, the subordinate must obey and implement them. Therefore, given that the obligation to respect legality seems less important than the duty of hierarchal obedience, and since it remains optional, rather than mandatory, to inform the Central Inspection of such cases, this dissuades subordinates from going down this road for fear of possible reprisals by their superiors.

This process merits reconsideration, especially since it is a regression from the provisions of the former 1955 Regulations, which had liberated the civil servant from the obligation to obey the order or instruction if these were manifestly in contravention of the laws and regulations. Three amendments to paragraph 2 of Article 14 of the Regulations for Civil Servants should be envisaged.

First, the civil servant must be henceforth required to inform their hierarchal superior in writing and with good reasoning of any order or instruction they deem to be in violation of the laws and regulations in force, so that it is no longer necessary for the infraction to be undeniable and clear in nature, meaning that a simple irregularity would suffice.

Second, the subordinate should not be required to carry out orders and instructions in violation of the laws and regulations, even if their hierarchal superior confirms them in writing. Third, and most importantly, the objection process should be complemented by making it mandatory, rather than optional, to refer the violation to the Central Inspection.

These amendments would also limit possible abuses of hierarchal power while also preserving this institution.

B- Democratization Measures

The highly hierarchal nature of the public administration should also be loosened through measures that would serve to democratize civil service. Indeed, although it is legitimate for the authorities to impose strict adherence to the general principles of good functioning, continuity of service, public authority, and the protection of society, giving them priority over freedoms and liberties, it would be outrageous to have the former completely override the latter.

On one hand, the principle of participation (that is, the participation of civil servants, via representatives elected by them, in the organisation of service and the management of personnel) should be introduced to Lebanese positive law. France has integrated this mechanism since 1946, a few days before the adoption of the Constitution of the 4th Republic (Law No. 46-2294 of October 19, 1946, on the Regulations for Civil Servants). Its processes have been frequently amended and perfected (most recently by virtue of Law No. 2019-828 of August 6, 2019, on the Transformation of Civil Service, also referred to as the Dusspot Law). These changes essentially enable civil servant representatives to sit on joint consultative bodies such as the Higher Council of State Civil Service, as well as those related to local government and public hospital workers. In this capacity, civil servants can participate by giving their prior opinions on individual decisions regarding the promotion, mobility and pay raises of civil servants.

The reconfiguration of the Lebanese Civil Service Council with the aim of ensuring equal representation of civil servants may seem unrealistic for the time being and may not succeed. Nevertheless, a breakthrough can be achieved by ensuring a limited but credible representation of civil servants, via the addition of one or two representatives of civil servants to the composition of the Civil Service Council to have a say in the latter's management of staff. These representatives would involve civil servants in certain relevant decisions, which would add to their legitimacy and would help the Lebanese public administration address its shortcomings in democratic practices.

On the other hand, the prohibition of joining political parties or confessional associations with a political character set forth in the Regulations for Civil Servants of June 12, 1959 (Article 15, paragraph 1), was lifted at the end of the Civil War by virtue of Law No. 144 of May 6,

1995. In fact, this condition was reduced to renouncing any responsibility or role in these parties or associations. This measure was applauded for enshrining the freedom of speech. Nevertheless, it also received criticism because the prohibition ensured the neutrality of civil service by shielding it from partisan conflicts and political clashes. Hence, its elimination made way for the monopoly of entire sectors in the administration by members of the victorious militias of the Civil War. Civil servants are still deprived of their collective rights, such as the right to organize and the right to strike (Article 15, paragraphs 2 and 3 of the Regulations for Civil Servants). However, this prohibition is unconstitutional and out of touch with reality.

Admittedly, the prohibition of union action among civil servants does not hinder the establishment of associations for civil servants, provided that they do not take on a professional or political nature. This prohibition goes against the provisions of the International Covenant on Civil and Political Rights (Article 22, paragraph 1) and the International Covenant on Economic, Social and Cultural Rights (Article 8, paragraph 2), whose constitutional value has been recognized by the Constitutional Council as instruments referred to in the Preamble of the Constitution (Lebanese Constitutional Council, Decision No. 2/2002 of May 10, 2001). Moreover, the 1992 amendment authorizing membership to political parties and associations renders the ban on civil servants' membership in professional trade unions completely meaningless. This ban has become outdated and deprives civil servants of an effective tool to engage with political authorities in negotiations regarding remuneration policies in the public sector, as well as career development and work conditions and organization.

As for the right to strike, it prohibited not only under the Regulations for Civil Servants, but also under Article 34 of the Penal Code. These provisions are nonetheless inconsistent with the international instruments recognized by the Lebanese Constitution (Article 8, paragraph 1 of the ICESCR of December 16, 1966). They have also become obsolete, as civil servants have frequently suspended their work and hampered the regular functioning of public services, but this did not prompt the competent authorities to consider them as resigned or to take disciplinary and penal measures against them as set forth in relevant texts.
Therefore, this right should be recognized, and regulations should be put in place to reconcile it with the need to ensure the continuity of public service.
In 1998, the Civil Service Council submitted to the government a draft law amending paragraphs 2 and 3 of Article 15 of the Regulations for Civil Servants with the aim of recognizing the rights of civil servants to organize and to strike. This initiative did not come to fruition, and neither did the draft law seeking to amend certain provisions of the Labour Law in order to allow civil servants to establish unions (Report by the President of the Civil Service Council, (2011)).

In addition to the abovementioned amendments, a code of conduct for civil servants focusing on professional ethics should be adopted.

II- Reinforcing Internal Control

The hierarchal authority wields numerous prerogatives, including disciplinary powers. It is grounded in the belief that the hierarchal superior is in charge of the proper functioning of the service for which they are responsible, and that the right to sanction is a natural component of hierarchal power.

Based on prior regulations, this power was granted to the minister and the director-general. However, by virtue of the Regulations for Civil Servants, it was extended to the directors and heads of services and bureaus.

Similarly, Article 7 of the Decree-law No. 111 of 12/6/1959 on the Organization of Public Administrations stipulates that the hierarchal superior shall control the functioning of public service by inspecting administrations and civil servants and adopting necessary measures to sanction offenders, remedy the mistakes, and take action to avoid them. This inspection should take place every three months in central administrations and every six months in regional centres.

These provisions highlight the pivotal role of internal control in the proper functioning of public service.

Nonetheless, reality tells a different story. Superiors are usually reluctant to exercise these prerogatives, for fear of being reprimanded. They limit themselves to the role of intermediary: transferring files, reports, and complaints from their hierarchal superiors to their subordinates. At the most, they refer them to the Central Inspection. As a result, this practice causes the administration to be excessively lenient, undermines the supposed deterrent effect of the hierarchal power, and overwhelms the Central Inspection for no reason.

This internal hierarchal control should be reinvigorated and bolstered. To this end, periodic transfers of hierarchal superiors, across all categories, should be applied to ensure the effective implementation of control procedures. Furthermore, this power should be extended to the heads of sections as well, because their position makes them key to this disciplinary process.

III- Summary of Recommendations

- Reinforce the ability of subordinates to object to orders and instructions by their hierarchal superiors by no longer limiting it to clear and undeniable irregularities, thereby freeing civil servants from the obligation to implement the illegal order or instruction, and by making it mandatory to refer the violation to the Central Inspection.
- Enshrine the principle of civil servants' participation in the organization of service and management of staff.
- Enshrine the rights to organize and to strike.
- Adopt a code of conduct for civil servants.
- Reinvigorate internal hierarchal control and extend these powers to the heads of sections.

Part 2

Enhancing the Dynamics of Internal and External Control of the Public Administration

Nadi Abi Rached

Chapter 1

The Need to Streamline Internal Control within the Administration

Control within the administration covers different areas, aims to achieve several objectives, and therefore takes a multitude of forms. Where civil servants are concerned, it can take the form of disciplinary control which aims at penalising the non-compliance of civil servants with their statutory obligations. On the other hand, *control over the performance* of these civil servants takes on a less negative connotation and leans more towards incentivisation rather than repression. Control within the administration goes beyond civil servants and can encompass administrative processes. Here, a classic distinction is made between administrative control in the strict sense, which generally aims to guarantee the legality and lawfulness of administrative processes, and *financial control*, which aims to guarantee the proper use of public funds. As for the strategic control exercised by the administration, its objective is to plan for the medium- or long-term transformation of administrative structures and processes, after an assessment of the administration's status and needs. The types of control exercised further branch out according to various criteria. As a result, the types differ as follows: *a priori, a posteriori, documentary or on-the-spot controls, preventive or repressive controsl, etc.* This rich and complex landscape explains the existence of such a large number of authorities and bodies that take on the qualitative and quantitative challenges associated with control within the organisational chart of the administration. In Lebanon, these bodies are primarily the Civil Service Council, the Central Inspection, the Court of Audit, and the Higher Disciplinary Council, which are all directly linked to the Presidency of the Council of Ministers. There are also essentially three ministries which can be called upon, in addition to the aforementioned bodies, each within its scope of competencies, to exercise control: the Ministry of Finance (financial control), the Ministry of the Interior (control of decentralised authorities), and the Ministry of State for Administrative Reform (strategic control).

I- The Disorganisation and Inefficiency of Control Exercised over the Lebanese Public Administration

The proliferation of control institutions should not undermine the overall concept of control usually referred to in the singular form. In other words, the various types of control should always strive to achieve the same ultimate objective: ensuring the sustainability and development of a public administration capable of guaranteeing public interest. However, this is not the case in Lebanon, where such proliferation is problematic at various levels. These can be broken down according to whether we are talking about the control of civil servants (A) or the control of administrative processes (B), including strategic control.

A- Issues Relating to the Control of Public Servants

Due to the inadequacies and shortcomings discussed above in relation to the control of the performance of civil servants with a focus on incentivisation, it should be noted that such control in Lebanon is mainly disciplinary. Upon examination of the legal instruments governing this control and how they are applied, the following issues come to light:

1- The Fragmentation of Disciplinary Power between the Various Control Institutions

Disciplinary power is fragmented between the various control institutions. In fact, this power is simultaneously wielded by:

- The hierarchical superior within each administration for disciplinary sanctions of the first category, i.e. the least severe (Article 56 of the Civil Servants Statute);

- The Higher Disciplinary Council for disciplinary sanctions of the second category, i.e. the most severe. The Council may also choose to impose sanctions of the first category (Article 56 of the Civil Servants Statute);

- The Central Inspection Board for disciplinary sanctions of the first category and partly of the second, as well as inspectors in the context of an inspection procedure for part of the disciplinary sanctions of the first category (respectively, Articles 19 and 16 of the Law on the Establishment of the Central Inspection), in addition to the possible involvement of the President of the the Central Inspection Board in the disciplinary power granted to the Minister (Article 56 of the Civil Servants Statute);

- The Civil Service Council, which, according to Article 2 of the Law on the Establishment of the Civil Service Council, has disciplinary powers, in particular with regard to the dismissal of civil servants (Article 71 of the Civil Servants Statute) or indirectly through the Council's contribution in the civil servants career advancement and promotion mechanisms (Articles 32 and onwards of the Civil Servants Statute);

- The Court of Audit, indirectly, when the latter exercises *a priori or a posteriori* control, noting that its sanctioning power may be compared in several respects to the exercise of a disciplinary power (Articles 60 and onwards, Law on the Court of Audit).

This fragmentation of the disciplinary sanctioning power between the various control bodies is one cause of the dilution of disciplinary control, its inefficiency and even its paralysis, as we will demonstrate later on.

2- The Fragmentation of Disciplinary Sanctioning Power, a Catalyst for Arbitrariness, Impunity, and Inequality

The fragmentation of disciplinary power between the various control authorities and institutions amplifies the negative impact of the lack of a legal definition of what constitutes a disciplinary offence within the Lebanese legal framework. In fact, the very general wording in the Civil Servants Statute of the statutory obligations whose violation would justify a disciplinary sanction entails a twofold risk:

- It puts civil servants under the mercy of their hierarchical superiors' caprice, which can harm on the one hand an unjustly sanctioned civil servant and on the other hand the administration itself through the possible impunity of a civil servant who did in fact commit an offense but remained unsanctioned due to the abstention (discretionary prosecution principle) or the lax interpretation of the control authority of what counts as a disciplinary offence.

- The fragmentation of disciplinary power between different authorities aggravates these injustices, by preventing the formation of a unified disciplinary «jurisprudence,» with each authority implementing its own disciplinary policy. This is likely to generate disparities and inequalities within the civil service.

3-The Paralysis of the Disciplinary Sanctioning Power due to its Dilution and Fragmentation

This paralysis is the result of the mutual obstacles which are likely to make the various authorities subject to the control of one another. We will only list a few examples:

- First, the paralysis of the disciplinary sanctioning power may be due to a hierarchical superior, particularly a minister who abuses the questionable procedure of Article 14 of the Civil Servants Statute to oblige a civil servant, at the end of the remonstrance procedure mentioned above (Chapter 3 of Part 1), and under the threat of taking disciplinary action against them, to execute an illegal order by confirming it in writing. The civil servant will thus be immune from any disciplinary or even judicial sanction that could be rendered by any other control authority. The minister himself also remains untouchable because of his de facto immunity (see Chapter 2 of Part 2 below). According to Circular No. 4/2019 of February 22, 2019, issued by the Central Inspection, some civil servants would themselves ask the signed confirmation of their hierarchical superior granting them disciplinary immunity in order to cover up their own wrongdoings.

- This paralysis can also stem from the interrelationships between control institutions. This is evidenced by the number of cases handled by the Higher Disciplinary Council, which is the ultimate disciplinary authority. Indeed, over the last two decades, rarely has this Council received more than a dozen cases per year, sometimes less. The small number of cases referred to the Council, which is obviously not an indication of a healthy Lebanese public administration, is rooted, first of all, in the legal limitation of the power to refer cases to the Council. The Council cannot examine cases on its own initiative. Therefore, it can only

look into matters referred to it solely by virtue of a decision issued by the appointing authority or the Central Inspection Board (Article 58 of the Civil Servants Statute), and only within the limits specified in the referral decision. Other control authorities, such as the Civil Service Council or the Court of Audit, are thus deprived of the power to make direct referrals to the Higher Disciplinary Council, although these authorities are best placed to detect the commission of disciplinary offences in the exercise of their functions. To remedy this, these two bodies can only recommend follow-up to the civil servant's hierarchical superior (which is reluctant to use his own disciplinary or prosecutorial powers) or inform the Central Inspection, whose action is usually hindered for various reasons, including political ones as we will discuss later on. The fragmentation of control authorities thus contributes to the politicisation of control functions or even to their paralysis, which becomes all the more serious it extends to judicial authorities. In fact, the Higher Disciplinary Council has denounced on several occasions in its annual reports the absence of disciplinary proceedings for civil servants who have been criminally convicted and who remain in their jobs, without any adequate disciplinary measure taken by the administration.

