

Analyzing Freedom of Expression Online in Lebanon in 2018

SMEX
تعزيز الحقوق الرقمية
advancing digital rights



Acknowledgments

SMEX produced the report based on research from **Rana Saghie**, a lawyer and researcher specializing in issues related to freedom of expression. **Grant Baker** edited the report, with assistance from **Najah Itani**. Additionally, **Yasna Hagdoost** copyedited the report.

The report relies on cases **SMEX** collected through **Muhal**, the Observatory for Freedom of Expression Online, to document detentions and arrests related to online freedom of speech in Lebanon. **Muhal** aims to raise awareness about these issues among civil society organizations, journalists, young people, and other stakeholders and pressure policymakers to change the laws, particularly regarding defamation and libel, that have led to the majority of these arrests. Not all cases documented in the report are available online. All errors and omissions are the responsibility of **SMEX**.

SMEX is a Lebanese NGO that since 2008 has worked to defend digital rights, promote open culture and local content, and encourage critical, self-regulated engagement with digital technologies, media, and networks across the Middle East and North Africa (MENA).

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■ Introduction

Over the past three years, Lebanon has witnessed a crackdown against freedom of expression online. The state has penalized citizens, journalists, and civil society representatives who criticize government officials or mock religious figures, worsening the overall environment for free speech online. To track the wide repression on freedom of expression online, SMEX launched Muhal, an observatory for freedom of expression online, to document violations perpetrated by state authorities. In 2018, SMEX tracked 36 cases limiting online freedom of expression, compared to just 15 in 2017 and seven in 2016.

“ The Constitution guarantees free speech; however, a number of articles in the Penal Code, Publications Law, and Military Justice Code undermine the protection. ”

Legally, Lebanon only offers conditional protection to freedom of expression, both offline and online, which enables judicial and non-judicial bodies to impose restrictions. Although Lebanon has signed a number of international conventions and treaties affirming its commitment to protecting freedom of expression, its laws falls short. The Constitution guarantees free speech; however, a number of articles in the Penal Code, Publications Law, and Military Justice Code undermine the protection. Of course, a free society has to balance the right to free expression with protecting the rights and freedoms of the most marginalized social groups. But the Lebanese state has used the law to prosecute speech that criticizes the government, and at the same time failed to protect vulnerable and marginalized groups from threats.

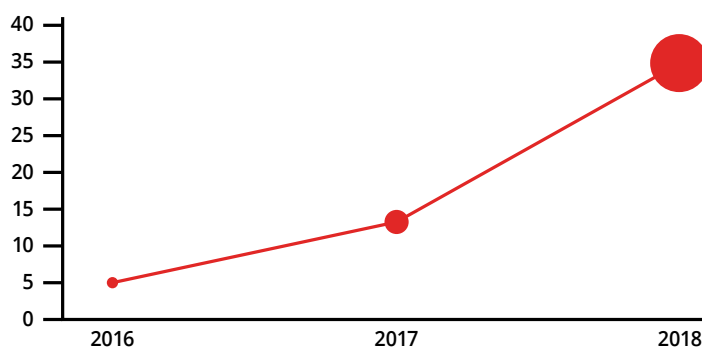
The courts have also failed to establish a stable jurisprudence concerning freedom of expression online. As per the Publications Law, journalists should be tried in the Publications Court. However, Single Criminal Judges

have tried a number of them, especially in cases where the journalist posted content on social media. Non-journalists are almost always subject to the Penal Code and tried in front of Single Criminal Judges. In select cases, other courts, including the military courts, have handled cases involving freedom of expression online. The Publications Court provides more protections to defendants, while the Single Criminal Judges and other courts expose them to harsher penalties, fostering an environment of self-censorship.

More concerning than the courts' activities are the detention of defendants by non-judicial bodies - including the Cybercrime and Intellectual Property Bureau, the Army Intelligence Directorate, the State Security Directorate, the Criminal Investigations Department, and the General Directorate of General Security - both at the request of the public prosecutor and on their own accord. In 2018, SMEX documented 25 detentions in which security agencies played a role, out of a total of 36 cases related to freedom of expression online. The detentions often occur without the presence of the lawyer, last long periods of time, and occasionally turn violent.

