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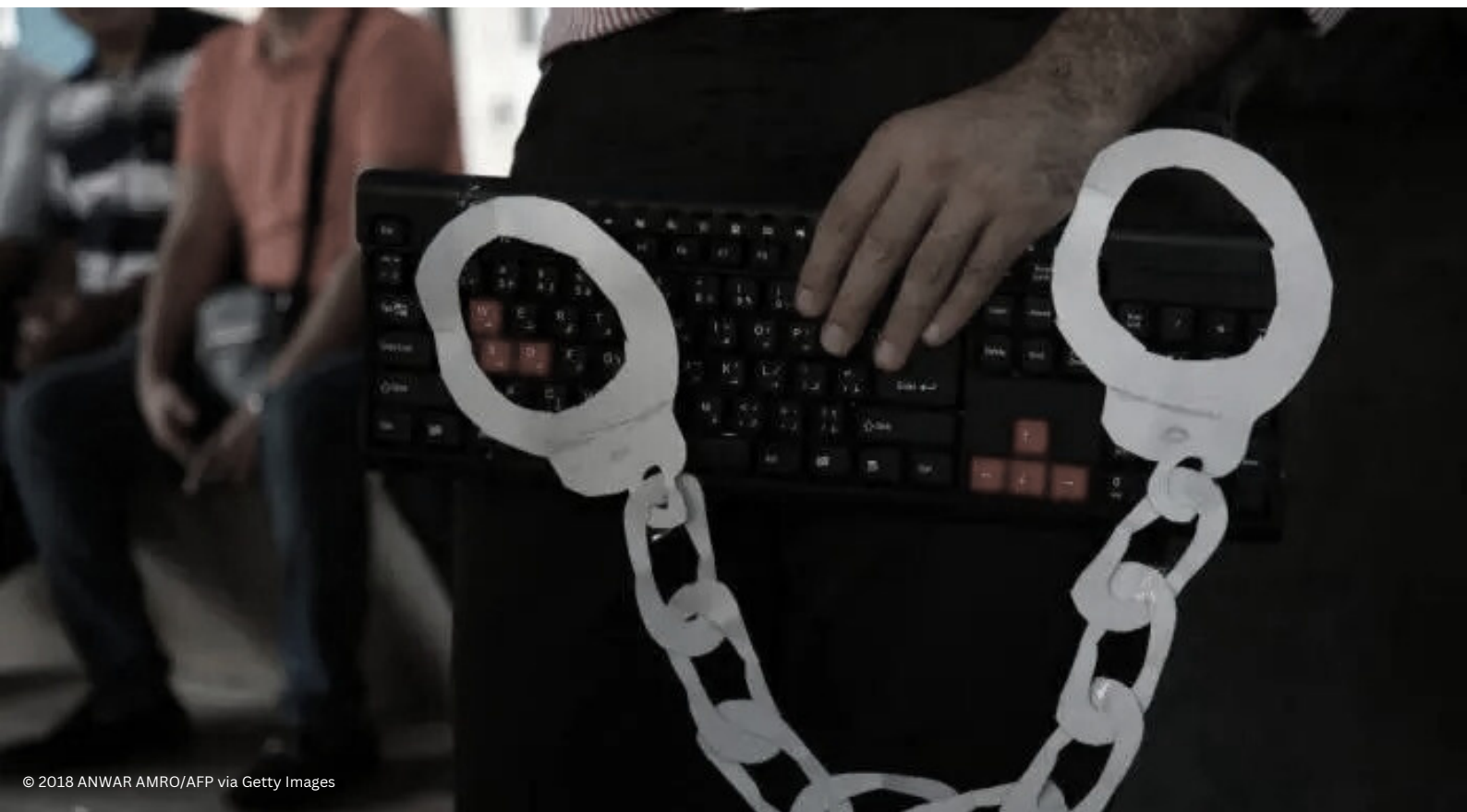


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Study

Repealing Defamation Laws Weaponized Against Media Professionals in Lebanon: A Step Towards Upholding the Freedom of Speech, Defending the Freedom of Media and Fighting back against the Oppressive State

Dr. Ali Mourad



This publication is within the project entitled "Media Reform to Enhance Freedom of Expression in Lebanon", implemented by Maharat Foundation, Legal Agenda and the European Media and Journalism Research Center (MJRC) with the support of the Delegation of the European Union to Lebanon. The project aims at enhancing Freedom of Expression in Lebanon through the promotion of media law reform as a priority on the national agenda and improvement of the environment for media coverage on the transparency and accountability of elections process.

The project supports the publication of background papers produced by Maharat Foundation on the local Lebanese context and by MJRC on the European standards and best fit recommendations for Lebanon. The papers cover 6 main themes: Protection of journalists and their sources, Associations of journalists, Decriminalization, Incentives, Innovation, and Regulation, co-regulation and self-regulation opportunities for the media.



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This study was prepared within the project to reform media and promote freedom of expression in Lebanon:

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Media and Journalism Research Center (MJRC) MJRC:

[MJRC](#) is an independent media research and policy think tank that seeks to improve the quality of media policymaking and the state of independent media and journalism through research, knowledge sharing and financial support. The center's main areas of research are regulation and policy, media ownership and funding, and the links between tech companies, politics and journalism.

Maharat Foundation:

[Maharat Foundation](#) is a women-led freedom of expression organization based in Beirut dedicated to campaigns grounded in research and strengthening connections between journalists, academics, and policy makers.

It advances and enables freedom of expression, quality information debate and advocates for information integrity online and offline. Maharat promotes innovation and engages the journalistic community and change agents within Lebanon and the wider, MENA region to promote inclusive narratives and debates and to counter misinformation, disinformation, and harmful content.

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1. EXECUTIVE SUMMARY

Lebanon is witnessing a worrying surge in attacks aiming to undermine public, individual and private freedoms, most notably the freedom of expression. The respect of civil liberties and human rights have been eroded. The convocation, detention, trial and sentencing of activists and journalists is becoming more prevalent. Legal proceedings taken against citizens for sharing posts on social media are increasing and hate speech is on the rise. The convocation of journalists and activists violates their enshrined rights to express themselves and contravenes the provisions of the Lebanese Publications Law.

Despite being enshrined in the Lebanese Constitution, the freedom of press and expression are subjected to legal restrictions embedded in major legislations such as the Publications Law, the Radio and Television Broadcasting Law, the Military Justice System Law, and the Electronic Transactions Law. Nevertheless, the biggest restriction remains the existing defamation laws, which consider slander and libel as a felony. For instance, any written or verbal comments that may prejudice the dignity of public servants and government institutions are punishable by law, if no evidence substantiating said claims were found.

The legislative and judicial authorities are being used to undermine the freedom of expression and media, to intimidate journalists and to reduce them to silence. Journalists defending common good, fighting corruption, exposing security forces malpractices, reporting violations against vulnerable groups, and criticizing the country's economic and political situation are being increasingly subjected to abusive practices. Their rights are being flouted. Powerful individuals accused of such practices are using criminal laws to their advantage by threatening anti-corruption fighters and critics to initiate legal proceedings that may lead up to imprisonment.

1. EXECUTIVE SUMMARY

Defamation laws must be repealed to ensure that the freedom of press, media, and speech are truly respected. Additional legal and judicial reforms are required in that regard. The proposed reforms consist in keeping fines and abrogate the sentence of imprisonment in all defamation and speech crimes, except in cases of incitement to violence, hatred or discrimination based on nationality, race or religion.

Various legislations must be amended to protect journalists, uphold the right to criticize public instructions and introduce the notion of criticizing public officials at a wider scale in order to hold them accountable to their actions. Said amendments are also needed to enshrine the media outlets right to expose corruption, uncover crimes, and prove cases of mismanagement by public officials.

2 .“IT IS DIFFICULT TO SPEAK AND IT IS DANGEROUS TO REMAIN SILENT” (AN AFRICAN PROVERB)

Lebanon is witnessing a worrying surge in attacks aiming to undermine public, individual and private freedoms, most notably the freedom of expression. The respect of civil liberties and human rights has been eroded. The convocation, detention, trial, sentencing of activists and journalists is becoming more prevalent. Legal proceedings taken against citizens for sharing posts on social media are increasing and hate speech is on the rise. The convocation of journalists and activists violates their enshrined rights to express themselves and contravenes the provisions of the Lebanese Publications Law.

The number of legal proceedings initiated against various activists and politicians for criticizing officials or political parties has increased since April 2023. The efforts to hold accountable those responsible for the country's political and economic crisis remain fruitless. It became clear that the ruling class is taking a leaf out of the oppressive regimes book by orchestrating a systematic smearing campaign targeting media personalities and activists to deflect the attention away from its poor governance, inability to address the acute socio-economic situation and failure to provide basic needs. They are oppressing media personalities and activists, trying to censor public speech, culture and arts, disseminating hate speech and targeting vulnerable groups. By targeting journalist, the ruling class is casting itself as the protector of the Lebanese society and values. However, it would be wiser to tackle the root causes of the country's major problems.¹

1- Interview with Riad Kobaissi, journalist, during the preparation of this study, dated 14/09/2023

2 .“IT IS DIFFICULT TO SPEAK AND IT IS DANGEROUS TO REMAIN SILENT” (AN AFRICAN PROVERB)

Therefore, the ruling class is using existing criminal legislations as a tool to quell all criticism, especially the ones aimed at the President, the Army, and government officials. One may argue that these laws, which were introduced during the Ottoman and French colonial era, have been in use since the early 1900s. However, there is sufficient evidence to prove that the cases of libel and slander have significantly increased in recent times, especially in cases of internet free speech.² Civil society organizations and journalists have confirmed this trend.

This study shall cover the following points: the Lebanese legislative structure, its failure to uphold the Constitution and implement relevant international conventions, the increasing abusive measures taken against journalists, the increasing restrictions on the freedom of expression and press, the court rulings, and make the criminal courts incompetent to trial defamation and speech crimes.

2- Human Rights Watch Report, “There Is a Price to Pay”: The Criminalization of Peaceful Speech in Lebanon, Hanine Ghaddar, dated 15/11/2019

3. THE POLITICAL CONTEXT: THE RISE OF AUTHORITARIANISM TO QUELL PROTESTORS

Before the 2019 October Protests, the freedom of expression and press had been significantly deteriorating. The ISF Cybercrime Bureau had summoned several media personalities, bloggers, activists and social media users after they criticized public figures or commercial companies. They have been accused of slander, libel and instigating sectarian tensions, among other things. This put the question of censorship on “digital” media into perspective and highlighted its adverse impact on the freedom of expression.³ It became clear that cyberspace freedom was gradually shrinking. During the last five years, internet free speech has been eroding. For instance, the authorities have punished journalists and civil society representatives for criticizing government officials or mocking religious dignitaries. This practice negatively affects the freedom of expression on the internet.⁴

However, October 17th, 2019, proved to be a turning point in Lebanon’s political and social lives. Regardless of its immediate outcome, the protests have ushered the country into a new era. The Lebanese people has been firmly opposing the authoritarian political and economic cast that has been in power for the last thirty years. They are trying to topple the entire corrupt, sectarian and foreign-dependent ruling class and hold it accountable.