- The same observation concerning the paralysis of control functions should also be made when examining the conditions under which the Court of Audit exercises its powers in the context of its judicial control of civil servants and audits. At the end of a judicial review procedure leading to sanctions against a civil servant, and in addition to the impossibility to make a direct referral to the Higher Disciplinary Council, the Court of Audit has no legal obligation to initiate disciplinary proceedings. According to Article 75 of the Law on the Court of Audit, the latter merely has the option to recommend prosecution to the hierarchical authorities and to inform the Central Inspection, which is likely to make this prosecution even more uncertain, noting that it is already compromised due to the reasons explained above.

- Finally, the paralysis of control functions becomes clearer when one examines the conditions under which the Central Inspection exercises its own disciplinary powers, alongside other control institutions. In fact, the disciplinary power of the Central Inspection is exercised first by inspectors during the course of their inspections in public administrations. This sanctioning power, limited in coverage and scope (only part of the disciplinary actions of the first category can be imposed), also suffers from the exclusion of first-grade civil servants from its scope. As a result, it is rarely used by inspectors. The power to impose sanctions is then especially exercised by the Central Inspection Board. When the President submits to the Board the inspector's final report and sanction recommendations, the Board's hands are tied due to the exclusion of the four major sanctions stipulated in the Civil Servants Statute for second-grade civil servants and below, as well as all sanctions of the second category for first-grade civil servants. This twofold limitation of the Board's power to impose sanctions is theoretically offset by its power to refer the offending civil servant to the other disciplinary or judicial control authorities (Higher Disciplinary Council, Court of Audit, or the criminal justice system). Nevertheless, the Board's decision to sanction or refer the offending civil servant to the other control institutions has proved particularly problematic in recent years because of the collective decision-making process, which requires agreement between the three

members of the Board appointed by virtue of a decree issued by the Council of Ministers. Such agreement is often unattainable, which has led to the paralysis of the Board. This paralysis is sometimes due to the failure of the executive to appoint the members of the Board, or, in case the members are appointed, to the blocking of the quorum necessary for the Board to issue decisions. This situation is often denounced by the President of the Central Inspection and in the reports of control institutions, including the Higher Disciplinary Council, and it irreparably undermines the efficiency of disciplinary control over civil servants.

B- Issues Relating to the Control of Administrative Processes

The issues relating to the control of administrative processes are not much different than those relating to the civil servants performing these processes. Although they span various fields, we will tackle them essentially through the lens of control over the financial activity of the administration, revealing the fragmentation, redundancy, silos, and inadequacies of the control exercised by the administration, as well as the lack of any coherent strategic vision for these processes.

1- Inconsistent Control

- **Fragmentation**

  The fragmentation of the control over administrative processes exceeds that of civil servants, in the sense that it involves, particularly in financial matters, institutions other than those concerned with the strict control of civil servants. It also involves different authorities within some of those institutions that do not always work in harmony with each other. This is the case, for example, for the administration's implementation of public expenditures, from the expenditure commitment to its payment, passing through its validation and authorisation.

  Thus, the commitment statement can undergo a wide range of control processes carried out by various actors, both before and after it is signed. This control primarily involves the Ministry of Finance, through the controller of the commitment statements, who is an official attached to the budget and expenditure control directorate of the Ministry, and who can involve the Minister of Finance himself in the a priori control of the commitment of expenditures. Controlling expenditures may also involve the Bids Department, which is affiliated with the Central Inspection but exercises its powers independently of the Central Inspection Board, its inspectorates, and its president. The Bids Department intervenes primarily (but with many exceptions) whenever public expenditure is subject to announcement and tendering procedures in accordance with the Law on Public Accounting. Third, the Court of Audit may take part in this control process in several cases: first as part of its *a priori* administrative control (beyond a certain threshold designated by the Law on Public Accounting). Second, in the context of its *a posteriori* administrative control and third as a part of its judicial control of accounts and civil servants. Finally, the control of the commitment statements may be subject to the oversight of the inspectors of the Inspectorate-General of Finances (Central Inspection), by virtue of the annual inspection

schedule or special missions at the instigation of various authorities, such as the relevant minister or director-general, the president of the Civil Service Council, the president of the Court of Audit and the Public Prosecutor at the Court of Audit, in addition to the president of the Central Inspection. At the end of the inspection process, the case may be referred either to the Central Inspection Board, to the Court of Audit in the context of its judicial review, or even to the Higher Disciplinary Council in the event of disciplinary proceedings.

The control of state expenditures is not limited to commitment statements, but also encompasses controls on the validation, authorisation, and payment of funds, all of which involve more or less the same actors, in addition to the Authorisation Directorate and the Public Accounting Directorate at the Ministry of Finance.

- **Incoherence**

The multiplication and diversification of controls over the administration's financial activity is not inherently wrong. However, it becomes so when several of these control processes are implemented systematically at times, but randomly at others. In the absence of a well-thought-out and comprehensive control strategy specific to each institution, as well as a firm obligation of coordination between the various control authorities or at least a strategic vision of control processes common to all the relevant institutions, led by an authority or a steering committee, inconsistency remains the primary characteristic of administrative control. In the absence of streamlining of control processes, we observe, in addition to an administrative activity slowdown, many redundancies, gaps, contradictions, setbacks, and intra-institutional and inter-institutional conflicts. This also leads to the overwhelming of control institutions who seem to be unable to carry out the tasks legally entrusted to them.

For example, this is evidenced by the overwhelming of the Court of Audit, which, in addition to the lack of staff, is weighed down by the burden of conducting *a priori* control, thereby preventing it from carrying out its essential functions of *a posteriori* control. In fact, the Court of Audit regularly sheds light on this situation in its annual reports, when it manages to produce them. The same applies to the Central Inspection, which is also overwhelmed by special missions from a wide variety of authorities. These are carried out way too often at the detriment of its annual inspection schedule, as required by law (Article 12 of the Law on the Establishment of the Central Inspection). The failure of public administrations and the Ministry of Finance to submit to the Court of Audit the documents necessary for it to conduct *a posteriori* administrative control is also further proof of this general state of chaos, as well as of the lack of coordination and mutual hindrances. It is also particularly symptomatic of the institutional fragmentation and the absence of a common strategy or the slightest coordination, the absence, in the annual reports issued by these various authorities, of any hint of a strategic vision for the control processes whether specific to each authority (authorities often regurgitate the legislative provisions regulating their control functions) or common. It is also important to note the lack of indication of any other control authorities in these reports, except for a few figures relating to cases referred by one authority to the other (figures that frequently do not match). The fragmentation and divisions between the different authorities, which have been systematically denounced by the civil servants and representatives of these authorities during the interviews we were

able to conduct, are even likely to affect the same institution, as evidenced for example by the high-profile dispute that led to the separation between the Bids Department and other organs within the Central Inspection (2018).

2- Exceptions and Obstacles to Control

The issues revealed by the fragmentation of the administration's control are further aggravated by the obstacles hindering or even banning this control. These legal and political obstacles can be summarised as follows:

- **Control Exceptions**

  First, there are certain legal exceptions, since some authorities and administrations (mainly public establishments, autonomous administrations, municipalities, or even ministerial administrations) are excluded from certain forms of control, or even from all control, based on the will of the legislative or executive powers. These exclusions have made it possible to establish well-protected silos within the administration, with disparities between those inside these silos and those outside of them, and create a climate of impunity, even within large administrations that are often responsible for substantial public funds. There is a long list of examples of such administrations; however, we will only mention the most significant ones, such as the Central Bank of Lebanon, which is closed off to all control institutions, as well as the Council for Development and Reconstruction, whose activity is only subject to *a posteriori* control by the Court of Audit. Also included on that list are the Council for South Lebanon, Ogero, the Rafic Hariri University Hospital, and the NSSF. None of these entities are subject to the *a priori* control carried out by the Court of Audit or to the administrative control of the Central Inspection. The Lebanese Army (LAF), the Internal Security Forces (ISF) and the General Security are also excluded from the administrative control carried out by the Central Inspection, in addition to local executive authorities and enterprises and associations subsidised by public funds, which are exempt from administrative and financial inspection. Several authorities were also not subject to the control carried out by the Bids Department at the Central Inspection prior to the 2022 reform.

- **Obstacles to Control**

  In addition to the above, there are political obstacles or rebuttals, which are sometimes enabled by the law and at other times devoid of legal foundations. The first case is illustrated by the possibility for the Council of Ministers, at the motion of the relevant minister, to override the Court of Audit's visa disapproval in the context of its *a priori* administrative control of the execution of public revenues and expenditures. There is also the possibility (which should be reduced by the imminent entry into force in the summer of 2022 of the new Law on Public Procurement) for the Council of Ministers to bypass the announcement and tendering procedure controlled by the Bids Department at the Central Inspection, and to instead resort to direct contracting. As for the second case, it can be illustrated by the various political interventions. These sometimes consist of paralysing control institutions by abstaining from appointing their members (such as the Central Inspection, the Higher

Disciplinary Council, the Court of Audit, etc.). At other times, these interventions come in the form of a circular by the President of the Council of Ministers forbidding, for example, the Central Inspection from conducting investigations, in the context of an inspection procedure, with ministers, heads of the inspected administrations (Circular No. 1597 of October 15, 2001), or another circular requesting the Central Inspection not to collect data from the various administrations, even though such data is necessary for the performance of statutory duties (Letter No. 1248/S from the Prime Minister to the President of the Central Inspection, October 1, 2021). They can also consist of a minister's ability to hamper an inspection procedure by proposing to refer the inspector to the Higher Disciplinary Council, which is likely to halt the investigation while the disciplinary procedures are ongoing (Article 58-2 of the Civil Servants Statute and Article 7-2 of the Law on the Establishment of the Central Inspection).

Finally, political and administrative obstacles or rebuttals to control are apparent in the resistance of ministers and directors (often on the orders of the minister), to submit to control procedures, as well as in the obstacles they place to prevent inspectors from accessing premises or documents necessary for the inspection (refusal to provide documents), for example. These obstacles, denounced by the inspectors we interviewed, are confirmed by the lack of knowledge of the Central Inspection's requests and correspondences (Prime Minister's Circular No. 17 of July 7, 2017, asking administrations to collaborate more closely with the Central Inspection), as well as by the non- implementation of the decisions and recommendations of the control authorities (such as the Higher Disciplinary Council and the Central Inspection), or the failure to submit accounting statements to the Public Accounting Directorate of the Ministry of Finance or to the Court of Audit. All of these shortcomings have been systematically denounced by various control institutions in their annual reports as well as by the civil servants and the representatives of the various control institutions whom we interviewed.

3- The Lack of a Common Strategic Vision

The failure of the control mechanism exercised over civil servants and administrative processes also stems from the lack of a strategic vision that should have been set by the administration. There is an abundance of laws relating to the strategic functions of each control institution. However, much like the other functions entrusted to these institutions, the strategic control over the administration is fragmented to the point where it leads to a siloed exercise of these strategic competences by each institution, instead of developing a comprehensive and harmonised strategic vision. According to senior officials from some of the control institutions we have met with, this has created redundancies, competition, or even conflicts, which make this strategic control very inconsistent.

- **Fragmentation of Strategic Control**

The fragmentation of strategic control is clear in legal texts. The following authorities all take part in the process:

- The Civil Service Council, inter alia through the power granted to the Council's board to issue recommendations and proposals to the Council of Ministers on the amendment of laws and regulations relating to the organisation of public administrations and establishments, their work processes, the size of their staff, as well as administrative and salary expenses (Article 9 of the Law on the Establishment of the Civil Service Council).

- The Central Inspection, inter alia through the power granted to its board to issue recommendations and proposals to the Council of Ministers relating to the reorganisation of administrations, public establishments, and municipalities and the enhancement of their work processes (Article 11 of the Law on the Establishment of the Central Inspection). The Central Inspection also has the general mandate to enhance work processes, issue recommendations to the administrative authorities (ex officio or at their request), and undertake studies, investigations, and actions at the request of the authorities (Article 2 of the same law). It is worth noting that, upon its establishment, the Central Inspection included a Research and Guidance Directorate, which is a strategic oversight body that was later transferred in accordance with Law No. 222 of May 29, 2000, to the Civil Service Council.

- The Court of Audit, through the power granted to it in the context of its *a posteriori* administrative control (Articles 46 and onwards of the Law on the Court of Audit) to prepare an annual report including, inter alia, proposed reforms of laws and regulations whose implementation leads to financial consequences. The distribution of this report to the President of the Republic, the Parliament and the two above-mentioned control bodies (i.e., the Civil Service Council and Central Inspection) proves its strategic importance. This report is supported by special reports, which are submitted at the request of the Court to the various authorities and that tackle specific issues and suggest adequate solutions.

- The Ministry of State for Administrative Reform, introduced for the first time in 1961 and definitively established in 1995. It is intended to be a strategic ministry for the reform of all areas of the administration, and it has developed countless studies, strategies, and charters related to the different areas of the administration (fight against corruption, e-government, codes of conduct, etc.).

- The Ministry of Finance, through the powers granted to the Minister of Finance to prepare the draft budget law (Articles 13 and onwards, Law on Public Accounting). This constitutes a strategic power, given that each administration, in the context of the preparation of its own budget, is required to comply with the instructions and classifications set forth in the budget circular, along with all the effects that these instructions can have on the administrative process strategy (an administrative budget classification favouring means-focused administrative processes and public policies,

versus a results-focused budget classification favouring administrative processes and public policies cantered around objectives and performance). It is important to note that in 1996, the Ministry of Finance established the Institute of Finance, a public establishment (since 2003) affiliated with the Ministry of Finance. It is a strategic body, which has recently distinguished itself by developing the Draft Law on the Reform of Public Procurement Processes, adopted by Parliament on June 19, 2021, and expected to enter into force on July 29, 2022.

The diversification of strategic functions and their distribution across the various control institutions is natural given the specialisation of each. It is even a source of diversity and richness likely to contribute to a comprehensive, rational, and common strategic vision for the administration. However, such a vision is not possible without the conditions enabling these different bodies to fully exercise their competencies and in the absence of a minimum level of coordination and collaboration between them. Alas, these conditions, coordination, and collaboration seem to be lacking in Lebanon.