The state has taken advantage of defamation articles in the Penal Code, Publications Law, and Military Justice Code to punish criticism of government officials, political parties, and public figures and cover up investigations that reveal political and elite corruption. Moreover, the state has allowed religious groups, notably the Catholic Information Center, to exploit articles related to sectarianism and blasphemy to restrict speech that mocks or criticizes religion, even when it is satirical and harmless.

Censorship not only suppresses freedom of expression, but also stifles the creation of ideas and opinions. Such administrative and judicial decisions contribute to a deteriorating environment for freedom of expression, but self-censorship poses an equally large threat.



In 2018, SMEX tracked 36 cases limiting online freedom of expression, compared to just 15 in 2017 and seven in 2016.

■ Protection of Freedom of Expression Under International Law

As one of the 51 founding member states of the United Nations, Lebanon has signed a number of treaties that uphold the right to freedom of expression. Most notably, Article 19 of the 1948 Universal Declaration of Human Rights and the 1966 International Covenant on Civil and Political Rights (ICCPR) protects freedom of expression, clarifying that “this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.” Researchers have interpreted the document’s inclusion of “regardless of frontiers” to protect online speech that originates in one country but is viewed in another.¹ Furthermore, the U.N. Human Rights Committee has held that a general reservation to the second paragraph of Article 19 of the ICCPR is unacceptable.²

Lebanon has also signed a number of multilateral treaties that enshrine the right to free expression, including the 1966 International Covenant on Economic, Social and Cultural Rights,³ the 1969 International Convention on the Elimination of All Forms of Racial Discrimination,⁴ the 1989 Convention on the Rights of the Child, the 2006 Convention on the Rights of Persons with Disabilities, and the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families.⁵

The U.N. Human Rights Committee, established by the ICCPR, has issued a number of non-binding reports condemning the criminalization of defamation, blasphemy, and hate speech; promoting the protection of whistleblowers and sources; and advocating for the independence of the judiciary. Likewise, the special rapporteurs who are appointed by the U.N. Human Rights Council have also released reports urging governments to respect freedom of expression and judiciary independence.

Defamation

The U.N. clearly stated that defamation laws restrict rights and hinder the right to online freedom of expression. The Human Rights Committee’s General Comment No. 34 recommends that “states should consider decriminalizing defamation and the application of the criminal law should only be countenanced in the most serious of cases.” Furthermore, it stresses that “states should avoid excessively punitive measures and penalties. Imprisonment is never an appropriate penalty.”⁶ In a 2015 report, David Kaye, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, noted that “states impose content-based, often discriminatory restrictions or criminalize online expression, intimidating political opposition and dissenters and applying defamation and *lèse-majesté* laws to silence journalists, defenders, and activists.”⁷

General Comment No. 34 also stresses that “all public figures, including those exercising the highest political authority such as heads of state and government, are subject to criticism and political opposition.” In the cases where defamation laws do exist, they “should not provide for more severe penalties solely on the basis of the identity of the person that may have been impugned.” Moreover, courts should recognize criticism in public interest as a valid defense against defamation.⁸

Blasphemy

The Human Rights Committee has also condemned the criminalization of blasphemy. General Comment No. 34 states: “Prohibitions of displays of lack of respect for a religion or other belief system, including blasphemy laws, are incompatible with the Covenant, except in the specific circumstances envisaged in Article 20, paragraph 2, of the Covenant.”⁹ In 2017, Ahmed Shaheed, the U.N.

¹ “Regardless of Frontiers: The International Right To Freedom of Expression in the Digital Age.” Center for Democracy and Technology, April 2011. https://www.cdt.org/files/pdfs/CDT-Regardless_of_Frontiers_v0.5.pdf

² UN Human Rights Committee (HRC), General comment no. 34, Article 19, Freedoms of opinion and expression, September 12 2011, CCPR/C/GC/34, <https://www.refworld.org/docid/4ed34b562.htm>. General Comment No. 34 states that while reservations to particular elements of Article 19 (2) may be acceptable, a general reservation to the rights set out in paragraph 2 would be incompatible with the object and purpose of the Covenant.

³ UN General Assembly, International Covenant on Economic, Social and Cultural Rights, 16 December 1966, United Nations, Treaty Series, vol. 993, p. 3, <https://www.refworld.org/docid/3ae6b36c0.html>. Article 15 (3) states: The States Parties to the present Covenant undertake to respect the freedom indispensable for scientific research and creative activity.