The post financial collapse period cannot be reviewed without tackling the issue of freedom of expression. Indeed, it was a cornerstone of the social movement that saw unprecedented levels of criticism aimed at the ruling elite. The Lebanese people broke the shackle of fear by ignoring the peril of getting arrested or prosecuted. The protestors were able to impose their narrative. They held the ruling class responsible for the country’s great malaise and accused it unequivocally of corrupt practices, spoiling resources. They urged them to recover stolen assets. The daily criticism of the ruling class through all possible means was the cornerstone of the opposition’s tactics. For many, it was the only way to defend their rights. This approach elevated the freedom of expression.

3- 23/10/2013 الأربعاء، الأخبار، جريمة، جريدة الاخبار، <https://al-akhbar.com/Community/59323>، زينب حاوي، عندما تصبح «التفريفة» جريمة،

4- Social Media Exchange (SMEX), 6 /12/2019، خطاب مرفوض: تقرير جديد عن حالة حرية التعبير على الإنترنت في لبنان -

3. THE POLITICAL CONTEXT: THE RISE OF AUTHORITARIANISM TO QUELL PROTESTORS

In 2019, traditional media outlets and social media platforms echoed the physical protests and became a second avenue to express discontent. The former played an important role during the protests since they are accessible and diverse. In spite of not covering events in the same way or speed, televisions had to report the social movement, that was taking place in the entire country. Therefore, every Lebanese household was able to follow the ongoing developments.⁵

The Lebanese political class sees the cyberspace and social media in an extremely negative eye. In contrast to traditional media outlets, they cannot control nor monitor them. Indeed, most traditional outlets are subject to a hierarchal censorship, can be politically influenced and third parties can dictate its news bulletins and stories. This led to the rise of self-censorship, especially outside of the Beirut metropolitan area where local pressure can be more effective, which makes it more difficult for individuals to express their opinions.

Therefore, the political parties have been trying to control online freedom and set limits that cannot be crossed. Cases of online freedom restrictions, user intimidations and criminalization of social media and blogging activities were recorded. Successive violations against bloggers and journalists were also recorded, given that Lebanon does not have legislations to protect internet freedom which falls under the realm of criminal tribunals. Moreover, the ISF Cybercrime Bureau has been trying to control and censor various bloggers and citizens.

5- Lebanese media outlets are owned by political parties and wealthy families. They score the highest levels of political dependency. 78.4% of media outlets are owned by the State, political parties or political figures. It became evident during the coverage of social protests. Some outlets had to cover them in order to help their political patrons attack other political parties. <https://www.alaraby.co.uk/medianews/2019/10/18/>

3. THE POLITICAL CONTEXT: THE RISE OF AUTHORITARIANISM TO QUELL PROTESTORS

The political class has been trying to regain the initiative by attempting to reintroduce old censorship mechanisms to undermine the freedom of expression. They have been trying to silence the protestors by violating the free speech of several activists and media personalities.⁶ During the last couple of years, several journalists were attacked while covering events.⁷ Moreover, several reporters were physically or verbally assaulted during media coverage.⁸

The major obstacles facing the freedom of expression are: the illogical criminalization of defamation and the outdated legal definition of a journalist. Some magistrates use the latter as a pretext to refer journalists that are not registered with the Lebanese Press Syndicate or publishing content on news websites to the ISF Cybercrime Bureau. Nowadays, social media is an integral part of journalism and distinguishing users from journalists is nigh impossible. It should be reminded that journalists have the right not to appear before the Cybercrime Bureau and law enforcement agencies in opinion cases related to journalistic work.⁹

6- Monitoring Freedom of Expression and Media: 17/10/2019-31/12/2019, Maharat Foundation, Page 1, <http://www.maharatfoundation.info/media/1771/foe-report-2019-web.pdf>

7- Monitoring Freedom of Expression and Media: 17/10/2019-31/12/2019, Maharat Foundation, Page 2

8- Monitoring Freedom of Expression and Media: 17/10/2019-31/12/2019, Maharat Foundation, Page 4

9- Interview with Elsy Mfarrej, journalist, during the preparation of this study, dated 14/09/2023

4. THE LEGISLATIONS GOVERNING THE FREEDOM OF EXPRESSION AND PRESS: THE VIOLATION OF CONSTITUTIONAL GUARANTEES

Despite the fact that civil liberties, mainly the freedom of press and expression, are enshrined in the Lebanese Constitution, the existing legislative structure goes against the provided constitutional guarantees and Lebanon's international obligations.

4.1 The Constitutional Guarantees

Article 13 - Part II of the Lebanese Constitution provides that “the freedom to express one’s opinion orally or in writing, the freedom of the press, the freedom of assembly and the freedom of association are guaranteed within the limits established by the law”. These provisions constitute the constitutional framework governing the freedom of media in Lebanon. The present article, which was drafted in 1926 and remains valid till the present day, establishes two facts: First, the freedom to express a given opinion orally or in writing is enabled by media outlets. A free opinion can be formulated, but said opinion cannot reach the general public if not vehiculated by traditional means like the written press and audiovisual media or, by extension, modern technological means of communication. Second, the indivisibility of civil liberties. The freedom of media and journalism cannot be exercised without the freedom of the press, the freedom to issue publications and to use means of communication to share opinions. Furthermore, media freedom was tied to other civil liberties such as the freedom of assembly, freedom of association, the right of collective speech in the public sphere, the right to object, and the right to create political parties. Therefore, all civil liberties go hand in hand with media freedom.

4. THE LEGISLATIONS GOVERNING THE FREEDOM OF EXPRESSION AND PRESS: THE VIOLATION OF CONSTITUTIONAL GUARANTEES

Despite the constitutional guarantees, some major legislations affecting the freedom of expression do not clearly differentiate between means of publishing and social media. Such legislations include the Penal Code, the Lebanese Criminal Procedure Code, the Military Justice System Law, the Publications Law, the Access to Information Law (Whistleblower Protection Law), the Electronic Transactions and Data Protection Law, and the Radio and Television Broadcasting Law.¹⁰

International conventions provide for the creation of more human, just and equal societies capable of upholding human dignity, and defending individual freedoms, mainly the freedom of expression, freedom of speech, and the freedom from fear, oppression, coercion and injustice. The International Human Rights Law considers the freedom of expression as a fundamental human right that upholds human dignity and ensures vibrant democratic societies.

State Parties are required to implement international conventions since they become an integral part of existing national legislations. State Signatories commit to uphold and respect human rights and fundamental liberties in their respective societies.

Article 19 of the International Covenant on Civil and Political Rights (ICCPR), ratified by the Lebanese Republic, provides that “everyone shall have the right to freedom of expression, this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.” The ICCPR provides that the freedom of expression may be subject to certain restrictions, but these restrictions shall only be provided by law and are necessary: a) for the respect of the rights and reputations of others; b) for the protection of national security, public order, public health and morals.¹¹

10- حزيران 2019 06 SMEX، النقاش الإيجابي وتحسين القوانين لحماية حرية التعبير في لبنان، تقرير عن ندوة من تنظيم منظمة " 10- <https://smex.org/ar/%D8%A7%D9%84%D9%86%D9%82%D8%A7%D8%B4-%D8%A7%D9%84%D8%A5%D9%8A%D8%AC%D8%A7%D8%A8%D9%8A-%D8%A7%D9%84%D9%82%D9%88%D8%A7%D9%86%D9%8A%D9%86-%D8%AD%D8%B1%D9%8A%D8%A9-%D8%A7%D9%84%D8%AA%D8%B9%D8%A8%D9%8A/>

11- Human Rights Watch Report, “There Is a Price to Pay”: The Criminalization of Peaceful Speech in Lebanon, Hanine Ghaddar, dated 15/11/2019

4. THE LEGISLATIONS GOVERNING THE FREEDOM OF EXPRESSION AND PRESS: THE VIOLATION OF CONSTITUTIONAL GUARANTEES

The imposed restrictions “shall not jeopardize the freedom of expression”. Such measures shall meet the following three criteria: to be explicitly provided law, to serve legitimate objectives, and to be proportionate as well as necessary to meet said objectives.

However, Lebanese defamation laws do not meet the ICCPR standards. They alarmingly violate the principles of legitimacy, necessity and proportionality. For instance, pre-trial investigations and trial proceedings in cases of slander and libel took place. Moreover, private

citizens and media personalities have been summoned to respond to accusations of slander, libel, belittling and contempt.

4.2 The Legislative Restrictions on the Freedom of Media and Expression

The Penal Code punishes any written or oral comments that may prejudice the dignity of public servants and government institutions, if no evidence substantiating said claims were found. Those charged with defamation may get fined or imprisoned. Nevertheless, laws protecting the dignity and reputation of individuals are different from legislations maintaining public order and banning as a result all forms of speech inciting hatred and violence. Various major legislations criminalize defamation and are mostly used to quell free speech. Such legislations include the Publications Law, the Penal Code, the Military Justice System Law, the Radio and Television Broadcasting Law, and the Electronic Transactions Law.

4. THE LEGISLATIONS GOVERNING THE FREEDOM OF EXPRESSION AND PRESS: THE VIOLATION OF CONSTITUTIONAL GUARANTEES

A. The Publications Law

The Law protects the freedom of press. Nevertheless, it contains numerous restrictions and provides large fines and significant prison sentences in case of infraction. For instance, the Legislator shielded the legislative, executive and judicial powers from any possible criticism or accusations. Furthermore, any publication attacking head of states may be perceived as an insult to their dignities, which is punishable by law (Article 23). Moreover, all publications contrary to morality and public morals are prohibited (Article 12).

The Law also prohibits all pejorative publications insulting any of the recognized religions, stirring sectarian or racial strife, disturb public peace, or endanger the State's integrity, sovereignty, unity, borders or Lebanon's international relations.¹²

The Law punishes defamation, contempt, slander and libel. If aimed at a public official, magistrate or judicial authority, the proscribed penalty and sentencing is more severe. If the forwarded claims are substantiated, they will be used by the defense in cases involving public servants and officials. In cases provided by the present legislation, law enforcement agencies cannot conduct investigations. This reduces the risk of intimidation, mistreatment and privacy violation.

B. The Penal Code

The Law defines means of publications and criminalizes all public actions, written texts and oral statements that contain elements of defamation and contempt. This legislation is being used to criminalize online speech and restrict the freedom of expression since it contains provisions that punish the contempt, libel, slander as well as defamation of religions and incitement of sectarian tensions.

12- The Penal Code – Article 317

4. THE LEGISLATIONS GOVERNING THE FREEDOM OF EXPRESSION AND PRESS: THE VIOLATION OF CONSTITUTIONAL GUARANTEES

The Law punishes the defamation, slander and contempt aimed at public servants in their official capacity, the Head of State, the national flag, national symbols, foreign States, foreign head of states and foreign political representatives stationed in Lebanon. It also punishes the defamation of religions, the Army, courts of law, magistrates, and public administrations. In cases of libel involving a public servant, the accused may be acquitted, if the validity of their claims are substantiated. In cases of slander and contempt, the accused is not acquitted, even if their claims are substantiated.

C. The Military Justice System Law

The Law restricts the freedom of expression, opinion and press since it contains provisions enabling the initiation of legal proceedings before military courts against journalists, activists and media outlets accused of attacking the dignity of the military, security forces, their respective leadership and personnel. It punishes “the defamation of the flag, the military, and the vilification of its dignity, reputation and moral”. It also punishes all actions to “undermine the military order and authority, as well as the subordination and respect to presidents.”¹³ These provisions go against Lebanon international obligations since the International Law only allows for restrictions that are necessary to protect national security and said restrictions must be provided by the law and be proportionate.