- **Obstacles to Developing a Common Strategic Vision**

The obstacles are primarily material ones, each administration regularly denouncing their lack of personnel, which makes it difficult to carry out the functions entrusted to it, particularly its strategic function. This is the case, for example, of the Court of Audit, which is overwhelmed by its *a priori* control function, preventing it from fulfilling its strategic function consisting of carrying out *a posteriori* administrative control. This is also the case of the Central Inspection, which is overwhelmed by the countless requests for inspections from administrations and other control authorities, as well as by its disciplinary functions, preventing it from exercising its strategic functions provided for in Article 11 of the Law on the Establishment of the Central Inspection. However, even if the relevant institutions manage to overcome these obstacles, there remains the potential for conflict in the legal distribution of strategic functions between the different control institutions, as well as problems relating to transparency, coordination, and cooperation between the control institutions themselves on the one hand, and, on the other, between these institutions and the other administrative institutions:

- To illustrate the potential for conflict in the legal distribution of strategic functions between the different control institutions, one need only look at the example of Articles 9 and 11, respectively, of the laws on the establishment of the Civil Service Council and the Central Inspection, the terms of which are substantially similar. In the absence of proper coordination, this leads to overlapping functions, squandered resources, competition, and conflict.

- This lack of coordination and cooperation firstly concerns the administrations that are subject to control and can be illustrated by the many shortcomings or even failures of these administrations in providing the control institutions with the data necessary to perform their functions: deficiencies or failures, for example, by the administrations to provide the Central Inspection and the Civil Service Council with the reports and programmes of their activities (Article 7 of the Law on the Organisation of Administrations, or even Articles 14 and 16 of Decree No. 2460/59 on the Organisation

of the Central Inspection, etc.). We can even mention their failure to provide the Court of Audit with the accounting documents necessary for its *a posteriori* strategic administrative control. These shortcomings at the level of administrations also hinder the exercise of the strategic functions of the Ministry of State for Administrative Reform, which is evidenced by the numerous circulars issued by the President of the Council of Ministers, reminding the administrations of the need to inform the aforementioned Ministry of any planned or implemented study or project in such a way as to avoid overlaps and squandered resources.

These shortcomings in terms of transparency, coordination, and cooperation have prevented the creation of a centralised administrative database capable of providing the information required by the control institutions to exercise their functions, including strategic ones. The establishment of such a database even seems to be opposed at the highest levels, despite several attempts by the Central Inspection, all of which have been blocked by the President of the Council of Ministers. This was made clear, for instance, in the President of the Council of Ministers Letter No. 1248/S of October 1, 2021, addressed to the President of the Central Inspection, contesting the latter's right to create such a database.

II- Alternative Reforms of the Lebanese Administration's Control

To counter the lack of organisation and efficiency of control processes in the Lebanese public administration, several alternative reforms are possible within each process.

A- Alternative Reforms for the Control of Civil Servants

1- Legal Definition of Violations and Disciplinary Sanctions

A reform of the disciplinary control of civil servants can first aim to offer a standard, legal, and precise definition of the disciplinary misconduct (as well as of the sanctions), as is the case in Italy for example. Am attempt was made to define the nature of disciplinary misconducts by the Ministry of Administrative Reform, which drafted a code of conduct for civil servants (December 2001). Nevertheless, it remains insufficient, as it repeats the provisions of the Civil Servants Statute and remains devoid of any legal value (a mere approval by the Council of Ministers). However, a legislative reform, in the form of a precise listing of disciplinary misconducts and sanctions, has its drawbacks; indeed, it is practically impossible to foresee all the forms of violations of the statutory obligations of civil servants. This has undoubtedly led some countries (including France and Germany) to adhere to the very general definition of disciplinary misconduct, preferring to avoid the risk of disciplinary impunity that could potentially result from an incomplete list. In Lebanon, proceeding with such a legal definition could be an intermediate solution. In fact, it might be the only solution likely to protect civil servants against the arbitrariness of their hierarchical superior. This list could be deemed as non-exhaustive when the disciplinary procedure takes place before a control institution other

than the hierarchical superior (i.e. the Higher Disciplinary Council and the Central Inspection). This would avoid impunity in the event of unforeseen disciplinary misconducts. This effort to adopt a legal definition should be satisfactory for the Higher Disciplinary Council, whose annual reports highlight the inadequacy of the imposed sanctions.

2- Solutions for the Paralysis and Fragmentation of the Disciplinary Control of Civil Servants

There are several types of solutions to the inter-administrative and inter-institutional obstacles due to the fragmentation of the disciplinary control of civil servants. We will not delve once again into the reform of Article 14 of the Civil Servants Statute (Part 1, Chapter 3), one consequence of which would the removal of the obstacle laid by this kind of disciplinary immunity granted in writing by the hierarchical superior to the civil servant executing the illegal order. However, we will only stress that transforming the civil servant's duty of obedience to the hierarchical order into a duty of disobedience in the event that the order is illegal, whether manifestly or not, does not grant disciplinary immunity to the civil servant in the case of disobedience. Indeed, the Central Inspection, having been informed of this disobedience and after verifying the motives, can impose the necessary sanctions or refer the civil servant guilty of wrongful disobedience to the competent authority.

- **The Dangers of the Decentralised System of the Disciplinary Control Versus the Advantages of the Centralised System**

The fragmentation of the power to impose disciplinary sanctions between the different control institutions requires several types of reforms. Before tackling these reforms, let us look at the general evolution of the power of sanction in Lebanon, as it can be quite revealing. Lebanon has in fact moved from a completely decentralised system of disciplinary control between 1921 and 1953 (the power to sanction, like in France and Tunisia today, was exclusively held by the hierarchical superiors in each administration) to a less decentralised control between 1953 and 1965 (existence of several disciplinary councils, depending on the categories of civil servants). Currently, there is a single Higher Disciplinary Council, in order to unify disciplinary jurisprudence, among other things.

The reasons behind this evolution, which has limited the disciplinary power of the hierarchical superior and centralised the resolution of disciplinary disputes, have not disappeared. Therefore, any alternative which consists of returning to a decentralised system or a multitude of disciplinary councils still seems inadequate, which is why the efforts to unify disciplinary dispute resolution remain justified. The unification process also remains incomplete, which entails several risks. The evolution should therefore be completed by centralising the power of disciplinary sanctions in the hands of a Higher Disciplinary Council affiliated with the Civil Service Council (as is the case in France, with the Higher Civil Service Council). This affiliation would eliminate the inconsistencies of granting disciplinary power to the Civil Service Council and seems very logical, given the mandate and powers of the Civil Service Council. It would also avoid the expenses of creating an additional administration. This centralisation of disciplinary power in the hands of the Higher Disciplinary Council would also have to be accompanied by the revocation of the disciplinary power of the Central Inspection, which will thus be able

to devote itself to its inspection and strategic functions. Some limited sanctioning powers can always be granted to inspectors to support their inspection procedures, as well as to hierarchical superiors in each administration to reinforce the hierarchical structure.

- **The Insufficiency of the Proposed Solutions to Overcome the Paralysis of Disciplinary Action**

The paralysis of disciplinary action due to the relationships between the various control institutions, partially resolved by linking the Higher Disciplinary Council to the Civil Service Council, should be completely resolved by facilitating disciplinary action before the Higher Disciplinary Council. Since the latter is not authorised to look ex-officio into any disciplinary violation it detects (by virtue of the principle of separation of the disciplinary authorities of prosecution and passing judgment), Law No. 201 of May 26, 2000, granted to the Disciplinary Council the power to ask the Central Inspection to undertake the necessary investigations into the misconduct and to inform it of the results of the investigation for the purposes of taking legal action. As this reform has proven to be insufficient, administrations were encouraged to exercise their disciplinary and prosecutorial powers before the Higher Disciplinary Council through circulars issued by the President of the Council of Ministers, which did yield any meaningful results.

Another proposed solution was to establish an administrative public prosecution service capable of initiating disciplinary action before the Higher Disciplinary Council. However, the creation of such a public prosecution function risks adding yet another unnecessary institution to the already numerous control institutions. Indeed, the Central Inspection Board already enjoys prosecutorial functions, via the government commissioner to the Higher Disciplinary Council. It should be noted, however, that this has not led to any improvement in the situation.

- **The Alternative of Partially Reconsidering the Advisability of Disciplinary Action**

Given the abovementioned failures, the revitalisation of disciplinary action cannot be achieved without at least partially reconsidering the principle of advisability of disciplinary action. This reconsideration will thus involve all authorities (whether administrative or jurisdictional) and will eliminate all the inter-institutional obstacles hindering disciplinary action. It consists of setting a legal obligation for The Court of Audit to seize the Higher Disciplinary Council at the end of any judicial action leading to the sanctioning of a civil servant. This will also apply to the Central Inspection Board and any hierarchical authority, in case of the criminal prosecution or conviction of a civil servant for any offense related to their duties.

In addition to adopting a legal definition of violations, this reconsideration of the advisability of disciplinary action could be reinforced by the establishment of a list of disciplinary violations whose perpetrators are mandatorily referred to the Higher Disciplinary Council by any of these authorities, depending on their severity (obligation to prosecute in the case of the most serious violations).
In addition to removing the obstacles to refer cases to the Higher Disciplinary Council, the latter should be empowered to bring to justice any civil servant whose misconduct is likely to

constitute an offense or a crime punishable by law. This reconsideration of the advisability of disciplinary action, along with the possibility given to the Higher Disciplinary Council to take legal action, will also help to dissuade the administrative authorities reluctant to execute the decisions of the Higher Disciplinary Council.

- **Options for Unblocking the Central Prosecution Authority**

Finding a solution to the paralysis of the power of disciplinary control over civil servants is also contingent on putting an end to the paralysis of the Central Inspection Board, which is the central prosecuting authority. Several reforms are possible and are likely to resolve the deadlock. MP Hadi Hobeich suggested to broaden the membership of the Board, to reduce the quorum required for decision-making, and to defer Board members who fail to attend sessions more than three times without a valid excuse to the Higher Disciplinary Council. This proposal could actually contribute to putting an end to the deadlock.

B- Alternative Reforms for the Control of Administrative Processes

There are several possible alternatives that could help streamline the control of administrative processes, and they have been mentioned by certain actors of the control institutions and in projects aiming to streamline administrative process control (most often unsuccessful). Foreign experiences can also be beneficial and have been mobilised, both formally in the various proposed reform projects and informally, when mentioned by the institutional representatives we met with.

1- Streamlining of Administrative Process Control through Decentralisation

- **Decentralisation in Favour of the Internal Hierarchical Control**

As mentioned above, the multiplication, redundancy, and fragmentation of administrative process control between the various control institutions are all factors that have rendered these authorities overwhelmed and unable to carry out all their competencies. It was thus logically suggested to remedy to this issue by revoking or at least reducing certain control functions or competencies in each of these authorities. According to some of these proposals, these measures should be compensated by the decentralisation of administrative process control, by strengthening the internal hierarchical control mechanisms in each administration. The need to reactivate and consolidate the internal hierarchical control of administrative processes and of civil servants (also provided for in Articles 7 and 8 of the Law on the Organisation of the Public Administration), regularly mentioned in the annual reports of the Higher Disciplinary Council, was also mentioned as a means of reducing the workload by the officials and representatives of the Central Inspection we have interviewed, which would allow them to devote more time to their strategic control functions. According to the inspectors we interviewed, a large proportion of the complaints they receive are either arbitrary or «political» complaints lacking any real basis, or complaints related to minor irregularities, which can easily be dealt with as part of the internal hierarchical inspection of each administration.

Foreign Experiences in Decentralising Control

The logical alternative consisting of decentralising the control of administrative processes through the reactivation and the consolidation of internal hierarchical controls within administrations can even be supported by examples of several foreign systems of administrative process control. Indeed, many countries do not have a centralised system of administrative process control and resort instead to the decentralisation of control within ministries. This is the case in France for example, which has been frequently mentioned by the civil servants and senior officials we have interviewed, where the control of the administrative processes is entrusted to inspection bodies affiliated with the various ministries, including: the Inspectorate-General of Finance (IGF), attached to the Ministry of Economy and Budget; the Inspectorate-General of Administration (IGA), attached to the Ministry of Interior Affairs; the Inspectorate-General of Social Affairs (IGAS), attached to the Ministry of Health; the Inspectorate-General of Education, Sports, and Research, attached to the Ministry of Education, Youth, and Sports and the Ministry of Higher Education, Research, and Innovation; as well as several ministerial inspectorates such as the General Control Authority of the Armed Forces (CGA), attached to the Ministry of Armed Forces; the Inspectorate-General of Foreign Affairs (IGAE), attached to the Ministry of Europe and Foreign Affairs; or the Inspectorate General of Agriculture (IGAG), attached to the Ministry of Food and Agriculture. The same applies in Tunisia, where most inspectorates are ministerial, despite an effort to centralise them through the creation of the High Committee for Administrative and Financial Control, which insures the coordination and follow-up of the control functions of different supervisory bodies.

The Dangers of Control Decentralisation in Lebanon

Despite the relevance and success of the abovementioned control systems, the fact remains that any desire to decentralise administrative control, whether expressed by institutional actors or through external proposals, seems to give little consideration to the reasons why administrative action control was centralised in Lebanon in the first place. Indeed, centralisation has been adopted precisely to remedy the shortcomings of internal hierarchical control and to guarantee the independence and effectiveness the central control institutions established during the great movement of reform towards the end the 1950s. For example, in order to free the Financial Inspectorate-General from the hierarchical influence of the Minister of Finance and to strengthen its control, it was detached from the Ministry of Finance and affiliated with the Central Inspection, which is directly attached to the President of the Council of Ministers. At the time, this was considered a guarantee of independence. Since the inadequacies and dangers of internal hierarchical control have not disappeared but have rather worsened, according to all institutional actors today, it is then necessary to maintain the centralisation of control within the institutions to which it was entrusted.

- **The Need to Keep Internal Control… Under Control**

Maintaining the centralisation of administrative control should not lead, however, to the abandonment of internal hierarchical control, which is both necessary for the proper functioning of the administrations and to unburden central control bodies. Internal hierarchical control should therefore be consolidated. Nevertheless, this cannot be done without the necessary management of this control by central institutions, specifically by the Central Inspection. The latter should be provided with the necessary means to order hierarchical superiors to undertake the control and inspection duties legally entrusted to them or those occasionally assigned to them by the Central Inspection, as well as to monitor the results of such processes. This consolidation would thus enhance the vague obligation entrusted to directors and directors-general to inspect administrations (Articles 7 and 8 of the Law on the Organisation of Public Administrations), by imposing a specific obligation forcing these authorities to comply with the Central Inspection's demands to exercise their legal control functions, according to the conditions specified by the Central Inspection, failing which they would be subject to disciplinary action before the Higher Disciplinary Council.