⁴ UN General Assembly, International Convention on the Elimination of All Forms of Racial Discrimination, 21 December 1965, United Nations, Treaty Series, vol. 660, p. 195, <https://www.refworld.org/docid/3ae6b3940.html>. Article 5 “[guarantees] the right of everyone, without distinction as to race, color, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights ... (vii) The right to freedom of thought, conscience and religion; (viii) The right to freedom of opinion and expression.

⁵ UN General Assembly, International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, 18 December 1990, A/RES/45/158, <https://www.refworld.org/docid/3ae6b3980.htm>. Article 13 states: “1. Migrant workers and members of their families shall have the right to hold opinions without interference ... [and] to freedom of expression.”

⁶ General comment No. 34, Article 19, Freedoms of opinion and expression.

⁷ UN Human Rights Council, Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, May 22 2015, A/HRC/29/32, <https://www.refworld.org/docid/5576d4c4.html>.

⁸ General comment No. 34, Article 19, Freedoms of opinion and expression.

⁹ Ibid.

Special Rapporteur on freedom of religion or belief, further emphasized that blasphemy laws “are generally focused on the degree to which speech causes offense or outrage to religious sentiments, and not the extent to which that speech undermines the safety and equality of individuals holding those religious views.”¹⁰ Therefore, laws criminalizing blasphemy or the mocking of religious rituals run counter to the HRC’s guidelines.

Hate speech

The U.N. acknowledges the dangers of hate speech, but also recognizes that there are limits to restricting it. According to General Comment No. 34, while states are required to prohibit hate speech, the limitations must meet the strict conditions set out in Article 19 (3).¹¹ Moreover, Human Rights Council Resolution 16/18, which addresses discrimination and incitement to violence, rests on the rationale that more expression is the best antidote to intolerant expression, coupled with policies and laws tackling the root causes of discrimination.¹²

Protection of whistleblowers

The U.N. has also advocated for protecting whistleblowers. According to the 2017 report by David Kaye, “The law should protect any person who discloses information that he or she reasonably believes, at the time of disclosure, to be true and to constitute a threat or harm to a specified public interest.”¹³

Protection of sources

Likewise, Kaye’s report acknowledges that “laws guaranteeing confidentiality must reach beyond professional journalists, including those who may be performing a vital role in providing wide access to information of public interest such as bloggers, ‘citizen journalists,’ members of non-governmental organizations, authors, and academics.”¹⁴

Independence of the Judiciary

In the Basic Principles on the Independence of the Judiciary, the U.N. General Assembly confirms the need for countries to maintain and protect an independent judiciary. Article 1 of the resolution states: “The independence of the judiciary shall be guaranteed by the State and enshrined in the Constitution or the law of the country. It is the duty of all governmental and other institutions to respect and observe the independence of the judiciary.”¹⁵ More recently, Diego Garcia-Sayan, the Special Rapporteur on the independence of judges and lawyers, argued for an independent judiciary, writing “the requirement of independence and impartiality of judges is not a prerogative or privilege granted in their own interest but is justified by the need to enable judges to fulfill their role as guardians of the rule of law and of human rights and fundamental freedoms of the people.”¹⁶

Access to Information

The U.N. General Assembly established the right to access information in Article 19 of the Universal Declaration of Human Rights and the ICCPR. Additionally, General Comment No. 34 also recognizes the right of the general public to receive media output.¹⁷

10 UN Human Rights Council, Report of the Special Rapporteur on freedom of religion or belief, August 28, 2017, A/HRC/72/365, https://www.un.org/en/ga/search/view_doc.asp?symbol=A/72/365

11 General comment No. 34, Article 19, Freedoms of opinion and expression.

12 UN Human Rights Council, Report of the Special Rapporteur on the independence of judges and lawyers, May 2, 2018, A/HRC/38/38, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G18/122/81/PDF/G1812281.pdf?OpenElement>

13 Report of the Special Rapporteur on freedom of religion or belief.

14 Ibid.

15 UN Commission on Human Rights, Independence and impartiality of the judiciary, jurors and assessors and the independence of lawyers., March 3, 1995, E/CN.4/RES/1995/36, <https://www.refworld.org/docid/3b00f0c948.html>