D. The Radio and Television Broadcasting Law

The Law incorporates provisions listed in the Penal Code and the Publications Law. If they publish or broadcast any content that implies any defamation, slander or libel aimed at a physical or legal person, a media outlet may be punished for inciting sectarian tensions, calling for physical or moral violence, encouraging terrorism, and stirring up racial and religious segregation. If television and radio stations do not comply with the above-mentioned requirements, they may get suspended for 3 to 30 days. Moreover, they may get penalties ranging from fines to suspension of broadcasting.

13- The Military Justice System Law - Article 157

4. THE LEGISLATIONS GOVERNING THE FREEDOM OF EXPRESSION AND PRESS: THE VIOLATION OF CONSTITUTIONAL GUARANTEES

E. The Electronic Transactions Law

The adoption of this law constituted a positive step. However, the legislation does not enable freedom of expression since it is considered a restrictive tool. Indeed, electronic websites and social media platforms are deemed part of the means of publication that are listed in Article 209 of the Penal Code¹⁴. The law does not also distinguish between private accounts and official publication pages. They consider that all accounts are open to the public sphere and therefore their users can be held accountable for defamation crimes. This interpretation increases the risk of subjecting private conversations on the internet to the Penal Code provisions.

14- Law No.81 relating to Electronic Transactions and Personal Data - Article 118. The law was enacted on 10/18/2018 and entered into effect in January 2019.

5. THE LEGISLATIVE AND JUDICIAL STRUCTURES: A TOOL TO SQUASH FREE SPEECH AND INTIMIDATE JOURNALISTS INTO SILENCE

Journalists defending public good, fighting corruption, exposing security forces malpractices, reporting violations against vulnerable groups, and criticizing the country's economic and political situation are being subjected to various abuses. They are getting assaulted, receiving convolutions and standing trials in order to silence them. Powerful individuals whose bad practices are put under the spotlight are using criminal laws to their advantage by threatening anti-corruption fighters and critics to initiate legal proceedings that may lead up to imprisonment. In recent years, the freedom of press has been systematically undermined in Lebanon. The assassination of Lokman Slim, the judgment after trial of Dima Sadek, the search of Mariam Al Laham's home following a convocation, the instance of judicial authorities to task law enforcement agencies to question journalists are some notable examples.¹⁵ Journalists are also being forced to sign declarations that they wouldn't criticize those who brought the case against them. Moreover, Lebanon does not have civil laws punishing defamation nor does it have criminal laws punishing aspersion in order to protect one's reputation. Furthermore, Lebanon does not have a modern legal mechanism that differentiates between offending and harming someone, which puts the country out of sync with international standards.

5.1. Defamation Laws and Journalists: An Alarming Trend

The Publication Law provides that journalists should be tried by the Publications Court. Nevertheless, several violations have been reported, such as: wrongful termination, assault during work, smear campaigns, convocations by law enforcement agencies and lawsuits before other judicial authorities involving journalists. The law provides that a journalist can be provisionally detained for 48 hours, renewable once.

15- Interview with Elsy Mfarrej, journalist, during the preparation of this study, dated 14/09/2023

5. THE LEGISLATIVE AND JUDICIAL STRUCTURES: A TOOL TO SQUASH FREE SPEECH AND INTIMIDATE JOURNALISTS INTO SILENCE

However, there have been recorded instances of journalist being detained for 10 or 15 days! The authorities have been violating the law in three ways: 1) They accuse journalists of *lèse-majesté*; 2) They force journalists to sign pledges or declarations, an unlawful measure; 3) During investigations, they search journalists' phones and access their social media accounts to delete posts that are the subject of filed complaints.¹⁶ In recent times, some journalists stood trial before single criminal judges or the Military Court.¹⁷ According to first-hand accounts, the questioning technique is designed to mistreat, humiliate and punish defendants for their actions and deter them from publishing the content that may be considered offensive to powerful individuals.¹⁸

A. Implying the Penal Code to Cases related to the Freedom of Expression and Media

All international instruments assert that imprisonment is an unnecessary punishment for crimes of speech and publications and affirmed that such sentences are disproportionate. If restrictions were to be put, they should be introduced to maintain the right of others and their reputations, serve a legitimate objective and be proportionate. Imprisoning journalists just for the sake of protecting the reputation and dignity of others is a disproportionate and unnecessary measure.¹⁹

The Penal Code is drafted in an ambiguous manner that opens the door to various interpretations, including ones that suit the rulers' interests. The ruling class is not shying away from such practice. The fight for civil liberties is not only the battle of media and activists. On the contrary, it is a struggle for human rights. Moreover, the political parties have created a culture of punishment and they threaten all those who speak up with reprisals. The Penal Code and the Publications law, mainly the controversial defamation provisions, have remained unchanged for almost 60 years. The Lebanese Press Editors Syndicate, the recognized trade union, is controlled by the ruling political parties. The journalists, witnesses and sources are not protected.²⁰

16- Interview with Jad Chahrour, journalist, during the preparation of this study, dated 14/09/2023

17- قانون الأول 2019، SMEX خطاب مرفوض: تقرير جديد عن حالة حرية التعبير على الإنترنت في لبنان، منظمة

18- Ibid

19- Article 19 of the ICCPR, Special Rapporteur on freedom of Opinion and expression, the ECHR

20- Interview with Farouk Al Moghrabi, journalist, during the preparation of this study, dated 14/09/2023

5. THE LEGISLATIVE AND JUDICIAL STRUCTURES: A TOOL TO SQUASH FREE SPEECH AND INTIMIDATE JOURNALISTS INTO SILENCE

The lack of protection constitutes a dangerous legal precedent and an alarming sign of the erosion of the freedom of media and expression. It also contravenes relevant international conventions ratified by Lebanon, which have the force of law as stated in the preamble of the Lebanese Constitution. The majority of media outlets, journalists and free speech activists saw in these practices a “dangerous precedent” that “rewards” certain interests. Therefore, they decided to stand united in their “fight for civil liberties”. Legal proceedings affect the freedom of press, is considered an act of intimidation and may reduce journalists to silence.²¹

The Public Prosecutor initiates a public interest litigation whenever an article that includes slander of the Head of State, stirs sectarian strife, disturbs public order, endangers the State’s sovereignty, or promotes fake news discrediting the army. Public officials, members of the judicial system and citizens file defamation cases with the police or the prosecutor’s office, which use public funds to investigate cases on the State’s behalf.

Moreover, individuals have the right to file civil lawsuits to obtain compensations. They also have the right to become a civil party associated to the prosecution in criminal cases. If a private person waives their personal claim, the public interest litigation is dropped. If a public official waives their personal claim, the proceedings of the public interest litigation continue.

The prosecution refers press publications implying defamation to the Publications Court, social media posts implying defamation to criminal tribunals and content implying defamation against military personnel to the Military Court. Due to the lack of automation in public sector, it has been difficult to obtain accurate statistics on the number of lawsuits initiated by private members or the public prosecution.²²

21- Interview with Jean Kassir, journalist, during the preparation of this study, dated 14/09/2023

22- The Lebanese Criminal Procedure Code – Article 47

5. THE LEGISLATIVE AND JUDICIAL STRUCTURES: A TOOL TO SQUASH FREE SPEECH AND INTIMIDATE JOURNALISTS INTO SILENCE

The law allows legal counsels to attend the questioning of suspects.²³ However, this law has not been applied in practice. There was an informal agreement struck between the Press Syndicate and the Public Prosecution regarding the questioning of journalists. It consisted of having them exclusively interrogated by investigative judges. The terms of this agreements were breached since several journalists were investigated by law enforcement officers. Moreover, the ruling class insists on unlawfully and arbitrarily prosecuting journalists for defamation. They are getting charged of crimes that do not correspond to the reality and prosecuted before civilian and military tribunals. It seems that public prosecutors are selectively applying the provisions of criminal laws related to defamation crimes and adopting double standards. This plays in favor of well-established political and religious parties and their interests.

B. The Arbitrary Criminal Prosecution of Journalists: A Trend on the Rise

Between 2015 and 2019, criminal courts have sentenced several individuals to prison in defamation cases. Some cases related to defamation on social media platforms have been referred to criminal courts instead of the Publications Court.²⁴

On July 10th, 2023, the Single Criminal Judge in Beirut, Mag. Rosine Hojeily, sentenced TV presenter Dima Sadek to one year imprisonment, deprived her of some of her civil liberties, and ordered her to pay an LBP 110 million fine as compensation for the Free Patriotic Movement (FPM). She was standing trial for defamation, slander and stirring sectarian strife. This is one of the firmest punishments in Lebanon's history. Due to the sectarian nature of Lebanese politics, the judge assumed that the presenter had an intention to stir strives and may have intentionally or unintentionally mixed the political party with the religious community they represent. The magistrate defined the acceptable form of criticism as "a constructive, corrective, and beneficial criticism that carries noble objectives". This is a restrictive interpretation of criticism that cannot be applied in democratic societies. Furthermore, it contravenes the provisions of Article 13-Chapter II of the Lebanese Constitution and Article 19 of the ICCPR that Lebanon has ratified.

23- Human Rights Watch Report, "There Is a Price to Pay": The Criminalization of Peaceful Speech in Lebanon, Hanine Ghaddar, dated 15/11/2019

24- Maharat Foundation Report on the Violation of Freedom of speech and expression in Lebanon between May 2018 and April 2019, published in April 2019

5. THE LEGISLATIVE AND JUDICIAL STRUCTURES: A TOOL TO SQUASH FREE SPEECH AND INTIMIDATE JOURNALISTS INTO SILENCE

The delivered verdict did not balance between general societal interests and the individual right to protect one's reputation. It did not take into account the right to fully criticize public figures, and by extension, the ruling political parties.

“Stirring sectarian and racial strives is a serious crime”. One cannot be prosecuted for such crime on a whim. The judgment did not take into account the actions that the presenter shared in her tweet. If someone highlights racism, does this make them racist? Does reporting racism warrant jail time? The verdict also did not provide a proportionate punishment to the examined crime. In public opinion cases, liberty-depriving judgments do not constitute proportionate verdicts.²⁵ Jad Chahrour considers that the tweet of Mrs. Sadek did not imply defamation or slander, but simply provided a “political commentary”.²⁶ On June 27th, 2020, the urgent matters judge in Tyr, Mag. Mohammad Mazeher, issued a decision prohibiting the broadcast of interviews given by the US Ambassador and banned her from appearing on national media. Media outlets faced the prospect of receiving a fine exceeding USD200,000 for each infraction. This decision constitutes a dangerous precedent, an undue interference in media affairs and violation of civil liberties.