The reactivation and consolidation of internal hierarchical administrative control are not sufficient to compensate for the centralisation of administrative process control in the hands of centralised institutions, nor to remedy the multiplication and overlapping of their competences, which causes them to be overwhelmed. As such, the solutions involving the streamlining of these competencies have focused on reconsidering certain functions of each of these institutions, by reducing these functions, rearranging them among institutions, or transferring them entirely to new, ad hoc institutions. Some of these solutions have even been implemented or have been approved pending implementation. We can determine the effectiveness and fundamental principles underpinning these solutions by taking a closer look at them.

2- The Streamlining of Control Powers through their Breakup

- **The Doctrine of the Separation of Control Functions**

The reconsideration of the multiplicity of powers granted to control authorities is no doubt most reflected by the analysis of the legal competencies of the Central Inspection, as well as by the proposed amendments affecting the exercise of such competencies. Thus, it has been underlined (OMSAR, 1998) that the competencies granted to this control institution are incompatible, as they combine both inspection and control powers (inspectorates and disciplinary powers), regulatory powers (through strategic powers and the creation of the Research and Guidance Directorate), as well as executive powers (essentially through the Bids Department). This alleged incompatibility of functions has given rise to many different proposals, which seem to converge on the need to revoke the strategic, executive, and disciplinary functions of the Central Inspection to allow it to devote itself to its alleged main function: inspection. It has even been proposed to detach the Research and Guidance Directorate from the Central Inspection (strategic and regulatory function) and to link it to a new Ministry of Administrative Development (this has been done by virtue of the abovementioned law of May 29, 2000, but in favour of the Civil Service Council and not the inexistent Ministry

of Administrative Development as was proposed in 1998). The same OMSAR report of 1998 also proposed the detachment of the Bids Department from the Central Inspection to link it directly to the Presidency of the Council of Ministers (this has been done through the creation of an independent administrative authority for public procurement, by virtue of the law of June 29, 2021).

- **Hesitant and Confused Attempts to Redistribute Control Functions**

Beyond the 1998 proposals and their partial implementation, subsequent reports included diverse proposals for the redistribution of powers, particularly in terms of strategic or regulatory functions. Thus, several options have been suggested (OMSAR 2001): the creation of a Ministry of Administrative Reform excluding the control institutions; the creation of a Ministry of State for Administrative Affairs, supported by an inter-ministerial committee; the creation of a Central Agency for Reform, directly affiliated with the President of the Council of Ministers; or the activation of the High Committee for Administrative Reform and Development, created by virtue of Decision No. 71/2005 of the President of the Council of Ministers, chaired by the Minister of Administrative Reform, and composed of the presidents of the central control institutions (see the Introduction, Chapter 1, I).

This hesitation and confusion in assigning responsibility for the strategic control function is further aggravated by the reconsideration of the other control functions of central institutions – that is, to use the same adopted terminology, the executive and inspection functions. In OMSAR's interim reports of 2012 and 2013 on the strategic plan for the development of the Lebanese public administration, control institutions were completely excluded from the development of the strategy, a task essentially entrusted to the Council for Development and Reconstruction (which is legally not subject to the control of central institutions). Beyond the strategic function, the CDR would at the same time assume the task of coordination between the ministries, as well as executive functions and control over the implementation of the programmes and projects undertaken by the administration, thereby casting doubt on the entire concept of the separation of control functions.

The general state of confusion concerning the streamlining of control within the administration, in its various aspects, is further aggravated by the complaints and conflicting signals, sometimes coming from the control institutions themselves. For example, the judges of the Court of Audit no longer hide their desire to reconsider *a priori* administrative control, which is very demanding and often neutralised by the Council of Ministers, despite the fact they recognise the importance of such control. The Central Inspection as well seems to want to focus more on its strategic functions over its control functions. This is clearly apparent in its desire to no longer be obligated to inspect every administration once per year, as part of its annual programme (Strategy for the Consolidation of the Independence of the Central Inspection, CI, 2021). However, the civil servants and senior officials of this control authority proudly and rightly display the exponential curve (before the 2019 crisis) of inspection requests and cases actually processed.

- **The Dangers of the Separation and redistribution of Control Functions**

Faced with this tergiversation in the proposals and the conflicting signals in the attempts to streamline the control of administrative processes, it is necessary to shed light on the dangers of revoking powers and redistributing them amongst institutions or transferring them to new, *ad hoc* bodies under the pretext of the alleged incompatibility between these functions and of the overburdening of control institutions. Indeed, the regulatory, strategic, disciplinary, executive, communication, and inspection functions are complementary, necessary, and inseparable facets of the administrative process control. The tendency to separate and redistribute them amongst existing institutions or transfer them to old or new institutions is likely to further complicate the institutional structure of administrative process control, compartmentalise it, and aggravate the already complicated problems of collaboration between control institutions.

One proof of that is the transfer in 2000 of the Research and Guidance Directorate from the Central Inspection to the Civil Service Council, in an attempt to remedy the alleged duplication of strategic control between the two institutions. However, to exercise its inspection functions, the Central Inspection does need such a body. In practice, it relied on its IT Department, created in 1996, to collect the information necessary for the exercise of its inspection and strategic functions, which are, and for good reason, guaranteed by law. Indeed, the Central Inspection is the control institution that is most in contact with the administrations, whose activity it controls in all areas. To deprive the Central Inspection of this strategic function as well as of the means necessary for the exercise of its functions would be equivalent to depriving the administration of this institution's accumulated experience and its expert recommendations and proposals.

The same applies to the recent reform of June 29, 2021 (also carried out by the Institute of Finance of the Ministry of Finance), which dissociated the Bids Department from the Central Inspection, making it an independent public authority. Although this reform has led to substantial advances in terms of transparency, control, and monitoring of public procurement, it also gave rise to many complications in the institutional control structure by the adding not one, but two new independent administrations: the Independent Public Authority for Public Procurement and the Independent Administrative Authority called "Objections Commission." This additional complication of the multi-layered administrative control of the administration's financial activity (as explained above) paves the way for even more contradictions and mutual obstacles between the various control institutions, including the new administrations created, the Finances Inspectorate-General, the Court of Audit, and the Ministry of Finance (among others), not to mention the disciplinary or even judicial control authorities (Higher Disciplinary Council and State Council). However, this could all have been avoided, without prejudice to the significant reform advances, by maintaining the public procurement function within the Central Inspection and establishing within the Central Inspection, in conjunction with other administrations, the mechanisms necessary to ensure streamlined controls. Such mechanisms should ideally have existed before the imminent separation of 2022, and they could have prevented many conflicts.

The same criticisms pertaining to the creation of independent public procurement authorities also apply to the creation of other independent control authorities or even sectoral regulatory authorities, in line with a trend imported from abroad in the early 2000s. This phenomenon is likely to accelerate today under international pressure, particularly if the political and confessional obstacles to the creation of such authorities are removed (see Part 3 below on sectoral regulatory authorities).

3- The Streamlining of Control through Sharing, Harmonisation, Protection, and Transparency

Rather than streamlining control by reconsidering, revoking, and breaking up the complementary and necessary powers of central institutions, or by redistributing or transferring them to other competing institutions, whether old or new, priority should be given to reform the administration's control by consolidating various aspects (regulatory or strategic, executive and inspectoral) of the control of administrative processes in each of these institutions. In this sense, control can be streamlined not by reconsidering institutional powers, but by enhancing the conditions under which they are exercised by the different institutions. Sharing, harmonisation, protection, and transparency could be the principles that are likely to lead to the streamlining of the administration's control, the unburdening of various control institutions, and the removal of both reciprocal and external obstacles to their control.

- **Sharing**

This refers to sharing the information necessary for the exercise of various aspects of control of administrative processes. Sharing information requires first the collection of such information from various administrations in a single database accessible by all the control authorities strictly for the exercise of control functions. The use of digital technologies is therefore necessary, and several reform initiatives have been carried out with a view to digitising the Lebanese public administration. So far, all of these attempts have ended in failure. Similar to the confusion and the hesitation in the attempts and projects to streamline strategic control within the public administration, and as admitted by OMSAR in its latest Digital Transformation Strategy (2018), digital reform has been and remains the victim of fragmentation, outsourcing, compartmentalisation, and lack of harmonisation.

Political authorities seem to be reluctant about digital reform. This is evident in the conflict between the Presidency of the Council of Ministers and the Central Inspection on the collection of data necessary for the exercise of the Central Inspection's functions, despite the fact that the latter has proven its capacity to manage the IMPACT digital platform during the health crisis and during the implementation of the DAEM programme. This digital revolution could be salutary and could potentially help identify and promptly remove many of the obstacles previously reported to the control of administrative processes (failure in communicating work plans, internal inspection reports, civil servant files, and administrative or financial accounts, all of which are shortcomings frequently reported by all relevant institutions).

This platform could also contribute to the development, by various supervisory authorities, of control strategies based on a risk assessment, made possible by the exhaustiveness of the information and the analytical capacities available on the platform. Its creation should

therefore be planned, and the administrations should be required to contribute to it, failing which they shall be subject to disciplinary action. The establishment of this digital platform should not, however, be entrusted to a single control administration. For it to be usable by all control authorities, its design, organisation, criteria, markers, indicators, and more generally its content should be the result of collaboration between the different institutions who shall be called upon to input the indicators necessary for the exercise of their control on the platform. But since it is a unified platform, its management would be entrusted to a single institution, the one most likely to be able to ensure that the concerned administrations regularly submit information on the platform.

- **Harmonisation**

This refers to harmonising the different control activities, with the aim of avoiding overlaps, unburdening control institutions, and reducing their workload. This harmonisation should take place at three levels, the first being the establishment of the different control programmes. For example, the harmonisation between the establishment of the Finances Inspectorate-General control programme and that of the administrative control exercised by the Court of Audit would allow for a sharing of tasks likely to relieve the Finances Inspectorate-General and enable the Court of Audit to better perform its control duties. The second level is the execution of control functions and harmonisation through the sharing of control results. The results of the inspections undertaken by the Central Inspection, or the disciplinary sanctions imposed by the Higher Disciplinary Council, easily accessible through the digital platform, could for example constitute a main criterion for the Civil Service Council in the process of evaluating a civil servant. The third level is related to the harmonisation of the strategic functions of the control bodies, particularly the harmonised production of their annual or periodic reports, recommendations, and proposed reforms of laws and regulations. This harmonisation will not require the creation of any new ministry, agency, or independent authority. This harmonisation could be guaranteed simply by adding a provision to the laws or regulations currently in force on the need to hold a conference bringing together the presidents of these institutions and to form collaboration units between them. In addition, this would not place these institutions or the process of their harmonisation under the mandate of a minister, the President of the Council of Ministers, or any other authority which would likely undermine their independence.

- **Protection**

This refers to the protection of the independence of control institutions, by consolidating their non-submission to any hierarchical authority, including that of the President of the Council of Ministers, who cannot therefore issue mandatory circulars for them to abide by or make a binding interpretation of their statutes, as well as by reinforcing the functional independence of their leaders. Similarly, the authority of control institutions could be protected against obstacles thrown in their path to undermine them and prevent the exercise of their functions, not only through disciplinary action against civil servants, but also through legal and penal responsibility of the civil servant and the minister (Part 2, Chapter 2).

- **Transparency**

The creation of a digital database intended for internal control and piloted by the internal control institution to which it will be entrusted will allow the strict extraction and the online publication of information which, under the Law of February 20, 2017 on the Right to Access Information, should be accessible to the general public. This is likely to solve several problems arising from material difficulties, delays, obstacles, and shortcomings of the administration when it comes to applying the said law. The digitisation and centralisation of data, in conjunction with the National Anti-corruption Commission, created under the Law of May 8, 2020, and to which the abovementioned 2017 law entrusts the processing of requests for access to information addressed to the various administrations, will make it possible to overcome the resistance of these administrations when it comes to the communication of documents that are not accessible to the general public, but which can be viewed by interested parties, and which would be available in the database of the central control institution.

By streamlining control, the last pretexts for excluding certain major administrations or authorities from control are nullified.

III- Summary of Recommended Reforms for the Control of the Lebanese Public Administration

A- Main Suggestions for Reforming the Control of Civil Servants

- Set a precise legislative definition and list of disciplinary misconducts and sanctions. The list of punishable misconducts will be limitative for the hierarchical superior and non-exhaustive for the control institutions.

- Proceed with the reform of the remonstrance procedure mentioned in Article 14 of the for Civil Servants Statute by transforming the obligation of obedience to the hierarchical superior into an obligation of disobedience in case the hierarchical order is illegal and with the obligation of informing the Central Inspection of the disobedience and the reasons behind it.

- Centralise the power to impose disciplinary sanctions in the hands of a Higher Disciplinary Council, affiliated with the Civil Service Council.

- Revoke the Central Inspection Board's power to impose disciplinary sanctions.

- Maintain limited power to impose disciplinary sanctions in the hands of hierarchical superiors and Central Inspection inspectors.

- Reconsider the advisability of disciplinary action by establishing an obligation:

- For the Court of Audit to refer directly to the Higher Disciplinary Council any civil servant it convicted during its judicial control.

- For the Central Inspection Board and all hierarchical authorities to bring before the Higher Disciplinary Council any civil servant subject to criminal proceedings or convictions related to the performance of their duties.

- For all hierarchical and supervisory authorities to bring before the Higher Disciplinary Council any civil servant who has committed a violation listed as such by law, depending on the severity of the misconduct.

- Recognise the Higher Disciplinary Council's power to refer to judicial authorities any civil servant whose misconduct is likely to constitute an offense or a crime punishable by law.

- Broaden the membership of the Central Inspection Board, modify the quorum required for decision-making by the Board, and establish a disciplinary prosecutorial procedure for unjustified absenteeism.

B- Main Suggestions for Reforming the Control of Administrative Processes

- Maintain the centralised control over administrative processes in the hands of the institutions to which it has been entrusted.

- Reactivate and consolidate the internal hierarchical control power of administrative authorities, under the supervision of the Central Inspection, by adding to the provisions of Articles 7 and 8 of the Law on the Organisation of Public Administrations a specific obligation for the hierarchical authorities to comply with the Central Inspection's demands to execute their internal inspection legal obligations, according to the conditions specified by the Central Inspection, failing which they would be subject to disciplinary action before the Higher Disciplinary Council.