On March 28th, 2019, the Criminal Court sentenced Fidaa Itani, a journalist, to 22 months of prison and fined him LBP 75,000,000 in nine different cases. He was charged of defaming the Head of State, a minister and the military. The ISF Cybercrime Bureau detained him for one night. On August 3rd, 2017, he left Lebanon for the United Kingdom in order to seek asylum.²⁷

On June 27th, 2018, the single criminal judge in Baabda, Mag. Nadine Najm, sentenced in absentia Fidaa Itani to four months in prison and ordered him to pay a fine. He was charged with defaming, slandering and libeling a minister.²⁸

25- 12/7/2023 . المفكرة القانونية، اقسى الاحكام في قضية رأي في لبنان،

26- Jad Chahrour, Media officer at the Centre for Media and Cultural Freedom (SKeyes)

27- Human Rights Watch Report, “There Is a Price to Pay”: The Criminalization of Peaceful Speech in Lebanon, Hanine Ghaddar, dated 15/11/2019

28- Maharat Foundation Report on the Violation of Freedom of speech and expression in Lebanon between May 2018 and April 2019, published in April 2019. Human Rights Watch Report, “There Is a Price to Pay”: The Criminalization of Peaceful Speech in Lebanon, Hanine Ghaddar, dated 15/11/2019

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On May 9th, 2017, the Ninth Chamber at the Court of Cassation, the judicial authority enjoying the competence to hear appeals in publications cases, published an opinion about crimes made on social media platforms. It considered that ordinary tribunals applying the Penal Code provisions, and not the Publications Court applying the Publications Law provisions, as the competent authority to hear such crimes since they were made on unregulated private accounts. Moreover, it overruled the initial ruling that affirmed the jurisdiction of the Publications Court.²⁹ Nevertheless, some magistrates are still considering themselves as competent to review cases of defamation and slander on the internet.³⁰

On January 7th, 2020, the single criminal judge in Beirut, Rosine Hojeily, terminated legal proceedings against Hani Nsouli, a journalist, in a defamation and slander case that was brought to court in September 2018.³¹

On October 31st, 2017, the criminal judge, Mag. Abeer Safa, issued a historic ruling that consisted in terminating legal proceedings in cases of defamation and slander involving five activists. The judge considered that concerned lawyers and journalists, who are discontent with the current state of affairs highlighted their dissatisfaction to public authorities in a general and unspecified manner.³²

On July 31st, 2018, the judge of urgent matters, Mag. Carla Shouwah, a verdict to dismiss the case filed by OGERO against Al Akhbar. The judge considered that the articles published by the newspaper did not contain any elements of defamation or slander. She deemed any future requests to prevent further publications as an unnecessary and disproportionate restriction of the freedom of expression. She asserted that the newspaper was covering a public interest story and upheld the right of media outlets to shed the light on public mismanagement, especially in cases of public funds squandering and privacy violation.³³

29- The opinion was issued as a result of the appeal submitted by Mr. Mohammad Zbib, via his legal counsel, Att. Nizar Saghie, in the lawsuit opposing him to Mr. Nohad Al Machnouk, a former minister, in order to challenge the judgement issued by the Publications Court, dated 18/10/2016, which consisted in rejecting submitted pleadings.

30- Human Rights Watch Report, "There Is a Price to Pay": The Criminalization of Peaceful Speech in Lebanon, Hanine Ghaddar, dated 15/11/2019

31- Ideb

32- Maharat Foundation Report on the Violation of Freedom of speech and expression in Lebanon between May 2018 and April 2019, published in April 2019.

33- Human Rights Watch Report, "There Is a Price to Pay": The Criminalization of Peaceful Speech in Lebanon, Hanine Ghaddar, dated 15/11/2019

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C. The Adverse Impacts of Defamation Criminalization on Journalism

The ruling class sided with political and religious figures in cases of defamation. Security forces applied relevant legislations with a vengeful and oppressive spirit, disregarding its original purpose that is to provide legal remedy for actual damages. The prosecution applied laws selectively and law enforcement sometimes acted at its own discretion, without judicial orders.³⁴ People will get prosecuted, go through pre-trial investigation and trial proceedings, and receive post-trial convictions. They are afraid of getting caught in protracted legal proceedings that may cause great psychological stress on them and their families.

According to a HRW interview, some individuals had to live in a self-imposed exile in order to avoid arrest in Lebanon. Moreover, the majority of defendants do not know if the legal procedures are completed or still pending, because the public prosecution left them in the dark for long periods of time.³⁵ Fidaa Itany is living in the UK after he requested asylum. A colleague of his, Hanine Ghaddar, is afraid of returning home because she does not know if her trial ended or is still pending. She was unable to attend her father's funeral.

The imposed fines had a significant impact on the defendants and their employers. In some cases, the disproportionate fines had a devastating effect on independent journalists.³⁶ According to HRW interviews, the electronic presence of media personalities, which is important to enjoy the right to freely express opinions as guaranteed by international law, is taking a significant setback since they do not have sufficient funds to develop their websites and pay legal fees at the same time. Moreover, fines have to be paid within ten days, otherwise the convicts will get arrested and sentenced up to six months in prison.³⁷

34- Human Rights Watch Report, "There Is a Price to Pay": The Criminalization of Peaceful Speech in Lebanon, Hanine Ghaddar, dated 15/11/2019

35- Ideb

36- Interviews with 4 journalists: Radwan Mortada, Hanine Ghaddar, Ghassan Saoud and Timour Al Azhari

37- Interview with Michel Kanbour, a journalist.

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Many individuals have reported that they are applying self-censorship. Others reported that they are unable to write freely. Given the legal problems that private citizens are encountering for raising important topics, journalists are thinking twice about publishing pieces on corruption, security forces malpractices or bad governance. Some of them prefer to delete or modify comments on social media platforms. Some newspapers even refused to publish articles on corruption, to avoid litigation. This environment undermines good governance and debilitates vibrant civil societies.³⁸ The same concerns were echoed in HRW interviews.³⁹

Several accused individuals have reported that were subjected to significant pressure following their convocations. Others felt terrified and realize the seriousness of their situation and started to scale down their activity. Moreover, legal proceedings have caused unjustified stress, and unnecessary psychological and physical problems for the defendants and their families.⁴⁰ The same concerns were echoed in HRW interviews.

The accused discussed the consequences of having a criminal record. They reported work discrimination, disciplinary sanctions, wrongful termination as well as difficulties in obtaining employment, visas or studying abroad. They also highlighted the risk of getting arrested when applying for official documents such as passports, police record, or identity cards.⁴¹ The conviction will be expunged after five years, unless the offense is repeated within the prescribed period. In that case, the conviction will be expunged after ten years.⁴²

38- Interviews with 4 journalists: Radwan Mortada, Hanine Ghaddar, Ghassan Saoud and Timour Al Azhari

39- Maharat Foundation Report on the Violation of Freedom of speech and expression in Lebanon between May 2018 and April 2019, published in April 2019. Human Rights Watch Report, "There Is a Price to Pay": The Criminalization of Peaceful Speech in Lebanon, Hanine Ghaddar, dated 15/11/2019

40- Interviews with 4 journalists: Anne Marie El Hajj, Hanadi Gerges, Hani Nsouli, Michel Kanbour

41- Interviews with 2 journalists: Radwan Mortada and Walid Radwan

42- Human Rights Watch Report, "There Is a Price to Pay": The Criminalization of Peaceful Speech in Lebanon, Hanine Ghaddar, dated 15/11/2019

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5.2 The Unlawful Prosecution of Journalists by the Judicial Police

The Constitution guarantees the freedom of expression. Nevertheless, it has been undermined. Various violations affecting journalists, bloggers and social media users have been recorded. More importantly, some non-judicial law enforcement agencies are actively suppressing the freedom of speech in the cyberspace. For instance, the ISF Cybercrime Bureau, the Intelligence Directorate, the General Directorate of State Security (GDSS), the General Directorate of General Security (GS) are convoking and arresting suspects, by virtue of a judicial order or at their own discretion.

A. Using Convocations to Terrorize Journalists

In 2018, SMEX documented 36 cases of detention in relation to internet free speech. The police played a role in 25 of the 36 recorded cases. In most instances, a suspect is detained without the presence of their legal counsel. They may get detained for a long period of time and experience violence.⁴³

Founded in 2006 by virtue of Circular No.204/609, the Cybercrime and Intellectual Property Bureau is traditionally tasked with fighting crimes endangering the State's security such as terrorism, transnational crime and money laundering. Affiliated to the ISF Judicial Police - Special Criminal Investigations Department, the Bureau should pursue criminals that use high-end technological means to commit felonies such as hacking, information piracy, forgery and falsification. They are competent in investigating the technical and technological aspect that requires the knowhow of technicians and experts. In other terms, they do not have the jurisdiction to investigate defamation, slander, libel charges or cases related to free speech and the freedom of press. This explanation is based on the decision issued by the Prosecution Office at the Court of Cassation in the case of Mr. Mohannad El Hajj Ali.⁴⁴

43- SMEX 2018 Internet Free Speech Report in Lebanon, published in 2019
https://smex.org/wp-content/uploads/2019/11/X_191125_FreeSpeechPositive_Report_AR_Interactive.pdf

44- The convocation of Mohannad El Hajj Ali after he published an article on internet, dated 26/7/2013

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The Cybercrime Bureau became an entity to combat media freedoms, especially that some serious questions have been raised about the legality of its measures and competence to investigate media-related cases. Nowadays, the Bureau introduced the measure of forcing users to delete online posts, an unlawful practice that constitutes a blatant constitutional violation.⁴⁵

The Public Prosecution has been referring complaints regarding online posts to the Bureau. Therefore, the Bureau is prosecuting online bloggers and activists, based on judicial orders, and investigating cases brought to the prosecution by private citizens.⁴⁶

According to HRW interviews, physically and psychologically violent tactics were used in some cases. The privacy of journalists was violated. Their phones and social media accounts were searched without judicial orders.⁴⁷

Several questions need to be answered. Is the Bureau competent to interview journalists? Is the Bureau competent to interview bloggers? How the Lebanese law defines each category?

The Bureau shall not prosecute individuals for posting content on social media that may include elements of defamation. In practice, suspects are being questioned and they remain detained by order of the Public Prosecution until they delete said content and sign a declaration. The judicial police abuses can be rectified by the Public Prosecution. Yet, who rectifies the abuses of the Public Prosecution?! One can presume that cases are not referred to the Publication Court on purpose. Defendants that are tried under this judicial authority cannot be deprived of their liberty, humiliated and intimidated into deleting posted content. Nowadays the law distinguishes between the means of publications. If the content in question is published in newspapers or broadcasted on audiovisual media, the author shall be tried before the Publication Court. If the content in question is published on social media platforms, the author shall be tried before criminal courts. There is a problem in defining journalism and information protected by law.⁴⁸

45- Interview with Riad Kobaissi, journalist, during the preparation of this study, dated 14/09/2023

46- رانيا حمزة، نقيب المحامين في بيروت يشكك في شرعية مكتب مكافحة جرائم المعلوماتية، 13/5/2015، المفكرة القانونية - <https://www.legal-agenda.com/article.php?id=1105>

47- Human Rights Watch Report, "There Is a Price to Pay": The Criminalization of Peaceful Speech in Lebanon, Hanine Ghaddar, dated 15/11/2019

48- Interview with Farouk Al Moghrabi, journalist, during the preparation of this study, dated 14/09/2023

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The increase in cases referred to the Cybercrime Bureau by the Public Prosecution, which imitated legal proceedings, i.e., pre-trial investigation and court hearings, has been a notable example. Between July 2013 and May 2019, the bureau reviewed 3,599 defamation, slander and libel cases. The statistical breakdown shows that: 185 cases were filed by public sorbates; 22 cases were filed by religious institutions, 46 cases filed by private citizens or referred by the Public Prosecution.⁴⁹

Here are some notable cases:

On February 19th, 2019, the Bureau summoned Ali Dawoud, a journalist, after defamation, slander and libel charges were pressed against him. As member of the Press Syndicate, he refused to be summoned.⁵⁰ On July 18th, 2018, Joey Slim, a journalist, was interrogated after publishing a post that mocked Saint Charbel.⁵¹ On June 11th, 2018, Anne Marie El Hajj, a journalist, was summoned after publishing an article about an Ethiopian migrant worker.⁵² On June 4th, 2018, Safaa Ayyad, a journalist, was questioned after publishing an article on Al Modon website.⁵³ On June 9th, 2015, the Bureau summoned Hayat Merchad, a journalist. She refused to be summoned and the case was dismissed. On December 15th, 2014, the Bureau summoned Zaven Kouyoumdjian, a media personality, for plagiarism. On November 13th, 2014, the Bureau detained Karim Hawa, an activist, in a treacherous manner for four days after being accused of defamation and slander. On March 13th, 2014, the Bureau summoned Imad Bassi, a blogger, after being accused of defamation and slander. While he was being questioned, he refused to sign a pledge and was released on bail. On September 11th, 2013, the Bureau questioned Racha Al Amin, a journalist, after accusing Samir Geagea, the leader of the Lebanese Forces (LF), of terrorism. On August 27th, 2013, the Bureau summoned Lokman Slim, a publisher and writer, after the LF filed a defamation and slander lawsuit.

49- Human Rights Watch Report, "There Is a Price to Pay": The Criminalization of Peaceful Speech in Lebanon, Hanine Ghaddar, dated 15/11/2019

50- Maharat Foundation Report on the Violation of Freedom of speech and expression in Lebanon between May 2018 and April 2019, published in April 2019

51-Ideb

52-Ideb

53- Maharat Foundation Report on the Violation of Freedom of speech and expression in Lebanon between May 2018 and April 2019, published in April 2019

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On July 26th, 2013, the Bureau summoned Mohannad El hajj Ali, a journalist, after the LF accused him of defamation and slander. On April 11th, 2013, the Bureau summoned Abdallah Kameh, after publishing an article. He was released after several hours of detention.⁵⁴

The Cybercrime bureau was not the only entity that investigated defamation on the internet. Other security forces such as the ISF Intelligence Branch, the CS Intelligence Branch, the LAF Intelligence Department, the Central Criminal Investigations Department and the GDSS, investigated the above-mentioned cases at their own discretion.⁵⁵

B. Forcing Individuals to Sign Declarations and Remove Publications without a Court Decision

The most alarming practice consist of forcing the summoned individuals to sign a declaration, a prior written pledge, to not repeat the alleged offense. In other terms, they are ordered not to attack the plaintiff, which happens to be a political figure, or cover a specific topic. It is a blatant violation of constitutional rights, especially the freedom of expression and cult. This measure also constitutes an implicit admission of guilt that is made before the rendering of a court judgement.⁵⁶

Between January 2015 and May 2019, the Cybercrime Bureau released 1461 individuals after they pledged to not insult the plaintiff, write content containing elements of defamation and to remove denigrating content. Only six individuals refused to sign said pledges. This is an act of great oppression since citizens are being silenced instead of being given legal remedy. These declarations do not have any legal effect. According to Nizar Saghieh, signing a pledge amounts to a pre-trial admission of guilt. In other terms, the right to defense is forfeited.⁵⁷

54- Al Modon Website

55- Human Rights Watch Report, "There Is a Price to Pay": The Criminalization of Peaceful Speech in Lebanon, Hanine Ghaddar, dated 15/11/2019

56- 20/09/2015 صابرين الموسوي، تعهد الصمت: "إجراء تعسفي باطل حكماً، صحيفة المدن، <https://www.almodon.com/society/2015/9/20/%D8%AA%D8%B9%D9%87%D8%AF-%D8%A7%D9%84%D8%B5%D9%85%D8%AA-%D8%A5%D8%AC%D8%B1%D8%A7%D8%A1-%D8%AA%D8%B9%D8%B3%D9%81%D9%8A-%D8%A8%D8%A7%D8%B7%D9%84-%D8%AD%D9%83%D9%85%D8%A7>

57- Human Rights Watch Report, "There Is a Price to Pay": The Criminalization of Peaceful Speech in Lebanon, Hanine Ghaddar, dated 15/11/2019

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The Prosecution Office at the Court of Cassation affirmed that law enforcement agencies act based on their orders. According to Article 111 of the Lebanese Criminal Procedure Code, the investigative judge, based on the opinion of the prosecution, shall be competent to determine the conditions of judicial supervisions, if the defendant was released. However, the law does not give the same competence to the prosecution, especially in the pre-indictment phase.⁵⁸ Therefore, the Public Prosecutor at the Court of Cassation cannot press charges in speech cases because they are not public right cases.⁵⁹

Here are some notable cases:

On September 6th, 2023, Mariam Majdeline El Laham, a journalist, was summoned for defamation, slander and sectarian stir. She was detained after refusing to delete the contentious post. Her house and her parents' home were searched. Her computer was also examined. On September 13th, 2023, a research and information warrant were issued after she refused to undergo a drug test.⁶⁰

On August 24th, 2023, the members of the Machrou' Leila, a music band, were "questioned by the GDSS". They received online threats. They were forced to sign a pledge to delete posts deemed offensive to Christianity. No charges were pressed and they were set free. Nevertheless, the public prosecution did not take any measures to investigate the online death threats.⁶¹

On February 5th, 2019, Ziad Itani, an actor, was summoned to forcibly delete a post and sign a pledge of silence. Mr. Itany's went on to become the protagonist of a major political case.⁶²

On September 19th, 2018, Hani Nsouli, a journalist, was summoned after a lawsuit accusing him of defamation and inciting sectarian strife was filed. He was confronted with a request to sign a declaration to not criticize the plaintiff. He refused to publicly apologize to them.⁶³

58-Ideb

59- Interview with Jean Kassir, journalist, during the preparation of this study, dated 14/09/2023

60- 26/9/2023 . المفكرة القانونية، لور ايوب، تنديد بالعقوبات على الصحفيين: قضية اللطام تنبئ بالأسوأ.

61- Human Rights Watch Report, "There Is a Price to Pay": The Criminalization of Peaceful Speech in Lebanon, Hanine Ghaddar, dated 15/11/2019

62- Maharat Foundation Report on the Violation of Freedom of speech and expression in Lebanon between May 2018 and April 2019, published in April 2019. Human Rights Watch Report, "There Is a Price to Pay": The Criminalization of Peaceful Speech in Lebanon, Hanine Ghaddar, dated 15/11/2019

63- Ideb

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On August 30th, 2018, Abbas Saleh was summoned after accusing the leader of a Christian political party of stealing. He deleted the contentious post, but refused to sign a declaration.⁶⁴

On June 18th, 2018, HRW received a letter from the Cybercrime Bureau. They were asked to remove a statement on Lelisa, an Ethiopian migrant worker, by order of the Prosecutor at the Court of Cassation. They were unable to appeal the decision because prosecution orders are binding. “L’Orient-Le Jour”, the Legal Agenda, The Daily Star and LBCI, received similar orders. The first two entities refused to comply while the last two entities discontinued their coverage by deleting all relevant content.⁶⁵

On June 7th, 2018, Timor Azhari, a journalist, was questioned for publishing an article about Lelisa. He was forced to delete all relevant posts.⁶⁶

On August 11th, 2017, Hanadi Gerges was summoned to forcibly delete a contentious post and sign a pledge of silence. She was told not to criticize the Head of State, the Head of Government, the Speaker, the Patriarch and the Mufti in the future.⁶⁷

Between July 2017, and August 2018, Fidaa Itani, Wadih Asmar and Imad Bazzi refused to sign any declaration or delete any alleged slanderous content.⁶⁸

On January 29, 2014, Gino Reaidy, a blogger, was questioned after being charged with defamation, slander and libel. He was forced to sign a pledge of silence.

On April 21st, 2019, This Is Lebanon, a news website, was partially and temporarily taken down.⁶⁹

64- Human Rights Watch Report, “There Is a Price to Pay”: The Criminalization of Peaceful Speech in Lebanon, Hanine Ghaddar, dated 15/11/2019

65- Ideb

66- Ideb

67- Human Rights Watch Report, “There Is a Price to Pay”: The Criminalization of Peaceful Speech in Lebanon, Hanine Ghaddar, dated 15/11/2019

68- Ideb

69- Maharat Foundation Report on the Violation of Freedom of speech and expression in Lebanon between May 2018 and April 2019, published in April 2019. Human Rights Watch Report, “There Is a Price to Pay”: The Criminalization of Peaceful Speech in Lebanon, Hanine Ghaddar, dated 15/11/2019

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C. The Imprisonment and Prosecution of Journalists

Provisional Detention is meant to be an exceptional measure that aims to temporarily deprive an individual of their freedom. Only competent authorities can order the provisional detention of an individual in order to keep a charged or accused person in custody during the pre-trial phase. It is true that Article 32 of the Lebanese Criminal Procedure Code vests in the Public Prosecution the power to arrest, detain and interrogate suspects, if certain conditions are met. Nevertheless, provisional detention cannot be applied in publication cases. Indeed, Article 28 of the Publication Law, as amended by Law No.330/1994, explicitly provides⁷⁰ that journalists, publishers, writers and authors cannot be provisionally detained.⁷¹

However, the Penal Code provisions have been sometimes applied in cases of online speech crimes. According to said law, a person may be provisionally detained if they have committed a crime that is punishable by imprisonment for more than one year. Nevertheless, provisional detention should be the exception and not the norm. It should be only used to stop the suspect from fleeing, repeating the offence or tamper the evidence. Nonetheless, the public prosecution and/or some plaintiffs have been adding charges to ensure that the one-year imprisonment threshold is met. The additional charges are generally dropped for lack of evidence, but only after the charged individuals are kept in provisional detention.⁷²

In pre-trial investigations, law enforcement agencies come under the authority of the public prosecution that has the discretionary power to order the provisional detention of an individual. In a leaked memo dated February 20th, 2018, the minister of Justice asked the Chief Prosecutor at the Court of Cassation to order their subordinates to drop provisional detentions in online speech cases. However, the chief prosecutor refused to apply a non-binding request, since the Ministry of Justice does not have any authority over the public prosecution.⁷³

70- Article 28 of the Publications Law, as amended by Law 330 of 18/5/1994.