- Avoid the streamlining of the control of administrative processes by separating the executive, regulatory, and strategic aspects of control – all three of which are necessary and complementary – or by reconsidering controls that have proven their effectiveness (a *priori* control by the Court of Audit, annual programme of the Central Inspection).

- Avoid the aggravation of the fragmentation of administrative control caused by the creation of new control authorities and by the outsourcing of certain aspects of this control to old or new ad hoc authorities.

- Streamline the control of administrative processes by sharing data through:
  - The establishment by law of a unified digital platform, bringing together the data necessary for all controls, and whose indicators are designed jointly by the various control institutions.
  - The establishment of an obligation for the various administrations to input information in the digital database, in accordance with the indicators decided by the control institutions, failing which they would be subject to disciplinary action before the Higher Disciplinary Council.
- Streamline the control of administrative processes through the harmonisation of controls and the collaboration of the control institutions via:
  - The establishment of a steering committee comprising the presidents of control authorities.
  - The establishment of cooperation units in potentially redundant areas of control (i.e. financial control of the Central Inspection and administrative control of the Court of Audit).
  - The legal obligation to cooperate at three levels: the design of control schedules, the sharing of control results, and the exercise of strategic functions (reports and reform suggestions).
- Streamline control by protecting the independence and authority of control institutions through:
  - Ensuring the non-submission of control institutions to any hierarchical power, including the President of the Council of Ministers, and the protection of the functional independence of their directors.
  - Ensuring their freedom to interpret the legal provisions under which they operate.
  - Recognising the binding nature of the decisions made by the Court of Audit within the framework of its *a priori* control, including to the Council of Ministers.
  - Reinforcing the disciplinary and criminal responsibility of civil servants and ministers.
  - Subjecting the administrations excluded by law to the control of the central institutions, in particular those that manage substantial public funds.
- Partially use the digital control platform to offer a database, accessible free of charge and online; access to this database shall be guaranteed by the Law on the Right to Access Information (2017).
- Organise, in conjunction with the National Anti-corruption Commission (2020), the procedure to communicate documents that are not accessible to the general public but which can be viewed by interested parties, in accordance with the 2017 law.

Chapter 2

The Need to Hold Administrators Personally Liable

For a comprehensive and effective reform of the administration, it is not enough to focus on the internal dynamics regarding the control of civil servants and administrative processes. An additional type of reform is necessary, which goes beyond reforming the administration in the narrow sense to involve external control mechanisms. This external control should always be at the service of the main beneficiary of administrative processes – that is, citizens or, essentially, the administered or the service recipient. Thus, in addition to the direct control guaranteed by the proposed reinforcement of the transparency of administrative processes (by the database piloted in central control institutions and linked to the National Anti-Corruption Commission), citizens have two tools at their disposal, or rather two ways to control the administration meant to serve them.

The first tool is the political control of the administration entrusted, under the Lebanese parliamentary regime, to the national representative body, i.e. the Chamber of Deputies, which enjoys several means of political control to this effect set forth in the Lebanese Constitution (political responsibility processes). Sadly, however, parliamentary control of the executive branch and the administration is plagued by the same paralysis and ineffectiveness mentioned earlier. A reform of this control requires a reform of the Lebanese constitutional parliamentary regime, which far exceeds the scope of this study. Therefore, we will only point out that such a reform of political control over the administration will benefit from the proposed reform of administrative control, since effective parliamentary control of the administration can only be achieved through close collaboration with all central control institutions reinforced in their respective functions.

The second tool is judicial control of the administration, exercised by the judiciary and in the name of the Lebanese people. This power should be first exercised by the administrative judiciary through the numerous means of litigation it offers to citizens, including those related to the excess of power, full jurisdiction (including responsibility), interpretation, assessment of legality, and repression; second, the judicial justice can contribute to this process through the personal criminal or civil responsibility of the administrator in its broad sense (both civil servants and ministers).

Nevertheless, as in the case of political control, judicial control of the administration faces serious obstacles related to the independence of the judiciary, which is questioned by the public, as well as its ineffectiveness, particularly in the area of administrative justice. Since the reform of the justice system also falls outside the scope of this study, we will merely highlight the two draft laws on the independence of the administrative and judicial justice currently being deliberated by parliamentary commissions, prepared by the Legal Agenda. Once adopted, these laws are likely to guarantee a more independent and effective justice system.

I- Obstacles to the Penal Responsibility of the Administrator

Even if the reform of judicial and administrative justice and the relevant laws are successful, some obstacles will remain regardless of these legislations. These obstacles could neutralise the expected outcome of the reform, especially in terms of holding personally responsible those through whom the administration operates and who are meant to answer for their violations before the judiciary courts – especially before criminal courts, independently of the administrative responsibility process before an administrative court. Albeit necessary, this administrative responsibility process tends to dilute personal responsibility and bypass the civil responsibility of the administrator, which is lifted by invoking the responsibility of public authorities. By contrast, the criminal responsibility of the administrator is much less affected by invoking the administrative responsibility of the public authority. The obstacles preventing the enforcement of the criminal responsibility of the administrator before judicial authorities primarily concern the chief administrator, i.e. the minister, who enjoys a jurisdictional privilege synonymous in Lebanon to *de facto* immunity, and, in second place, the civil servant who enjoys a high level of functional protection, often allowing him to avoid criminal responsibility.

A- The Minister's Jurisdictional Privilege and de facto Immunity

Invoking the criminal responsibility of the minister, i.e. the chief administrator, has proven to be problematic, due to certain interpretations of Articles 70 and 71 of the Lebanese Constitution: "The Chamber of Deputies has the right to indict the President of the Council of Ministers and Ministers for high treason or for grave breach of their duties. The indictment decision may not be taken except by a two-thirds majority of the members of the entire Chamber. A special law shall determine the conditions of the civil responsibility of the President of the Council of Ministers and the Ministers" and "The indicted Prime Minister or Minister shall be tried by the High Court."

1- Questionable Interpretation of Articles 70 and 71 of the Constitution

Those constitutional provisions, which include classic elements for initiating proceedings against a minister, have been interpreted in Lebanon as having granted the minister a double privilege. First, a privilege shielding him from prosecution, as this power is only given to the Chamber of Deputies by a two-thirds majority of its members; second, a jurisdictional privilege, because the minister in this case shall appear before a special court (the Hight Court), tasked with prosecuting presidents and ministers and comprised of 7 MPs and 8 judges, according to Article 80 of the Constitution.

The issue prompted by the interpretation of the constitutional provisions concern the extent of the prosecution and jurisdictional privileges granted to ministers: a narrow interpretation would limit the scope of these privileges and hold ministers more accountable, while a loose interpretation would conversely strengthen the minister's *de facto* immunity, given that the Hight Court, a highly political special court, was rarely formed, and no official has ever been

referred to it in the country's history, given the obvious difficulties of doing so. Thus, the prevailing practice seems to favour a looser interpretation of prosecution and jurisdictional privileges alike.

- **The Minister's Prosecution Privilege**

Regarding the prosecution privilege granted to ministers, the questionable interpretation explains Article 70 as having exclusively granted the Chamber of Deputies the right to prosecute ministers, with the exclusion of all other prosecution authorities. But this interpretation is not inevitable: a literal interpretation of the constitutional provisions seems to offer Parliament a mere prerogative, without excluding other possible prosecution authorities, unlike the express language of Article 60 regarding the prosecution of the President of the Republic, who "… cannot *be indicted unless by the Chamber of Deputies*…" Still, the interpretation favouring ministerial privilege has prevailed, despite a short-lived interpretation in 1999 by the Court of Cassation recognising the competence of both judicial prosecution authorities and the Chamber of Deputies. This interpretation was quickly overturned by the Court in its Decision No. 7/2000 of October 27, 2000, limiting the power to prosecute to the Chamber of Deputies exclusively, as long as the violations committed fall within the scope of Article 70 of the Constitution.

- **The Scope of the Jurisdictional Privilege**

The scope of the jurisdictional privilege is also subject to another interpretation, favouring near-total ministerial impunity. According to Article 70 of the Constitution, the minister's jurisdictional privilege strictly applies to cases where the minister commits high treason or gross breach of his duties. This rather vague definition of the scope of the jurisdictional privilege raises the question of defining the acts that may be prosecuted before the High Court, particularly the inclusion or exclusion of offences against the Penal Code committed by the minister. The constitutional text, which does not mention offences under the Penal Code among the acts covered by the jurisdictional privilege granted to the minister, should ideally have been interpreted as excluding such acts from its scope. In fact, the text establishes a special court whose jurisdiction should be interpreted in the most restrictive manner, in compliance with the principle of equality and that of the natural judge. However, that has not been the case, since the Chamber of Deputies considered, in Article 42 of the Law on Judicial Procedures before the High Court, that ordinary crimes and offences should also be prosecuted before the High Court, thus expanding the scope of the jurisdictional privilege.

- **Legal Interpretations by the Court of Cassation**

Faced with this legislative and constitutionally questionable provision, the Court of Cassation sought to limit the damage by very slightly limiting the scope of the jurisdictional privilege through the distinction it made in the aforementioned Decision No. 7/2000 between the crimes and offences constituting a breach of the minister's duties, which fall within the jurisdiction of the High Court, and the ordinary crimes and offences covered by ordinary jurisdictions. This distinction is timid and open to criticism because the criteria is based on a distinction between "ordinary" crimes and offences and those "resulting from the political nature of the minister's work and the from the essence of his ministerial duties as defined by the laws and regulations in force," as if the nature and the essence of a minister's work and duties presupposes the commission of crimes and offences! Even if it wished to make such a distinction, the Court could have considered that no crime or offence could stem from the duties entrusted to the minister, which are legal and rightful by definition. This was not the case. The Court considered that what falls within the jurisdiction of ordinary courts are only the crimes and offences incidentally committed "during the course" of exercising ministerial functions, those committed in the minister's private life, or those whose criminal classification is clear and constitute an abuse of power by giving private interest precedence over the public interest, so as to prevent their classification as crimes directly connected to ministerial functions. Crimes and offences related to ministerial functions consequently remain within the exclusive jurisdiction of the High Court.

2- The Result: An All-powerful Minister-Monarch

These interpretations favouring the minister's prosecution and jurisdictional privilege have practically led to recognising the *de facto* penal quasi-impunity of the minister. This lack of penal responsibility also alludes to the equally serious lack of political responsibility, despite processes under the Lebanese Constitution that make it possible. This lack of responsibility is exacerbated by the conditions for the dismissal of ministers, made impossible by the constitutional amendment of September 21, 1990, which stipulates that a dismissal requires a decision by two-thirds of the members of the Council of Ministers.

Enthroned by virtue of Article 66 of the Constitution at the head of his administration, the minister becomes an all-powerful "minister-monarch," irresponsible, untouchable, out of the reach of the Higher Disciplinary Council and the Civil Service Council, since the minister doesn't fall under the legal definition of civil servants. As a result, they also become unattainable by the Central Inspection, which is denied the right to inspect ministers' activities (see above), not revokable by the President of the Republic and the President of the Council of Ministers, uncontrollable by the lethargic Parliament, and protected by the Constitutional Council, which protects his competences (see Part 3 below, Decision No. 8/2020 of November 24, 2020). The minister wields a quasi-absolute power which he could abuse to hinder, delay, and disregard processes, as well as a hierarchal power which he could misuse to force subordinates to obey him, making them as irresponsible as the minister.

B- The Excessive Functional Protection of the Civil Servant

This basically refers to the de facto immunity of the hierarchal superior (the minister), which the latter can extend to all civil servants under him by virtue of Lebanese law through several questionable provisions, primarily the process which we suggested amending in previous parts of this study – that is, the remonstrance mechanism and the confirmation of illegal orders, set forth in Article 14 of the Civil Servants Statute. This article is based on Article 13 of the French Law of September 14, 1941, issued and promulgated in Vichy and signed by Marshal Philippe Pétain. It illustrates quite well the prevailing ideology at the time of its initial inception. Therefore, it also risks exempting the civil servant from his responsibility, especially since Article 373 of the Lebanese Penal Code punishes the civil servants for disobeying the orders of their superiors with up to two years of imprisonment. Similarly to Article 14 of the Civil Servants Statute, Article 62 of the Law on the Court of Audit exempts from sanction any civil servant who obeys, after making a remonstrance, the written order of their hierarchical superior confirming the unlawful order. This article is further confirmed by Article 112 of the Law on Public Accounting. It could certainly be argued that, once the illegal order is confirmed by the hierarchical superior, they themselves bear responsibility for it. However, this obscures the fact that when one moves up the administrative hierarchy, the hierarchical superior is ultimately the minister, who enjoys *de facto* immunity.

This situation is further aggravated by the excessive functional protection granted to civil servants who commit violations in the exercise of their functions by virtue of Article 61 of the Civil Servants Statute. Although recently amended by virtue of the Law of May 8, 2020, this article offers a sort of functional immunity to civil servants, rather than mere protection. Indeed, this article prohibits the prosecution of civil servants, which can only be instituted by the Public Prosecutor upon obtaining the approval of the relevant administration, i.e. ultimately and once again the minister. The 2020 amendment of this article failed to revoke the need for the administration's approval. If the administration refuses to give the approval to prosecute, the article only gives the Public Prosecutor the capacity to refer the matter to the Public Prosecutor at the Court of Cassation (whose independence in Lebanon is questionable) to decide on the matter. The origin of the functional overprotection under Article 61 is as telling as the origin of Article 14 of the Regulations for Civil Servant. This origin is Decision No. 1371 of June 22, 1920, by the French Governor of Lebanon who, undoubtedly wanting to protect the interests of the French administration in Lebanon, prohibited all prosecution of civil servants pending the authorisation of the mandate authority. As for the French Governor himself, he was inspired of course by Article 75 of the Napoleonian Constitution of the Year VIII, which enshrined the personal power of Napoleon Bonaparte and prevented the prosecution of civil servants before the courts pending the authorisation of the Napoleonic State Council. However, 50 years had passed since the repeal of Article 75 of the Constitution of the Year VIII by virtue of a decree by the French National Defence Government on September 19, 1870, in the wake of the declaration of the French Republic, the same republic that the French Governor represented in Lebanon.

II- Alternatives for Reforming the Conditions for Invoking the Penal Responsibility of the Administrator

There are several alternatives for reforming the conditions for invoking the administrator's penal responsibility, whether they are a minister or a civil servant.

A- Alternatives for Reforming the Conditions for Invoking the Personal Responsibility of Ministers

There are several alternatives to circumvent the de *facto* immunity of ministers.