71- باتريسيا صعيبي، حرية التعبير في لبنان، المجلة القضائية، منشورات صادر، 2021 - https://saderlaw.com/pdfs/AMAK_FreedomOfExpression_Me%20Patricia_210917.pdf

72- Human Rights Watch Report, "There Is a Price to Pay": The Criminalization of Peaceful Speech in Lebanon, Hanine Chaddar, dated 15/11/2019

73-Ideb

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Here are some notable cases:

On November 16th, 2017, Ahmad Al Ayoubi, a journalist, was summoned by the Criminal Investigations Department after being charged with making outrageous and slanderous statements about a brotherly State and the Head of the State. He was detained for thirteen days for refusing to sign a pledge. Eventually, he was released.⁷⁴

On December 23rd, 2018, the security forces attacked four journalists that were covering a protest in Beirut.⁷⁵

On February 3rd, 2019, the Military Police raided the offices of “Lebanon Debate”, a news website, searching for Michel Kanbour, a journalist, accused of publishing false information about law enforcement agencies.⁷⁶

⁷⁴- Human Rights Watch Report, “There Is a Price to Pay”: The Criminalization of Peaceful Speech in Lebanon, Hanine Ghaddar, dated 15/11/2019

⁷⁵- Maharat Foundation Report on the Violation of Freedom of speech and expression in Lebanon between May 2018 and April 2019, published in April 2019. Human Rights Watch Report, “There Is a Price to Pay”: The Criminalization of Peaceful Speech in Lebanon, Hanine Ghaddar, dated 15/11/2019

⁷⁶-Ideb

6. THE PUBLICATIONS COURT

A first instance court,⁷⁷ the Publications Court is considered as an exceptional body that hear all cases related to publications crimes. However, it is only eligible to hear cases involving newspapers⁷⁸ or audiovisual media outlets. Indeed, Article 28 of Decree-Law No.104/77 made the Publications Court as the competent body to trial in first instance all eligible publications crimes. Moreover, Articles 28 & 35 of Law No.382/94 provided that the Publications Law should also apply to speech crimes made via radio or television. Therefore, one may presume that the Publications Court is the competent authority to trial such crimes.⁷⁹

In the Case of A.B. Vs Prosecution, the Court of Cassation deemed that the Publications Court is incompetent, since the journalist was accused of a felony was not committed via the press or a written publication.⁸⁰ The Court ruled that “assuming the charged person is a journalist, the Justice System does not vest in the Publications Court the jurisdiction to review the crimes with which they are charged. As specified in Article 3 and the subsequent provisions of the Publications Law, dated 14/9/1962, the Publications Court is only competent to hear crimes committed in the press or in written publications. Based on the available evidence on which the prosecution relied upon, it was established that the acts attributed to the defendant, A.B, were not committed via a written publication or the press. Therefore, the competence of the Publications Law can be excluded.”⁸¹

Here are some of the notable condemnations rendered by the Publications Court:

On February 5th, 2019, Hossein Mahdi, a journalist, was convicted for publishing internal leaked documents in the “AUB Leaks” case, despite the initial judgment rendered by the urgent matters judge which affirmed that the publication of public interest document does not constitute a violation of the right to privacy.⁸²

77- Article 28 of the Publications Law, as amended by Law 330 of 18/5/1994. “The First Instance Court hears all publications cases and the rendered verdict may be appealed at the Court of Cassation. In publications cases, provisional detention is prohibited.

78- Article 3 of the Publications Law. A publication stands for a means of publication that contains words, shapers, letters, pictures and drawings. Each publication shall have a name and contain the author’s name, address and print date.

79-2021 باتريسيا صعيبي، حرية التعبير في لبنان، المجلة القضائية، منشورات صادر، 2021

80-Ideb

81- Criminal Court of Cassation, ruling no. 210, dated 25/09/2001, Basil VS Prosecution, Electronic Legal Portal, SaderLex

82- Maharat Foundation Report on the Violation of Freedom of speech and expression in Lebanon between May 2018 and April 2019, published in April 2019

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On January 31st, 2019, Aouni Al Kaaki, President of the Press Syndicate, was convicted for publishing an article that contains, according to the Court, fake information, which may disturb public order and undermine the State's security by attacking the Head of Government.⁸³

In March 2018, Michel Kanbour, a journalist, was convicted in absentia for accusing the general director of a governmental authority of corruption. He was sentenced to imprisonment for "inciting violence. The alleged insult of someone cannot justify that."⁸⁴

On February 12th 2014, Jean Assi was sentenced to prison for defaming and slandering President Michel Sleiman via twitter. "Court rules shall not constate a deterrent for people to freely express their opinions."⁸⁵

In April 2015, Radwan Mortada lost a case because he could not provide the Court with official documents proving the acts of corruption that he had reported.⁸⁶

On February 24th, 2015, Mohammad Nazal, a journalist, and Al Akhbar, a newspaper, were sentenced to pay a fine for accusing a magistrate of corruption. Nevertheless, "Article 387 of the Penal Code was not applied, which provides that the accused are acquitted once the alleged defamatory claims were proved to be true. In this case, the claims revolved around irregulates in law enforcement and the judiciary."⁸⁷

Here are some of the most notable favorable rulings rendered by the Publications Court:

83- Ideb

84- Human Rights Watch Report, "There Is a Price to Pay": The Criminalization of Peaceful Speech in Lebanon, Hanine Ghaddar, dated 15/11/2019

85- Maharat Foundation Report on the Violation of Freedom of speech and expression in Lebanon between May 2018 and April 2019, published in April 2019.

86- Human Rights Watch Report, "There Is a Price to Pay": The Criminalization of Peaceful Speech in Lebanon, Hanine Ghaddar, dated 15/11/2019

87- Maharat Foundation Report on the Violation of Freedom of speech and expression in Lebanon between May 2018 and April 2019, published in April 2019

6. THE PUBLICATIONS COURT

On April 7th, 2020, Al Akhbar, Mohamad Zbib and Roula Ibrahim were acquitted of all charges after they uncovered corruption cases. The first case was filed by former PM Fouad Siniora against Mohamad Zbib for publishing an article about irregularities in Lotto Cash Scratch Games, known locally as “Tiko Tak”. The second case was filed by the Chairman of the Beirut Municipality, Bilal Hamad, for exposing CCTV tender irregularities. The Court acquitted the defendants after it was established that they based their articles on decisions rendered by the Lebanese Court of Audit, also they provided the Court with credible evidence proving the catastrophic effect of the misuse of public funds. The Court based its verdict on three elements: 1) the decisions of the Court of Audit; 2) International instruments such as the Universal Human Rights Declaration, the European Convention on Human Rights, UN Convention Against Corruption, and the Council of Europe Anti-Corruption Guiding Principles; 3) Article 387 of the Penal Code.

On November 21st 2019, Nidaa Al Watan, a newspaper, was acquitted of all defamation charges after criticizing the then Head of State, President Michel Aoun, of being on the same page with Hezbollah.⁸⁸ On October 1st, 2019, Al Akhbar was acquitted after attacking former president Michel Sleiman for criticizing the Resistance and inviting him to leave.⁸⁹ The Court upheld the freedom of expression in both cases, even though the media outlets position themselves differently on the political spectrum.⁹⁰ It shielded speech freedom from instrumentalization. Moreover, the Court noted that “the tendency to put the freedom of expression and democratic principles ahead of the status of Presidential Office holders.” It also noted that criticism “is a manifestation of the freedom of expression that is enshrined by the Constitution and applicable laws..., and showcases intellectual pluralism that is inherent to all democratic societies.”

On March 12th, 2019, the case brought against Salem Zahran, a journalist was dropped. He was charged with insulting the Emir of Kuwait and endangering Lebanon’s international relations.⁹¹

88- Publications Court Ruling No.27, dated 21/11/2019

89- Publications Court Ruling No.16, dated 01/10/2019

90- 22/6/2020. نزار صاغية، تحولات ايجابية في اجتهاد محكمة المطبوعات 2، مبادئ الديمقراطية ابدى من رمزية رئاسة الجمهورية، 22/6/2020.

91- Maharat Foundation Report on the Violation of Freedom of speech and expression in Lebanon between May 2018 and April 2019, published in April 2019

6. THE PUBLICATIONS COURT

On December 4th, 2018, the case brought against Dr. Naji Karam, an archeology professor, who held the minister of Culture responsible for the poor management of important archeological sites, was dropped. The Court based its decision on a 2002 EHRC ruling. It states that “the conviction of those who point to and expose corruption in an objective manner cannot be justified from a legal and judicial point of view.” This judgment was seen as “the most impactful ruling in the last 20 years.” It came a year after Dr. Karam was convicted for defaming the general director of the Ministry of culture on social media platforms. This landmark ruling paved the way for a modern interpretation of laws governing the freedom of expression.⁹²

The Publications Court was created for two main reasons: to uphold the freedom of media and prevent bringing the media profession into disrepute. Lately, the Publications Court rendered several important rulings that reflect its ability to interpret existing laws in a manner that benefits and protects the freedom of expression. This shows that applicable legislations provide the judicial authorities with the ability to influence the freedom of expression. Moreover, judges play a key role in upholding or undermining the freedom of expression and press.⁹³ In a certain way, the magistrates are behind all major shifts undertaken by judicial authorities. More importantly, the current trend may not perdure given that its tenants are not enshrined in existing legislations. Therefore, the Court is still caught between two schools of thought: adopting a strict and literal interpretation of the law that does not uphold the freedom of speech or a less rigid interpretation that is based on the spirit of the Lebanese Constitution and Lebanon’s international obligations.⁹⁴ Until the time of writing, the Court has not adopted a definitive stance on whether it has the competence to hear all publications cases, even the ones involving social media platforms. The Court considers itself as competent to hear cases involving news websites, but reversed a previous decision to trial cases involving social media platforms such as Facebook or X, formerly twitter. Such cases have been referred to criminal courts.

92- Maharat Foundation Report on the Violation of Freedom of speech and expression in Lebanon between May 2018 and April 2019, published in April 2019. Human Rights Watch Report, “There Is a Price to Pay”: The Criminalization of Peaceful Speech in Lebanon, Hanine Ghaddar, dated 15/11/2019

93- 20/5/2020. نزار صاغية، تحولات ايجابية في اجتهاد محكمة المطبوعات في بيروت.

94- Maharat Report on the Violation of Freedom of speech and expression between May 2018 and April 2019 on the occasion of World Press Freedom Day, <https://maharatfoundation.org/%D8%AF%D8%B1%D8%A7%D8%B3%D8%A7%D8%AA/%D8%A7%D9%84%D9%85%D9%86%D8%B4%D9%88%D8%B1%D8%A7%D8%AA/reportpressday>.

6. THE PUBLICATIONS COURT

It should be noted that the Publications court is slowly, but steadily, moving towards enshrining the principle of criticizing public figures. In an age where the principles of freedom of speech and expression constitute the cornerstone of democratic societies, and the digital revolution enabled individuals to share their private opinions via the World Wide Web, this practice became inevitable. Indeed, Article 387 of the Lebanese Penal Code entitled private citizens and journalists working for media outlets to accuse public servants of professional wrongdoing without facing the prospect of getting convicted, as long as they manage to prove the forwarded allegations.

Nevertheless, the legal ambiguity surrounding online and electronic publishing puts journalists at risk. A journalist that publishes a given article on their website and republishes said article on their Twitter or Facebook accounts may be prosecuted by different judicial authorities, including the Military Court, for the same crime. A complex situation that can be traced back to existing laws, especially the ones criminalizing free speech. Until the present day, the judiciary failed to adopt a clear and constant jurisprudence regarding the freedom of expression and the freedom of speech in cyberspace.

7. PROSECUTIONS AND ALLEGATIONS BROUGHT BEFORE THE MILITARY JUDICIARY

7.1 Claim by the military judiciary before the Publications Court

The government commissioner filed a lawsuit against several media outlets and journalists requesting that they be prosecuted before the Publications Court, in violation of the rules of jurisdiction and powers conferred to him by law.

- On April 10, 2019, the government commissioner before the military court filed a lawsuit against journalist Mona Saliba on charges of slander and defamation of a public employee and demanded personal financial compensation.⁹⁵
- On January 31, 2019, the government commissioner before the military court charged journalist Maysam Rizk and Al-Akhbar newspaper with the crime of defamation against the Lebanese army and the military institution.⁹⁶
- On November 7, 2018, the government commissioner before the military court charged journalist Radwan Mortada and Al-Akhbar newspaper with the crime of insult and damaging the reputation of the military court and the State Security Service.⁹⁷
- On October 17, 2018, the government commissioner before the military court charged journalist Michel Kanbour, publisher of the “Lebanon Debate” website, with the crime of publishing false news and damaging the reputation of the government commissioner and the military court.⁹⁸

95- - Maharat Foundation’s report on violations of freedom of opinion and expression in Lebanon between “May 2018 and April 2019” in April 2019.

96- - The previous reference.

97- - The previous reference.

98- - Maharat Foundation’s report on violations of freedom of opinion and expression in Lebanon between “May 2018 and April 2019” in April 2019.

7. PROSECUTIONS AND ALLEGATIONS BROUGHT BEFORE THE MILITARY JUDICIARY

7.2 Referrals before the military judiciary

The history of the military judiciary is abundant with trials brought forward against activists and journalists. Activists who spoke out about torture by the military accused the Ministry of Defense and the army of using the broad military judicial authority as a tool of intimidation and retaliation to protect themselves and the army against criticism. There was a noticeable increase in the number of cases brought by the Military Public Prosecution against individuals for defamation between 2016 and 2019. The charges included damaging the reputation of the military institution and the army commander, defaming the military judiciary and military court judges, and spreading false news.⁹⁹

On March 7, 2019, the sole military governor in Mount Lebanon issued a ruling in absentia to imprison television correspondent Adam Shams El-Din for the crime of insulting the State Security Apparatus. Shams al-Din objected to the ruling. On April 11, 2019, the Military Court declared it had no jurisdiction and referred his case to the Public Prosecution to refer it to the Publications Court.¹⁰⁰

On March 7, 2019, the military judge in Mount Lebanon sentenced journalist Fidaa Itani in absentia to imprisonment because of Fidaa Itani's participation in comments insulting the "State Security Directorate," published by Adam Shams El-Din.¹⁰¹

On February 3, 2019, the government commissioner to the military court issued a search and investigation report against journalist Michel Kanbour for the crime of undermining the morale of the army and its leadership and publishing false information about a controversial bag belonging to the army commander.¹⁰²

99- - The previous reference.

100- - Maharat Foundation's report on violations of freedom of opinion and expression in Lebanon between "May 2018 and April 2019" in April 2019. Human Rights Watch report, Customs Report, Criminalizing Peaceful Expression in Lebanon, Hanin Ghaddar, 11/15/2019.

101- - Human Rights Watch report, Customs Judges, Criminalizing Peaceful Expression in Lebanon, Hanin Ghaddar, 11/15/2019.

102- - Maharat Foundation's report on violations of freedom of opinion and expression in Lebanon between "May 2018 and April 2019" in April 2019.

7. PROSECUTIONS AND ALLEGATIONS BROUGHT BEFORE THE MILITARY JUDICIARY

On January 10, 2018, the military court issued a ruling in absentia to imprison journalist Haneen Ghaddar on charges of defaming the army and damaging its reputation. Local and international human rights groups criticized the ruling, because “the military judiciary is interfering into a civil case par excellence, which constitutes an act of tyranny, silencing, and deliberate intimidation in which one party assumes the role of arbitrator, in contradiction to the principle of a fair trial.” After denouncing the ruling, the Military Court declared it had no jurisdiction and referred the case to the Publications Court. “The military court has not issued a prison sentence against a journalist since the 1950s, but rather a imposed fines (Ghaddar told Human Rights Watch). There are no statistics available on the number of prosecutions related to freedom of expression before military courts as there is no mechanism to officially track defamation cases.¹⁰³

Although the military judiciary refers expression cases to the Publications Court, there is on contention on the legality of referring electronic media cases to the military judiciary. The highest court of appeal in publications cases ruled that electronic media fell outside its jurisdiction. So, legally, if someone writes about the army or security forces on the Internet, why should his writings be subject to the jurisdiction of the military judicial system?

103- - Maharat Foundation’s report on violations of freedom of opinion and expression in Lebanon between “May 2018 and April 2019” in April 2019. Human Rights Watch report, Customs Report, Criminalizing Peaceful Expression in Lebanon, Hanin Ghaddar, 11/15/2019.

8. CONCLUSIONS AND RECOMMENDATIONS: HOW DO WE CONFRONT THE LEGAL REPRESSIVE MACHINE OF A CRUMBLING AUTHORITY?

The health of the democratic system is organically linked to freedom of expression, and this is ensured by preserving freedom and respecting the diversity of opinions in the media. The democratic system is not equal if public opinion is not able to access all the information necessary to be able to judge individuals and groups and form its political, social, economic and cultural opinion. The democracy of the electoral process depends on how the media approaches it.

The constitutional text, as well as the international agreements to which Lebanon is party, consider freedom of the media to be a human right and a basic principle protecting freedoms and societies alike. It plays a leading role in monitoring the authorities, informing citizens, and shedding light on the sources of corruption in society, which causes severe harm to democratic institutions, the national economy, and the rule of law, and poses a severe threat to the sustainable development of the people (paragraph 19 of the 2002 Johannesburg Declaration on Sustainable Development)

There are standards to measure the extent of respect for media freedom, the most important of which is recognizing the permissibility of defamation when there is a social interest that requires publishing/exposing certain actions, so it becomes an exercise to serve public interest, one worthy of acknowledgment, not punishment. It is shameful that the penal laws remain a sword hanging over the necks of media professionals, being brandished against them when they criticize people who hold positions of authority and public positions.

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In this context, French law, which constitutes a reference for Lebanese law, stipulates two cases that invalidate the claim of defamation. The first relates to the defamation defendant proving the veracity of their statement. The second is based on diligence and is much more recurrent than the first case, and is based on the defamation defendant proving their good faith in his statement. Good faith is based on four pillars: The legitimate justification for raising the issue being that it is of a general nature, caution in choosing the adjectives used, the absence of personal hostility between the two parties, and most importantly, acting seriously towards investigating and collecting information before submitting the statement. In addition, there is consistent jurisprudence shared between the French Court of Cassation and the European Court of Human Rights that stipulates that “when the issues raised fall within the scope of a general social debate, the claim of defamation and slander is not eligible for consideration.”¹⁰⁴

Critical discourse should be encouraged because it is essential for a vibrant civil society and a functioning democracy.¹⁰⁵ When an article is published criticizing the President of the Republic or a minister who held a ministerial position for years and did not carry out his duties, the author of the article is accused of contempt, slander, and defamation, which hinders the production of journalistic content that exposes the ruling class and its corruption. Reform cannot be achieved in Lebanon unless laws are enacted to protect journalists and whistleblowers who monitor officials, record their violations, and expose their crimes. Fortunately, there are many journalists who intend to broadcast what is happening to public opinion, considering that pressure through public opinion will prevent any criminal prosecution that suppresses freedom of expression. Therefore, the impact of suppressing freedom of opinion is often less than anticipated.¹⁰⁶

104- - [Al-Safir newspaper](#) " Elie Ferzli, Friday, 3/7/2014.

105- - Human Rights Watch report, [Customs Judges, Criminalizing Peaceful Expression in Lebanon](#), Hanin Ghaddar, 11/15/2019.

106- - An interview with legal researcher Elham Burgess within the framework of preparing this research, on September 14, 2023.

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In this context, it is important to obtain evidential documentation and verify the truth. Human Rights Watch has attempted, on several occasions, to use the Access to Information Act to obtain public information, with limited success.¹⁰⁷

8.1 Abolition of defamation crimes: A necessary input to ensure the effective exercise of media and press freedom

International human rights law permits restrictions on freedom of expression, provided they are necessary. However, the International Covenant on Civil and Political Rights attaches great importance to unrestricted freedom of expression. Some countries are moving to abolish defamation laws because they are unnecessary. Civil defamation and criminal incitement laws are sufficient to protect people's reputations and maintain public order. Criminal penalties are disproportionate to the harm to reputation and must be abolished.

On May 9, 2018, the United Nations Human Rights Committee expressed its concern about:

- (a) Criminalizing defamation, slander, blasphemy and criticism of public officials, which may be punishable by imprisonment;
- (b) The broad interpretation of cybercrime in the Bureau on Cybercrime aims to restrict freedom of expression;
- (c) Reports of the arrest and prosecution of people criticizing government authorities on social media".¹⁰⁸

Therefore, "all public figures, including presidents, are legitimately subject to political criticism." "Considering that forms of expression are insulting to a public figure is not sufficient to justify the imposition of sanctions." But it turns out that laws are used to silence any legitimate speech, which is necessary for a vibrant society governed by law.¹⁰⁹

¹⁰⁷- - The previous reference.

¹⁰⁸- - Human Rights Watch report, Customs Judges, Criminalizing Peaceful Expression in Lebanon, Hanin Ghaddar, 11/15/2019.

¹⁰⁹- - Human Rights Watch report, Customs Judges, Criminalizing Peaceful Expression in Lebanon, Hanin Ghaddar, 11/15/2019.

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After focusing on the press in the freedom battle, the focus today is on social media. Because freedom battles in the field of publications have succeeded in annulling the immediate measures that the Public Prosecution, the judiciary, or the executive authority can take against publications and editors before the end of the trial, and these are gains that do not benefit those who express their opinions on social media. The most prominent benefits resulting from decriminalizing defamation are:

A- Not using public authority in matters pertaining to personal dignity

Insult or defamation affect individual rights (rights to dignity) and are not serious enough to require the Public Prosecution to intervene (to defend the rights of society) and use its authority to defend people's dignity and impose a ceiling on the exercise of freedom of expression. The balance between freedom of expression and the right to reputation must be struck by the court without the intervention of the Public Prosecution. The necessity of decriminalizing defamation is magnified by two factors:

1- The political system based on elevating the status of leaders and portraying harm to them as harm to the entire denomination they represent. Decriminalization contributes to reducing this reality and strengthens the elements of democracy. 2- Likewise, the discriminatory Public Prosecution, which only investigates serious crimes, has turned into a supporting arm for institutions and has devoted its energies to investigating politicians' complaints when their reputations are under attack. Accordingly, the highest representative of society's rights (the Discriminatory Public Prosecution) has become involved in supporting politicians' complaints against the freedom of expression.

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B. No immediate measures or penalties

The second benefit of decriminalization is depriving the Public Prosecution of the ability to take immediate measures, especially for crimes not covered by the Publications Law, and prohibiting pretrial detention, or forcing journalists to choose between apologizing, deleting their publications, or signing a pledge of silence under penalty of pretrial detention, so basically a choice between their freedom of expression and personal freedom without providing the conditions for defending their innocence before the court.

C. The punishment must be proportional to the harm worthy of protection

The punishment must be proportional to the harm. The plaintiff and the defendant subject themselves to the investigation, in what becomes a duel between those who are defending their freedom to criticize and those who are testifying that their dignity and reputation have been attacked.

Changing the nature of the penalty from penal to civil leads the court to consider the extent of the damage claimed by the plaintiff. This applies specifically in the case of public figures who have access to the public as a whole and can refute any criticism against them. Therefore, the compensation awarded to public figures must be determined in light of the affected person's ability to access these public spaces, in a way that enhances freedom of expression and reduces any relevant obstacles.¹¹⁰

¹¹⁰ - Nizar Saghie, my opinion is not a crime: New Freedom Pause, 11/8/2023.

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8.2 Other legal and judicial reforms guaranteeing freedom of expression and the press

A. Abolishing the penalty of imprisonment and maintaining fines for crimes related to freedom of opinion, expression, and media

The Lebanese judicial authorities must comply with the standards of freedom of expression guaranteed in the Constitution and international conventions, and refrain from imposing freedom-depriving penalties in opinion cases, by decriminalizing defamation, slander, and contempt, so that they are limited to civil liability and do not entail any prison penalties. Accordingly, these penalties should not negatively affect the freedom of opinion and expression and the right to seek and transmit information.