1- Repealing vs. Upholding Prosecution and Jurisdictional Privileges

The most radical option is, purely and simply, repealing the privilege system to enable the minister's penal responsibility. The UK, Ireland, and Germany all offer examples proving that prosecution and jurisdictional privileges are not imperative and that the minister, by virtue of the rule of law and equality, can be prosecuted by the Public Prosecutor and judged and sentenced by the ordinary penal judge like any other person, with some small variations.

However, in most countries, maintaining a certain level of privilege is justified, mainly by the conditions under which the minister exercises his duties, for offences committed in the context of such exercise. The prosecution privilege therefore protects the minister from arbitrary prosecution, especially when it is initiated by citizens, which may undermine the proper exercise of ministerial functions, thereby harming public interest. There is also a certain distrust of prosecution authorities that illegitimately involve political considerations into their judicial processes. As for the jurisdictional privilege, in addition to the traditional mistrust of ordinary courts, it is also justified by the need to have ministers tried by persons who are more familiar with the conditions of the exercise of ministerial functions – that is, either by a political authority or a body at least partly comprised of politicians.

2- Other Possible Options

These somewhat compelling reasons for upholding ministerial privilege should not preclude certain nuances that would ensure greater compliance with the principles of the rule of law. The alternatives we will describe address certain aspects of ministerial privilege.

The first alternative is to amend the privilege of prosecution, either by repealing it altogether or restricting it through a screening system, similarly to France, where prosecutions before the Council of Justice of the Republic, a special court, could be initiated since the 1993 reform by any person harmed due to an offence committed by a minister. The screening system ensures that complaints are considered by a petitions commission before deciding on dismissing or pursuing them.

Another alternative focuses on the jurisdictional privilege, while upholding the prosecution privilege. This amendment to the jurisdictional privilege would purely and simply consist of dismissing the need for a special court, by granting all ordinary courts the power to look into such violations. This is the case in Italy for example. Another option is to tackle the identity, nature, or composition of the competent court to reduce its dependency on political powers and to make the process as close as possible to ordinary one. This is the case in countries that have chosen to entrust such cases to a specific judicial body, excluding all others which would have been usually competent, as in Belgium for example, where similar cases fall under the purview of the Court of Appeals.

3- The Suitable Alternative for Lebanon

Clearly, there are several alternatives to choose from. However, given the practical challenges to invoking the minister's political responsibility, their quasi-irrevocability, as well as statutory guarantees and functional authority bestowed upon the minister by the Constitution and relevant laws in Lebanon, and taking into account the state of affairs in a country marred by corruption, it is necessary to drastically revoke all privileges preventing any invocation of the minister's personal penal responsibility. Therefore, the preferred option is to revoke all prosecution and jurisdictional privileges granted to ministers.

This revocation could be achieved simply by repealing Articles 70 and 71 of the Constitution or at least by amending them in such a way that violations under the Penal Code are clearly excluded from these privileges.

However, such a reform would require the amendment of the Lebanese Constitution, which is currently very difficult to achieve. But this could be possibly avoided, since the Constitution does not indicate that Penal Code violations fall within the competence of the High Court, as previously mentioned. This reform could also be implemented by amending the Law on Judicial Procedure before the High Court to remove any reference (especially in Article 42) to penal violations and to provide clear definitions and penalties for crimes of high treason and grave breach of duties committed by ministers, which would not concern to penal violations.

If such reforms fail, the last line of defence, albeit unreliable, is the Court of Cassation's interpretation of the law, which goes against the de facto immunity of ministers. This interpretation could be bolstered by distinguishing between acts directly related to the exercise of ministerial functions and those that are unrelated to such exercise, with the aim of including all offences in the latter category.

B- Alternatives for Reforming the Conditions for Invoking the Personal Responsibility of Civil Servants

According to the rationale of the Law of May 8, 2020, amending Article 61 of the Civil Servants Statute on the excessive functional protection of civil servants, the protection granted by this article to civil servants is only offered in very few countries, and it allows civil servants to evade prosecution and obstruct justice. Given the origin and objectives of such protection, it is only logical to abolish it. A step in this direction was taken by virtue of Article 4 of Law No. 75 of May 8, 2020 on the fight against corruption in the public sector and the creation of the National Anti-Corruption Commission, which abolishes the principle of authorisation to prosecute when the offence is related to corruption and the prosecution process is initiated by the National Anti-Corruption Commission. This is an important step forward, but it is not enough, as the requirement for administrative authorisation was only lifted for certain types of offences and only when the prosecution is initiated by the National Anti-Corruption Commission. Moreover, a law issued on the same day amended Article 61 of the Regulations for Civil Servants, while maintaining the principle of prior authorisation. However, the abolition of this article should not lead to the abandonment of the protection of civil servants against any arbitrary actions to which they may be subjected. The immunity offered by Article 61 should be replaced by a true functional protection – that is a legal protection guaranteeing to defend the interests of the civil servant being prosecuted before a court, provided that they are being prosecuted for reasons other than personal misconduct.

The lifting of this functional overprotection or immunity and its replacement by a true form of protection also implies the abolition of any provision that hinders the prosecution and conviction of civil servants for their execution of illegal orders issued by their hierarchical superior.

III- Summary of Recommendations on the Conditions for Invoking of the Administrator's Personal Responsibility

A- Regarding the Minister's Responsibility

- The abolition of Articles 70 and 71 of the Constitution.
- If Articles 70 and 71 of the Constitution are not abolished, they should be amended in such a way as to expressly exclude offences under the Penal Code from the jurisdiction of the High Court in the case of ministers.
- If it is not possible to abolish or amend the abovementioned articles of the Constitution, the Law on the Judicial Procedure before the High Court should be amended to remove any reference (especially in Article 42) to penal violations and to provide clear definitions and penalties for crimes of high treason and grave breach of duties committed by ministers, which would not concern penal violations.

- It is preferable to develop the interpretation by the Court of Cassation concerning the distinction between acts directly related to the exercise of ministerial functions and those that are unrelated to such exercise, with the aim of including all offences in the latter category.

B- Regarding the Civil Servant's Responsibility

- The abolition of Article 61 of the Civil Servants Statute, which makes criminal prosecution contingent on the authorisation of the administration (abolition of functional immunity).

- The replacement of functional immunity by a functional protection guaranteeing to defend the interests of the civil servant being prosecuted before a court, provided that they are being prosecuted for reasons other than personal misconduct.

- In addition to the proposed amendment of Article 14 (Remonstrance and Confirmation Procedure) of the Civil Servants Statute, Article 112 of the Public Accounting Law and Article 62 of the Law on the Court of Audit should be amended to remove the exemption from punishment granted to civil servants guilty of an offence, which is justified by their obedience, after remonstrance, to the written order of their hierarchical superior.

Part 3

Streamlining Administrative Structures

Shehrazade El-Hajjar

The structure and organisation of any national administration are designed and adopted to meet several objectives: efficiency, harmonisation of applicable rules and procedures, improvement of services, cost reduction, accessibility by citizens, etc. In Lebanon, these different objectives do not seem to constitute the main rationale behind the structures and powers of the different administrations and the relationships established between them. The objectives of process efficiency and accessibility of services often seem to take a back seat compared to the need to guarantee the hold of political powers (namely, ministers) over the administration. This section will explain how the polarisation of the administration and the monopolisation of power by ministers are both the result of legislation that reinforces their prerogatives, particularly through the hierarchy or the control they are required to exercise over other authorities, and of practice, which shows a tendency for certain authorities to relinquish their decision-making power to the minister. This power of the minister is expressed both within the framework of their ministry and with respect to other administrations that are supposedly independent.

Chapter 1

Central Administration

I- A Polarised, Disorganised, and Uncoordinated Administration

A- An Arbitrary Establishment of Ministries and Departments

The main legislation relating to the organisation of the central administration was passed in 1959. This mainly refers to a Decree-law (No. 111 of 12/06/1959) adopted by the Karami government. This decree stipulates that ministries, directorates general, departments, and authorities could only be established, modified, and abolished by virtue of a law. This solution was supposed to bring clarity and transparency to the administration. However, it has proven to be somewhat detrimental to the administration's flexibility and the possibility to modify the mandates and competencies of ministries in line with evolving technical or social needs.

Moreover, many ministries have been created or organised by virtue of decrees or by decree-laws in the context of delegated legislation. This raises a question related to the amendment of the competencies of ministries and their different departments and services: Can this be done by simple decree, contrary to what is stipulated in the decree-law, in line with the principle that decisions made by virtue of a certain procedure can only be amended by following the same procedure?

The establishment of ministries and their powers has also led to some overlaps in competencies of different ministries and departments. This is particularly due to the adoption of broad formulas with regard to the competencies of each ministry. This overlap can lead to several ministries having jurisdiction over the same issue, without any coordination mechanisms being put in place. For example, the issue of food safety is the responsibility of the Ministries of Health, Agriculture, Industry and Economy and Trade. The legislator only occasionally provides for a coordination mechanism or institution between the different ministries involved, enabling them to participate in the elaboration of a concerted decision, even if it is ultimately taken by only one minister. This is the case, for example, for quarry permits, which are issued by the Minister of Environment upon the proposal of a National Quarry Council. The latter comprises representatives of the Directorate-General of Urban Planning (affiliated with the Ministry of Public Works), the Directorate-General of Local Administrations and Councils (affiliated with the Ministry of Interior and Municipalities), the Ministry of Energy and Water, the Ministry of Public Health, the Ministry of National Defence, the Directorate-General of Public Finance (affiliated with the Ministry of Finance), the Directorate of Rural Development (affiliated with the Ministry of Agriculture), as well as the Directorate-General of Antiquities, affiliated with the Ministry of Culture (Decree No. 8803 of 04/10/2002 on the Organisation of Quarries). Even

when they are mentioned in laws, such instances are rarely activated. Incidentally, this was the case, for example, of the National Council for Pricing Policy, provided for by a 1974 decree, but which was not formed until May 2022.

B- The All-powerful Minister: The Disregard of the Administrative Hierarchy

The Decree-law of 1959 also provides for the powers of the director-general. The latter is supposed to act as the direct superior, under the supervision of the minister, for all services and civil servants under their jurisdiction. The decree gives the director-general many powers and responsibilities. They assume the overall responsibility for the day-to-day operation of the administration. The director-general is also responsible for reviewing draft decrees and decisions submitted to the minister and drafting reports (Article 7 of Decree-Law No. 111), in which they are supposed to offer drawn on their expertise and their in-depth knowledge of the cases at hand. The director-general is indeed a symbol of continuity, as opposed to ministers who come and go more or less regularly.

However, in practice, ministers take a close interest in all the decisions made within the ministry. Interviews with members of the administration have confirmed this tendency, which has developed in particular through the appointment of civil servants directly by the minister through *taklif* (direct appointment). Civil servants appointed in this way, grateful to their benefactors, have developed the habit of referring all decisions to the minister, rather than taking the decisions themselves. This practice is not necessarily limited to civil servants appointed by the minister, but it has become widespread as more and more civil servants practice it to avoid liability. The minister intervenes in all matters, in blatant disregard of the hierarchy, thereby politicising all decisions and lengthening the duration of procedures. Given that they are legally untouchable, as explained above, the ministers' interventions at all levels only leads to more illegal practices.

C- Case Study: Security Administrations. Typical Example of Overlaps and Lack of Coordination

1- Multiplication of Administrations Competent in the Same Areas

Lebanese security administrations are also problematic in terms of the distribution of competencies and mandates, stipulated by legislations with broad provisions that do not clearly assign an exclusive function to any particular administration. This is the case of four administrations that are simultaneously competent in the fight against and prevention of terrorist acts.

Administration	Army	Internal Security Forces	General Security	Directorate-General of State Security
Primary Mandate		Maintaining public order and fighting crime . . . . . . Protecting property and people . . . . . . Executing judicial police missions . . . . . . Executing court decisions . . . . . . Guarding prisons . . . . . . Supporting public administrations in the execution of their mandates . . . . . . Guarding public administrations and institutions	Gathering political, economic, and social information for the government, monitoring media outlets, managing relations with foreigners	Gathering information related to the internal security of the state . . . . . . Monitoring foreigners and citizens' relations with foreigners in areas related to state security . . . . . . Combating espionage . . . . . . Conducting preliminary investigations in acts that affect the internal or external security of the State . . . . . . Coordinating with other security administrations

Administration	Army	Internal Security Forces	General Security	Directorate-General of State Security
Basis of its Intervention in the Fight Against Terrorism	Specifically, the Directorate of Military Intelligence: Gathering strategic information related to military plans and operations and implementing the necessary measures to combat espionage and sabotage operations targeting the security of the armed forces	1. . . . . Counterterrorism and Major Crimes Department: Monitoring and punishing crimes targeting State security, including damage to the prestige of the State and national morale, provocation of subversion and terrorism, as well as crimes against national unity 2. . . . . Intelligence Service: Gathering information related to the security and safety of buildings and barracks	Specifically, the Investigation Bureau: Gathering any information related to Lebanon Combating espionage and any acts that would undermine security Monitoring and tracking sabotage cases Fighting against secret associations Monitoring the movements of foreigners and their activities	Gathering information related to the internal security of the State Monitoring foreigners and investigating their activities that may affect State security Monitoring citizens' relations with foreigners in areas related to State security

In this context, and despite the existence of one administration that should be primarily competent in this area (namely, the Counterterrorism Department), at least four administrations are deemed competent to intervene by virtue of texts formulated in such a way as to justify their overlapping and potentially contradictory interventions. The wording of these texts is sometimes identical with regard to two different administrations. For instance, the monitoring of foreigners is recognised as falling within the scope of competence of both the General Security and the Directorate-General of State Security.

However, there are also many cases where the intervention of a security administration cannot be linked to a specific text. This is particularly true with regard to the intervention of the Army in matters purely related to internal security, such as the fight against drug trafficking networks. Such widespread interventions by the Army are often justified by the fact that the Army has more human and material resources to intervene.

2- Inefficiency Aggravated by the Inertia of Coordination Bodies

These overlapping competencies could have been resolved by establishing coordination bodies between the different administrations in order to avoid conflicts or the intervention of several bodies in the same matter. Such bodies are in fact provided for. On the one hand, there is the Higher Defence Council, a body composed of both ministries and civil servants representing security administrations. This Council is provided for by the National Defence Code to implement the defence policy determined by the Council of Ministers.

The second coordination body is the Central Internal Security Council. It is composed of the Minister of the Interior, the Public Prosecutor at the Court of Cassation, the Governor of the City of Beirut, the Commander-in-Chief of the Army (or their representative), the Director-General of the Internal Security Forces (ISF), and a commanding officer of the rank of Lieutenant Colonel (*muqaddam*) at least (article 23 of Law No. 06/09/1990 on the Organisation of the Internal Security Forces). This body is responsible for discussing security issues and the security situation, ensuring the exchange of information between the administrations represented on the Council, i.e. the army and the ISF, and coordinating their activities (Article 25 of Law No. 06/09/1990 on the Organisation of the Internal Security Forces). However, in practice, this Council, which convenes once a month (or at the invitation of the Minister of Interior if necessary), is only a façade and does not really exercise its coordination functions.

II- Proposed Alternatives for the Organisation of the Central Administration

A- Establishment of Ministries

Since the adoption of the 1958 Constitution in France, ministries have been established by virtue of decrees, and their organisation into directorates-general, directorates, and departments is determined by virtue of a Council of State decree (Article 2 of Decree No. 87-389 of 15/06/1987 on the Organisation of Central Administration Departments). This solution guarantees the separation of powers, which particularly prevents the intervention of the legislative branch in the management of the executive branch. This flexibility ensures that any new government can "make readjustments, redraw boundaries, and make redefinitions in light of current circumstances» (Chevallier, 1999). These modifications take into account practical considerations: to ensure the good management of public affairs by ensuring a certain

specialisation of ministries. The question that arises is what degree of specialisation to adopt, the choice being between «the fragmentation and atomisation of ministries multiplying inter-ministerial deliberations, whereas the existence of larger ministries would make it possible to internalise, at least in part, this coordination.»

Despite the advantages offered by this solution, particularly in terms of organisational flexibility and ease of modernisation of practices, the French system has drawn some criticism. Some consider that the ministerial structure should be more stable, in order to meet efficiency considerations rather than political ones. For example, it has been suggested that «the number of ministries should be limited and the connection of central services should be stabilised» (Doro, 2001).

In Tunisia, the Head of Government is also responsible for the establishment, modification, and abolition of ministries and State secretariats, pursuant to Articles 89 and 92 of the Constitution of January 27, 2014.

B- Ministry Structure

In France, the organisation of ministries includes a cabinet or office that reports directly to the minister, as well as directorates that organise offices into a very strongly hierarchical structure.

1. The cabinet assists the minister in the exercise of their political prerogatives. It participates in government decision-making by assisting or representing the minister at inter-ministerial meetings. However, its main function is administrative. On the one hand, it supervises central administrations (communicating ministerial directives and ensuring their proper execution). On the other hand, it ensures the coordination of all the ministry's services.

2. Directorates are the main internal divisions of the ministry. Ministers have significant freedom to organise their administration.

3. The establishment of a General Secretariats within the ministry is not mandatory but is recommended, especially since 2004. Since 2014 (Decree No. 2014-834 of 24/07/2014 on the General Secretariats of Ministries), General Secretariats have a general mandate of coordinating services and modernising the ministry.

   In addition, some reforms have led to the appointment of «pooled» secretaries-general, responsible for ensuring coordination between different ministries, such as the General Secretariat of the Ministries of Economy and Finance (Decree No. 2010-444 of 30/04/2010), responsible for coordination between the Minister of Economy, Industry, and Employment and the Minister of Budget, Public Accounts and State Reform.

III- Recommended Reforms for the Organisation of the Central Administration

- Preparing a complete and accurate inventory of all directorates and offices. This inventory would allow for the identification and management of duplicates and overlaps, as well as the identification of the most competent administration to which to assign each task.

- Creating or revitalising coordination bodies in the event that no single administration should be competent. A recommended option would be the French solution of creating a general secretariat responsible for coordination between ministries that are regularly called upon to intervene jointly.

- Allowing the issuance and modification of decrees by the executive, rather than the legislative branch. This easing of organisational conditions should however be accompanied by a legislative framework.

- It would also be necessary in this context to revive the role of the strategic control institutions of the Lebanese public administration (see Part 2, Chapter 1).

Chapter 2

Territorial Decentralisation

The provisions of the Taif Agreement on administrative decentralisation summarise the organisational situation of the Lebanese administration: «The State of Lebanon shall be a single and united State with a strong central authority.» This emphasis on a strong central administration is indeed representative of the current state of the Lebanese administration. Although a certain degree of devolution and territorial and functional decentralisation has been put in place, the distribution of powers and, above all, the means of control imposed by text and practice reinforce the power of the central administration and, through it, that of the ministers.

The Taif Agreement has called, alongside the consolidation of the central State, for strengthening the powers of the devolved authorities, by reinforcing the prerogatives of the governor (*muhafiz*) and the *qaimaqam* and ensuring the representation of various State administrations in the regions through «extensive administrative decentralisation.» However, the various measures introduced under the slogan of «administrative decentralisation» do not all aim to achieve decentralisation in the strict sense of this form of State organisation, but rather tend to reinforce devolution by insisting on the strength of the central power and its devolved authorities.

However, devolution is part of the rationale of hierarchy rather than autonomy, with all that this entails in terms of submission to the ultimate authority of the minister. This independence of decentralised authorities is rather relative, both at the level of regional decentralisation and functional decentralisation.

I- A Territorial Administration Strongly Dependent on Central Power

While the provisions of the Taif Agreement called for decentralisation at the district level, the only decentralised authorities in place today are the municipalities, of which there are over 1,000. The regulation of the creation of municipal councils (MCs) and municipal unions, the election of members and presidents of MCs, as well as the competencies of the various authorities and their controls can all be traced back to a decree-law adopted in 1977 (Decree-Law No. 118 of 30/06/1977). The modifications (by virtue of Law No. 665 of 29/12/1997, Law of 25/04/1990, and Law No. 316 of 20/04/2001) of this Decree-Law have not fundamentally altered the institutional relationships established in 1977.

The main problem with the current municipal regime is the supervisory control exercised over municipalities by three representatives of the central State: the Minister of Interior (mainly by Article 61 of the Law), the governor (mainly by Article 62 of the Law) and the *qaimaqam* (mainly by Article 60 of the Law). These authorities are responsible for ratifying many decisions taken by municipal authorities, which not only affects the free administration of the latter, but also complicates and lengthens the decision-making process, as the supervisory authorities have a period of one month to grant their ratification before it is presumed (Article 63 of the Law). This period before the decision enters into force is even longer when the decision in question is subject to prior control by the Court of Audit, since the one-month period for the supervisory authorities' approval starts from the date on which they are informed of the Court of Audits' approval.

1- Administrative Supervision Excessively Limiting Financial Autonomy

The 1977 Decree-law determines which decision are subject to control by the hierarchy, as well as which supervisory authority has the competence to review each type of decision. An examination of the articles of the law related to this type of control reveals that the financial dimension of the decision in question is a fundamental criterion in its review and for determining the rank of the authority responsible for it. Acts with little impact on the finances of the municipality are not subject to control, and the more expenses they entail, the higher the rank of the supervisory authority.

Type of Decision	Financial Value	Supervisory Authority
Budgets, fees, and financial assistance to local associations	Less than LBP 10 million per year	N/A
	More than LBP 10 million per year	Qaimaqam
Acquisition of real estate	Less than LBP 10 million per year	Qaimaqam
	More than LBP 10 million per year	Governor
Lease agreements	Less than LBP 20 million per year	N/A
	More than LBP 20 million per year	Qaimaqam
	More than LBP 40 million per year	Governor
Contracts for supplies, services, and works	More than LBP 30 million and less than LBP 80 million	Qaimaqam
	More than LBP 80 million	Governor
The execution of public works	More than LBP 20 million and less than LBP 50 million	Qaimaqam
	More than LBP 50 million	Governor

2- State Management of the «Independent Municipal Fund»

In addition to the involvement of the supervisory authority in almost all financial decisions, the finances of municipal councils are also affected by the control of central authorities over the «Independent Municipal Fund.» This Fund, created by the Decree-Law of 1977, organised by a decree issued in 1979 (Decree No. 1917 of 06/04/1979), and attached to the Ministry of Interior (Article 87 of the Decree-Law), was established to collect and distribute to all municipalities and municipal unions the revenues collected by the State on their behalf. Several taxes are collected on behalf of the municipalities: 10% on built property, 15% on corporate income, 10% on money transfers and 3.5% on imports. This financial dependence on central authorities is all the more problematic, as the latter have «the habit of withholding Fund transfers under pretexts such as the economic situation, the weakness of municipalities, and the fear of the misuse of public funds» (Abouassi, 2017). Between 1995 and 2013, for example, the 10% tax on mobile phone bills was not transferred to municipalities by the government. The government has also developed the habit of subtracting revenue from the Fund to finance contracts with private companies.

II- Proposed Alternatives for Territorial Administration

With regard to territorial decentralisation, the recent Tunisian experience allows us to examine a regulation that replicates traditional solutions of advanced decentralisation, while revealing, after less than 8 years, the problems posed by the implementation of such solutions in a context similar to Lebanon.

A- Autonomy of Local Authorities

The 2014 Tunisian Constitution offers a great deal of autonomy from the central State. Article 134 of the Constitution asserts two major principles already adopted in France with respect to territorial decentralisation: the principle of subsidiarity and the principle of transfer of corresponding resources. The former means that in matters of shared and delegated powers, the central authority must assign powers to the local authority closest to the citizen, provided that it is capable of exercising them. The latter is related to the third paragraph of Article 135, which states that «any creation or delegation of powers by the central authority to local authorities shall be accompanied by the allocation of appropriate resources.» This means that the resources delegated by the central authority must be proportional to the powers delegated or shared and must be sufficient to finance them.

B- Control by the Central Authority

The truly new aspects brought forward by the 2014 Constitution in terms of decentralisation can be found in Article 138, which constitutes a break with the previous manner of managing local affairs, by limiting the *a posteriori* control exercised over local authorities, with regard to the legality of their decisions. As such, autonomy became the rule, and supervision the exception. This change was crucial, as previously governors exercised extremely close control over local authorities: in fact, they exercised legal control as well as control related to the opportunity of the decisions taken (contrôle d'opportunité). The actual control is exercised by the administrative judge at the request of the State representative.

C- Establishment of Entities to Facilitate Decentralisation

The 2014 Constitution established two new entities to facilitate decentralisation: the Higher Council for Local Authorities and the Higher Authority for Local Finance. The former has a constitutional basis (Article 141) and plays an advisory role by examining issues related to development and equity between regions and issuing opinions on draft laws related to local planning, budget, and finance. The Higher Authority was created by virtue of Article 61 of the Local Authorities Code and is placed under the supervision of the Higher Council. It is responsible for «examining all issues relating to local finance, its consolidation, modernisation, and proper management in accordance with the rules of good governance, in order to promote the financial autonomy of local authorities and reduce disparities between them.»
Finally, there are auxiliary entities whose purpose is to assist local authorities. The Loans

and Support Fund for Local Authorities (CPSCL) is responsible for contributing to the development of local finance, and the General Authority for Exploring and Accompanying the Decentralisation Process (IPAPD) is responsible for carrying out the necessary studies in order to develop a national approach to the implementation of decentralisation and the support of local authorities. The Local Authorities Code has also provided for the creation of regional administrative courts to manage the control of local authorities.

III- Recommended Reforms to Territorial Administration

The reform of the territorial decentralisation regime is not a new topic. Several proposals and draft laws have been presented in this regard since the Taif Agreement. However, it is constantly postponed on the grounds that it is a fundamentally political issue and that such a reform would result in a disguised federalisation that goes against the constitutionally guaranteed unity of the national territory.

It is nonetheless necessary. Such a reform should respect a number of principles:

- The size of the Lebanese territory does not necessarily require the establishment of a second layer of decentralisation in the form of regions with legal personality and administrative and financial independence in addition to the municipalities.

- On the other hand, the role of the devolved authorities should be strengthened vis-à-vis the central authorities. They must have the material and human resources needed to support the municipalities.

- Adopting the major principles of territorial decentralisation, namely those of subsidiarity and the corresponding transfer of funds.

- Designating a single supervisory authority. Control should be exercised by the qaimaqam or governor, rather than concentrating all supervision in the hands of the Ministry of Interior and Municipalities, which would not be able to control the decisions of all municipalities.

- Abolishing financial supervision. Administrative control and financial control should be more clearly distinguished, and the latter should be exercised by authorities competent in the field.

- Abolishing administrative supervision and transforming it into administrative control of legality. The supervisory authority would no longer decide on the legality of decisions. Municipal authorities would have to refer certain decisions to the supervisory authority, which will be enforceable as soon as they are referred, with the supervisory authority being able to refer the matter to the administrative court in the event that it considers that the referred decision is illegal and must be annulled.
  The reform of the administrative jurisdictions should go hand in hand with the reform

- of the administration. This reform would simplify procedures. Moreover, it is a necessary element for the proper implementation of administrative reform.

- The financial autonomy of local authorities should be guaranteed. To this end, a mechanism should be provided for the automatic transfer of the sums collected by the State on behalf of local authorities into the Independent Municipal Fund, without the possibility of ministerial decisions blocking this transfer.

- The distribution of these revenues should no longer be carried out in an arbitrary manner. It should be made on the basis of objective and predetermined criteria, taking into account the size of each municipality.
  It would also be necessary in this context to revive the role of the strategic control institutions of the Lebanese public administration (see Part 2, Chapter 1).

Chapter 3

Functional Decentralisation

I- Public Establishments: Misunderstood and Misused

Public establishments are organised by a 1972 decree (Decree No. 4517 of 13/12/1972, General Regulations for Public Establishments). This text organises the creation of public establishments, which is done by virtue of a decree issued by the Council of Ministers. With regard to their management, the Decree distinguishes between the decision-making authority held by the Board of Directors of the public establishments and the executive power held by the Chairperson of the Board of Directors. It also organises the supervision to which this type of institution is subject: administrative supervision, financial supervision (exercised by the Ministry of Finance), and financial control (exercised by the Court of Audit). Numerous institutions have been qualified by law or jurisprudence as public establishments. The importance of this qualification lies in the relationship established between the supervisory authority and the establishments: either a hierarchical link or a supervisory link giving rise to a certain autonomy in decision-making.

A- Supervisory Control: Finances Are Key

The law organises this supervisory control, listing a number of decisions subject to ratification by the supervisory authority. On the one hand, this control includes certain decisions relating to the management of public establishments (Regulations for Civil Servants and Employees, internal regulations, work programmes, etc.). As for local authorities, this control largely focuses on the financial decisions of the establishment under supervision: annual budget and closing of accounts, requests for and supply of credits, setting of prices for services, public contracts, etc. The list of decisions subject to supervision is not exhaustive. One paragraph stipulates that other decisions may be subjected to supervision by virtue of a decree. This last provision could allow the government to submit decisions arbitrarily to the supervision of the concerned minister. As in the case of municipalities, ratification is implicitly granted if the supervisory authority fails to make a decision within one month (Article 23 of the Law).