Defamation should never lead to imprisonment, including defamation against the President of the Republic and the army. Precautionary arrest for all means of publication and expression, regardless of the capacity of the perpetrator should be suspended.¹¹¹

- Implementing a system of light financial fines in cases of opinion and expression without prison sentences, with the possibility of applying obligations to convicted persons to carry out civil services for the public interest, such as providing one hour per week for social work determined by the court. This civil penalty would contribute to urging the convicted person to assume greater social responsibility instead of restricting his freedom in vain.

- Limiting criminalization only to statements that amount to incitement to violence, hatred, or discrimination on a national, racial, or religious basis. Especially since Article 317 of the Penal Code only punishes “every act and every writing... “It results in inciting sectarian or racist tensions or inciting conflict between sects” without addressing issues of hatred and discrimination.

111- - Proposals of the Samir Kassir Foundation for Media Law and Freedom of Expression.

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B. For government institutions, including the army and security services:

- **Establishing the right to criticize public institutions:** provided that the civil servant or the representative of the foreign state who was personally insulted retains the right to file a personal claim without the public prosecution having the power to file a lawsuit based on its own discretion.¹¹²
- **Expanding the concept of the right to criticize a civil servant to include anyone who acts or appears in the capacity of a public figure:** The law must explicitly state the concept of public interest in criticizing public figures and authorities, not granting them special protection from defamation, and not using civil or criminal defamation laws by public officials in matters related to their public functions. “These laws should not be used to prevent criticism of the government,” but rather “reflect the principle that public figures should tolerate a greater degree of criticism than ordinary citizens.”
- **Expanding the concept of the public figure related to the inadmissibility of prima facie evidence:** provided that it includes everyone who deals with public affairs and bears public responsibilities equally, especially the performance and practices of the President of the Republic, heads of foreign countries, ambassadors, heads of diplomatic missions, and party leaders.¹¹³
- **Establishing the right of the media to prove acts of corruption, crimes and mismanagement related to the exercise of public office:** providing proof of corruption charges against public figures exonerates the publisher (Article 387 of Penal Code), and providing founded information about corruption without being able to provide conclusive proof does not require criminalization. Rather, the court must ask the concerned administration to provide the necessary papers and documents and prove the incorrectness of the presented information so that it can rule the publication as criminal.¹¹⁴

112- - Proposals of the Samir Kassir Foundation for Media Law and Freedom of Expression.

113- - Proposals of the Samir Kassir Foundation for Media Law and Freedom of Expression.

114- - Proposals of the Samir Kassir Foundation for Media Law and Freedom of Expression. And the Alliance for Defending Freedom of Expression in Lebanon, 7/13/2020.

8. CONCLUSIONS AND RECOMMENDATIONS: HOW DO WE CONFRONT THE LEGAL REPRESSIVE MACHINE OF A CRUMBLING AUTHORITY?

C. With regard to enhancing legal protection for journalists while performing their work, namely when it comes to issues of public interest, especially through:

- Considering the truth as the decisive defense in cases of defamation and defamation Related to issues of public interest.
- It is sufficient that the defendant acts with due diligence with the aim of proving the truth in order for the act of slander and slander to be dropped.
- Establishing the burden of proof, it is the responsibility of those who claim to be the subject of defamation, not the defendants. The court should also request the competent departments that are the subject of the press release to produce the necessary documents to prove or refute the allegations.
- Refrain from violating the privacy of the accused during the investigation, including by asking for their phones, social media accounts, and/or passwords.
- Abolition of detention for crimes of publishing, opinion and expression, regardless of the character or profession of the perpetrator. It is prohibited to interrogate a journalist in police stations, before investigative judges, and public prosecutions, and to refer any complaint or allegation directly before the competent court,¹¹⁵ which is the Publications Court. Referring those accused of defamation crimes directly to the Publications Court and not to the security services for investigation.
- Prevent security investigation agencies from asking defendants to sign pledges or remove defamatory content.

115- - Proposals of the Samir Kassir Foundation for Media Law and Freedom of Expression. And the Alliance for Defending Freedom of Expression in Lebanon, 7/13/2020.

8. CONCLUSIONS AND RECOMMENDATIONS: HOW DO WE CONFRONT THE LEGAL REPRESSIVE MACHINE OF A CRUMBLING AUTHORITY?

D. For the Publications Court

- Expanding the jurisdiction of the Publications Court to include defamation on media sites and social networking sites
- Revoking the duties of the judicial police in investigating publishing crimes and defamation, which shall be restricted to the Publications Court, whether on social networking sites or the audiovisual, and printed media.¹¹⁶
- It is true that the Publications Court is an exceptional criminal court that examines publications cases, but... It is not possible to discuss its abolition before defamation crimes are abolished, the rights of journalists under the Penal Code, the Publications Law, and the Military Justice Code.
- In the stage that follows the abolition of defamation crimes, it is necessary to work to abolish the Publications Court and all the jurisdictions of the criminal judiciary in cases related to freedom of expression and the press, and to limit the prosecution of journalists before the civil judiciary.
- It is necessary to abolish the Publications Court, as it is a criminal court and its ruling leads to placing a mark on the criminal record that prevents the journalist from establishing an association and may hinder their travel as in the case of a criminal. It differs from the single criminal court in that the investigation is carried out by the investigating judge, and the accused is not imprisoned or detained in custody.¹¹⁷

¹¹⁶- - The previous reference.

¹¹⁷- - An interview with journalist Farouk Al-Maghrabi within the framework of preparing this research, dated September 14, 2023.

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E. As for the military judiciary

- Not prosecuting civilians before military courts: Amending Article 24 of the Military Justice Law to prohibit the trial of civilians and all children before military courts, and to limit the prosecution of civilians before military courts to cases that threaten state security and military institutions (attacking military centers - armed clashes with military forces).
- Abolition of crimes and penalties related to freedom of opinion and expression from the Military Justice Code: Refraining from bringing criminal charges against individuals who defame the President of the Republic or the military institution, repealing the legislative texts that grant the military judiciary the authority to prosecute crimes of expression and publishing information that fall under the heading of insulting and defaming the army and security institutions, and not referring individuals who defame the army or security services to military courts.¹¹⁸

118- - Alliance for Defending Freedom of Expression in Lebanon, 7/13/2020. And the Samir Kassir Foundation's proposals for media law and freedom of expression.

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8.3 Pressure to decriminalize defamation, slander, and contempt in the new media law under consideration in the Parliament.

The Lebanese Parliament began discussing a new media law proposal in 2010. In September 2022, the Ministry of Information published the draft proposal as amended by the subcommittee of the Administration and Justice Committee “to update the Publications Law of 1962 and the Radio and Television Broadcasting Law of 1994 with the aim of improving the current draft of the proposed media law.” Today, after more than 12 years since its registration in the House of Representatives in 2010, and the completion of its discussion in the Information and Communications Committee in 2017, the legal text that the Administration and Justice Committee is considering today still requires amendments and drafting changes consistent with the basic principles of freedom of expression.

Reading the articles of the law under consideration indicates an unwillingness to deviate from criminalizing cases of expression. The proposed law clearly shows the authoritarian tendency to restrict media freedoms. Tightening penalties is not just a transient legal amendment, but rather a clear signal indicating a deliberate political decision by the authorities to curb public freedoms. Through this approach, the authorities demonstrate their firm intention to increase pressure on journalists and media institutions, which threatens to subjugate independent voices, which requires action and pressure to amend the articles, especially:

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- Regarding the criminal provisions related to libel, slander, and defamation: Article 62 of the proposed law stipulates the following: “While preserving the application of the provisions of the Penal Code and other penal laws that do not conflict with its provisions, the provisions of this law shall be applied to the crimes specified therein... The means of publication for implementing the provisions of this law are those stipulated in Article 209 of the Penal Code... and other means of publishing. Reading this article indicates the continued linking of the Media Law to the Penal Code and the failure to provide the required protection for media professionals. Rather, the punitive approach continues and the criminalization is not abolished, especially with regard to the provisions of defamation, slander, and libel.

In the same context, Article 66 states: “Whoever is convicted of a crime... Then repeats the same crime a year later... is subject to double the penalty stipulated by law. If there is recurrence... the penalty is multiplied by four... Whether the perpetrator is an actor, an accomplice, an instigator, or an intervener.” This article tightening penalties, represents a serious decline in enhancing freedom of expression and the press, and expanding the scope of public freedoms. It therefore limits the freedom of journalistic work in dealing with public affairs and will increase the number of unjust sentences against media professionals. Although the proposed law prohibits pretrial detention for all publication crimes, including crimes on social media, it does not eliminate the penalty of imprisonment for defamation, and in some cases increases prison sentences and doubles fines. If a public employee is subject to slander or defamation in connection with their work, proof of the truth of the statement is admissible as proof of defense only if the defendant is able to prove the validity of their allegations.¹¹⁹

119- - Human Rights Watch report, Customs Judges, Criminalizing Peaceful Expression in Lebanon, Hanin Ghaddar, 11/15/2019.

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- Regarding exposure to public officials and superiors, Article 69 of the proposed law stipulates that “slander and defamation committed by a media outlet shall be punished... With a fine ranging from five to fifteen times the minimum wage. It is not considered a crime to post a publication containing defamation and slander addressed against a civil servant... If the said publication does so with reference to official duty... provided that the defendant proves the validity of the actions attributed to the plaintiff... The judicial authority may order that administrative authorities and others be required to submit whatever supporting papers or documents they have... Its failure to do so is considered evidence of the validity of the defendant’s allegations.” Although this article provides protection for journalists when proving their allegations against any public employee, the concept of a public figure should be expanded to include leaders of parties, entities or companies that deal directly with the government.
- For the crime of insulting the President of the Republic, Article 70 of the proposed law stipulates that “In the case of an attack in the media against the person of the head of state... defamation, slander, or contempt against him, or against the head of a foreign country... The competent Public Prosecution of Appeal has the right to file a public right lawsuit... If the attack materialized through a publication, the Court of Appeal shall apply... the measure to confiscate the copy... If the publication was made by any audiovisual or electronic means, this court shall make a decision... to suspend the publication... The perpetrator of the crime shall be punished by imprisonment... And with a fine... Or one of these two penalties.”

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- For insulting diplomatic missions, Article 71 of the proposed law stipulates that “half of the penalty stipulated in the previous article shall be imposed if the crime is committed against one of the ambassadors or one of the heads of diplomatic missions accredited to Lebanon.” The criminal penalty in these articles threatens freedom of expression and the press, and imposes a subjective and objective restriction on freedom of expression, especially since it is up to the Public Prosecution to act upon its own discretion without prior proceedings. This article does not exempt journalists from punishment, even if the news published about presidents or diplomats is proven to be true.
- With regard to defamation, undermining national security, and publishing confidential information, Article 72 of the proposed law stipulates that “if a media outlet publishes... in disdain for a religion... or... to provoke sectarian strife, disrupt civil peace, or undermine the safety of the state... or Lebanon’s foreign relationship or... seeks to promote the Israeli enemy, the penalty shall be imprisonment... and a fine... or one of these two penalties.” Despite the necessity of adhering to the principle of criminalizing hate speech, this article is considered an objective undermining of freedom of expression and freedom of belief and opens the way for religious institutions to impose red lines on academic research and literary writing. The text related to state security also opens the way for the criminalization of all journalistic materials that deal with the performance of military and security institutions in the event that they commit violations.



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