Moreover, the administrative control exercised by the supervisory authority over decisions of a financial nature overlaps with the control exercised by the Minister of Finance over these decisions. Some of these decisions are in fact controlled by both authorities (annual budget and closing of accounts, requests for and supply of credits, setting of prices for services, use of the budgetary reserve, choice of allocation of revenues, methods of covering debts, etc. (Article 29 of the law)). The Ministry of Finance also has a period of one month to ratify the decision referred to it, otherwise the ratification is implicitly granted.
The Law does not give priority to either the supervising minister or the Minister of Finance

with respect to these categories of decisions. It does, however, stipulate that in the event of a conflict between the opinions of these two authorities as to whether or not the decision is to be ratified, the conflict shall be referred to and settled by the Council of Ministers (Article 30 of the Law), without any time limit being set in this case. This solution merely confirms that the control exercised by these two authorities is the same: it is not a situation where one authority exercises control of legality while the other exercises control over opportunity, which would justify this duplication.

B- Regulations that Institutions Seek to Avoid

The Law sets a number of rules related to the organisation, constraints, and controls with which institutions qualified as public should comply. This system may have seemed too restrictive for certain establishments, which has led the legislator to create institutions that operate outside this scope. The law regulating public institutions excludes a number of institutions, some of which are nevertheless qualified as «public» in their statutes. These include the Banque du Liban, the National Social Security Fund, the Cooperative of Government Employees, the National Council for Scientific Research, and the Center for Educational Research and Development. These institutions existed prior to the issuance of the law on public institutions.

For other institutions, the qualification and system are less clear. Their qualification has been subject to contradictory decisions by authorities required to make such a qualification. The High Relief Commission, for example, does not clearly meet any of the traditional categories of public administrations. The debate on its classification is based largely on its possession of a legal personality and administrative and financial autonomy, both of which are characteristics of a public establishment. In this context, the Department of Legislation and Consultations of the Ministry of Justice has sometimes qualified it as a «public administration» (Opinion No. 1664 of 25/7/1989). It has also considered that it is «independent in its decisions, execution, and expenditures, without needing to report to a higher authority in the state hierarchy, which leads to consider that it has the elements of administrative and financial autonomy» (Opinion No. 1694 of 12/10/1989). The Court of Audit has considered that the High Relief Commission has powers that give it a certain administrative and financial autonomy, but not enough to qualify it as a public establishment. The qualification of this Commission remains unresolved to this day, as the text establishing it is not clear, and its powers have largely exceeded its original mandate.

The status of Ogero has also raised some questions. The Department of Legislation and Consultations of the Ministry of Justice has ruled on the issue. It considered that «the qualification of the relationship established between the Ministry of Telecommunications and Ogero, in the context of the execution of the tasks delegated by the executive branch, is a relationship between the State and Ogero as a public institution, subject, in the execution of the aforementioned tasks, to the general regulations of public institutions, *without exception*» (Opinion No. 196/2001 of 22/03/2001). The importance of the qualification of this institution as a public establishment lies in the fact that it is subject to the various controls that apply to such institutions. This does not prevent Ogero from resisting the control of the Central Inspection.

C- Structures Parallel to Ministerial Structures

Some public establishments are mere auxiliaries to existing ministries. Rather than supporting ministries in carrying out their mandate, the creation of certain public establishments has allowed the implementation of structures parallel to the ministries, sometimes giving them a role that goes beyond the simple task of delivering a public service. More problematic still, some of these institutions also avoid the controls to which public establishments are normally subject to.

The Council for Development and Reconstruction is a good example of this phenomenon. Established in 1977, this public institution was assigned from the start an advisory mandate (carrying out and publishing statistical studies on the country's economic and social situation, providing information to State administrations and local authorities) and tasked with supporting the government (particularly in establishing relations with foreign parties for economic, financial, and cultural aid, thereby encroaching on the competencies of the Ministry of Foreign Affairs). Its functions have been very broad and diverse. However, several legislative and regulatory interventions have modified its operational functions, leading to a profound change in its status. It is competent to carry out the projects that the Council of Ministers decides to assign to it. Within this framework, it is the Council of Ministers' responsibility to choose the contractor who will carry out the work, and it is also the Council of Ministers' responsibility to carry out the necessary expropriations.

In addition, the term of office of the members of the Board of Directors of this Council is supposed to be 5 years. The last decree appointing the members of the Council dates back to 2006. The President of the Council has therefore had a much more stable mandate than that of ministers, which further strengthens his position. This is despite the fact that the Council is only subject to the *a posteriori* control of the Court of Audit, thus excluding it from the control of the Central Inspection, for example, even though the Ministry of Works is subject to it.

D- «Regulatory Authorities:» Effective Intervention or Protection of Ministerial Prerogatives?

A series of laws have established institutions that are independent administrative authorities: the Mediator of the Republic (Ombudsman), the Anti-Corruption Authority, the National Commission for the Disappeared, etc. Not all of these institutions have been fully established, but the situation is even more problematic with regard to independent regulatory authorities.

1- Reluctant Creation of Regulatory Authorities

The decision to create regulatory authorities began to take shape in 2002. Following the Paris I Conference, three laws were passed to organise certain sectors and create a Telecommunications Regulatory Authority (Law No. 431/2002 of 22 July 2002 on Telecommunications), a Civil Aviation Regulatory Authority (Law No. 481/2002 of 12/12/2002 on the Management of the Aviation Sector), and an Electricity Regulatory Authority (Law No. 462 of 02/09/2002 on the Organisation of the Electricity Sector). Of these three authorities, only the Telecommunications Regulatory Authority has been created, its board of directors having been appointed by the executive branch in 2007, before its operation was disrupted by the end of its members' terms of office in 2012. Its activities ceased completely in 2015 after the decision of the Minister of Telecommunications to suspend the authority's chairperson.

These initial experiences show that the creation or at least the effective establishment of regulatory authorities faces two major problems. The first is the confessional distribution of posts, which has been an obstacle to the formation of the regulatory authority for the aviation sector. The second is the ensuing reduction in the powers of ministers, which has notably been used as an argument against the formation of the regulatory authority for the electricity sector.

The Constitutional Council and the Law on the Regulatory Authority for the Water Sector: the unconditional protection of ministers' prerogatives

The decision of the Constitutional Council regarding the law amending the Water Code and organising the powers of the National Water Authority (Decision 8/2020 of 24/11/2020) is strongly representative of the desire to protect the prerogatives of ministers. The law adopted by Parliament provided in two of its articles for the powers of the authority, including the establishment of general policies for the water sector, issuing recommendations concerning this sector, assessing the ability to finance projects, etc. Those who objected to this law considered that the powers mentioned in these articles are constitutional powers granted to the minister and therefore called for their annulment. The Constitutional Council did not completely agree, but it still considered that such an administration could only have an advisory role. It therefore annulled the provisions that implied the «participation» of the authority in the setting of the principles and objectives of national water policies and the «adoption» of projects, as well as the organisation of water distribution and the priorities of projects and their distribution across the regions. It should be noted that this protection of ministerial prerogatives against the intervention of independent authorities (which are only granted advisory powers) has been

repeatedly confirmed by the Constitutional Council (Decisions No. 5/2001 of 29/09/2001 and No. 4/2020 of 22/07/2020).

2- Authorities Are Tolerated when Their Competencies Are Limited

Despite the failure to set up the regulatory authorities planned since 2002, the legislator has intervened on several occasions to create new regulatory authorities, mainly as a result of strong support from the international community. However, these new authorities are generally not endowed with decision-making powers but are merely consultative.

This is notably the case of the Oil Sector Regulatory Authority. Provided for by a law passed in 2010 (Law No. 132/2010 of 24/08/2010 on Oil Resources in Territorial Waters), this authority was set up in 2012 (Decree No. 9438 of 04/12/2012 on Appointing the Members of the Oil Sector Regulatory Authority). Its establishment was probably facilitated first by the nature of its competencies, which are mainly advisory (Article 10 of Law No. 132/2010). Its role is mainly to issue opinions to guide the decisions of the Minister of Energy and Water (regarding applications for petroleum rights permits, the development of specifications, etc.) and conduct studies for the marketing of oil resources, among other things. In addition to its essentially advisory role, some administrative and financial decisions of this administration are subject to the supervision of the Ministry of Energy (Article 10 of the Law on Petroleum Resources in Territorial Waters).

The decision of the Constitutional Council on the Water Regulatory Authority mentioned above only confirms this trend: the creation of an authority is welcome as long as its intervention is limited to an advisory role and does not encroach on the powers of the minister.

3- An Authority that is Both Independent and has Decision-Making Powers: The Capital Markets Authority

The creation of this authority also came as a result of encouragement from the international community. It was finally created and organised by virtue of a law issued in 2011. Its Board, chaired by the Governor of the Banque du Liban, and comprising the Director-General of the Ministry of Finance, the Director of the Ministry of Economy and Trade, the Chairperson of the Banking Control Commission (i.e. the Third Vice-Governor of the Banque du Liban), and three experts, was set up in 2012. The law classifies it as a legal entity operating under public law with administrative and financial autonomy, and it is not subject to the rules set for public establishments, particularly the controls provided for this type of institution. The law does not provide for a ministerial supervisory authority, thus making the Capital Markets Authority truly independent.

This authority has been active ever since, even though it has competencies and decision-making power. It is responsible for granting licenses to brokers who provide services to investors, financial rating agencies, and collective investment ventures. It also has the power

to sanction certain violations of the law on capital markets and can request the prosecution of persons it suspects of having committed an offence of exploitation or disclosure of privileged information or of dissemination of false information about financial instruments. In other words, it enjoys powers normally granted to a regulatory authority.

There is no explanation as to how this authority has been tolerated, especially since has real powers beyond a consultative role. It is also chaired by the Governor of the Banque du Liban, who enjoys the almost unwavering trust of constitutional authorities.

II- Proposed Alternatives for Functional Decentralisation

A- Public Institutions

The system governing public establishments in France is similar to that adopted in Lebanon. This is especially true when it comes to administrative supervision, which varies from one institution to the other depending on the type of activity practiced. In financial matters, budgets, loans, and major investments must be approved. In administrative matters, decisions do not enter into force except after obtaining the explicit approval of the supervisory authority or its non-objection after the decision in question has been referred to it.

As in Lebanon, the category of «public establishments» is marked by a high degree of heterogeneity, the concept having spread to a wide range of subjects. This diversity of purpose has also been accompanied by a diversity of systems, as not all institutions carry out their activities under the same conditions. Supervision, in particular, is adapted to the purpose of activity of the public institution.

However, there is some uncertainty surrounding the sharing of roles between the various State actors responsible for supervision. The number of these actors is increasing, as several ministries may exercise supervision over the same institution. Moreover, within the ministries themselves, the departments and individuals who play a role in the exercise of supervision are also increasing.

Contractualisation is a tool that was introduced in the framework of certain supervisory relationships as a new form of control. This phenomenon is part of the new public management, which considers contracts as an ideal instrument to set objectives and evaluate the results achieved by public economic operators. This phenomenon has spread to a large number of fields, through the signing of multi-year contracts on targets and resources with universities, hospitals, etc.

B- Regulatory Authorities

Independent administrative authorities, among which are regulatory authorities, began to emerge in the 1970s. Their purpose was to provide technical expertise, diverse perspectives and opinions, flexible processes, etc. They enable a new form of administration. This category of institutions includes a large number of authorities, the diversity of which makes it rather impossible to synthesise.

In France, the question has also arisen as to whether such authorities should be granted regulatory powers and whether such a delegation of power is constitutionally permissible, given the principle of ministerial accountability to Parliament for the operation of administrative services. The Constitutional Council, in a series of decisions on various regulatory authorities, has ruled that the creation of such authorities is in conformity with the Constitution. It has also accepted that an independent administrative authority may be legally entrusted with issuing regulatory instructions. This regulatory power remains limited, as it should be exercised in compliance with the laws and decrees, and it only relates to «measures of limited scope and content» (French Constitutional Council, Decision of September 18, 1986).

French courts have clearly confirmed that the decisions and activities of these independent administrative authorities must be subject to judicial review. These cases generally fall under the jurisdiction of the administrative courts, but for market regulation authorities, the law has provided for the partial competence of the judicial judge, given the largely commercial nature of the disputes.

In 2017, the legislator adopted a law on the organisation of independent administrative authorities. This law essentially organises the management of these authorities, especially with regard to their members, their mandates, incompatibilities, guarantees surrounding their functions, etc.

In Tunisia, independent administrative authorities, especially regulatory authorities, have been around since the 1990s, when administrative regulatory bodies such as the National Telecommunications Authority, the Insurance Authority, and Financial Markets Authority were created. The 2014 Constitution created independent constitutional bodies. The proliferation of independent bodies is indicative of a mistrust of traditional administrative powers and authorities.

III- Recommended Reforms for Functional Decentralisation

- Supervisory control can be maintained, but it should be reorganised. Administrative control in particular should no longer be the result of a discretionary power by the government, but rather the result of a less arbitrary legislative intervention. The legislative determination of decisions subject to supervisory control should be adapted based on the purpose of the institution, leaving a certain margin of manoeuvre for the institution in line with its purpose. Similarly, existing or future public establishments should no longer be exempt from this supervisory control.

- In cases where an institution is responsible for an activity that falls under the jurisdiction of several ministries, it would be useful to encourage dialogue with ministries other than the supervising ministry, without amplifying supervisory controls.

- Contractualising the relationship between the central government and public establishments. This contractualisation should be preceded by a joint strategic reflection on the mandates of the public establishment. This system would strengthen the involvement of public institutions in assessing their needs and determining their mandates.

- Lebanon's reality does not require the establishment of new regulatory institutions. Those that currently exist (telecommunications, electricity, financial markets, etc.) are the main regulatory authorities generally established in most countries, noting that two recent laws have completed the picture by creating a National Authority for Competition and the Public Procurement Authority.

- The confusion that exists between independent administrative regulatory authorities and public establishments should be addressed. These authorities would benefit from being truly independent and not subject to the supervision of the minister (unlike, for example, the Regulatory Authority for the Oil Sector).

- The argument of confessionalism should no longer constitute an obstacle to the establishment of these authorities.