16 UN Human Rights Council, Report of the Special Rapporteur on the independence of judges and lawyers, May 2, 2018, A/HRC/38/38, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G18/122/81/PDF/G1812281.pdf?OpenElement>

17 General comment No. 34, Article 19, Freedoms of opinion and expression.

■ Protection of Freedom of Expression under Lebanese Law

Lebanese law nominally protects freedom of expression while also imposing limits on it. Article 13 of the Lebanese Constitution guarantees freedom of the press and freedom to express one's opinion orally or in writing within the limits established by law. The Publications Law also guarantees "the freedom of the media, the printer, the publisher and the distributor."¹⁸ Despite these guarantees, a number of articles across the Publications Law, Penal Code, and Military Justice Code demonstrate the degree to which the law actually restricts online freedom of expression in Lebanon. These laws consider a series of publication offenses as crimes, including defamation, false news, intimidation, publishing confidential documents, contempt for a recognized religion, hostility to public ethics or national or religious sentiments or national unity, and endangering Lebanon's foreign relations.

Defamation, Libel, and Contempt:

The Penal Code includes vague definitions of defamation, libel, and contempt, giving prosecutors and courts the authority to clamp down on freedom of expression online. The public prosecutor, the courts, and non-judicial bodies have used Penal Code articles related to defamation the most extensively to repress freedom of speech online. The Penal Code defines:

- Defamation as "the attribution of a fact to a person [factual allegation], resulting in injury to one's honor and dignity, even if only in the course of casting doubt about or questioning the character of this person."¹⁹
- Libel as "any verbal insult or utterance showing contempt, as well as any expressions or drawings that are injurious, without referring to specific facts about the person being insulted."²⁰
- Contempt as "any insult through words, gestures, drawings, or writings committed against a public official during or because of his or her public office."²¹

Both the Penal Code and Publications Law distinguish between three categories of individuals: heads of state, public officials and bodies, and private figures.

The heads of state includes the Lebanese head of state, foreign heads of state, and state symbols, such as the flag. The Penal Code and Publications Law prescribe more severe penalties when the offense is committed against

these groups.²² Article 384 of the Penal Code punishes those who insult the Lebanese president with between six months and two years in prison and a fine not exceeding LL400,000 (265 USD). Article 386 also states that any person who defames the Lebanese president faces between two months and two years in prison. Furthermore, the defendant does not have the opportunity to prove the truth of the published allegations.²³ Even if the head of state drops the charges, the judge cannot dismiss the complaint, though they can reduce the sentence.^{24 25} Article 292 awards a similar punishment as Article 384 to anyone who insults foreign heads of state.

According to the 1962 Publications Law, as amended by Article 23 of Decree No. 104 of 1977, members of publications that defame the president or foreign heads of state face between two months and two years in prison as well as a fine between LL50 million and LL100 million (\$33,079 to \$66,157), though the Publications Court rarely issues prison sentences.

Public officials include public bodies, judges, and military officials; however, the law protects judges against all forms of defamation and subjects defendants in these cases to longer prison sentences. Penalties are more severe if the prosecuted speech concerns public officials' jobs, but Article 387 of the Penal Code does not punish defamation against public officials if the allegation is proven true.²⁶ Therefore, the Penal Code conditionally allows citizens to expose violations and wrongdoing committed by public servants or institutions, but only when it is proven true. Even if the plaintiff drops the charges, the judge cannot dismiss the case.²⁷

As per the Publications Law, the penalty for defaming a public official ranges from one month to six months in prison and a fine between LL6 million and LL10 million (\$3,983 to \$6,638), except when the offense is committed against public officials "who exercise public authority," which means the alleged defamation relates to their capacity as a public official. In this case, violators can be imprisoned for periods ranging from three months to a year. For judges on the podium, the penalty is more severe: Jail time increases to one to two years and the fine increases to between LL10 million and LL20 million (\$6,638 and \$13,276).²⁸

¹⁸ Publications Law, Article 1, Pub. L. No. 109 (1962). http://www.legallaw.ul.edu.lb/LawView.aspx?opt=view&LawID=257669#Section_276861

¹⁹ Penal Code (Legislative Decree No. 340), Article 385. Pub. L. No. 340 (1943). http://ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=89873&p_country=LBN&p_count=117

²⁰ Ibid.

²¹ Ibid, Article 383.

²² Ibid. Articles 292, 384, 386 and 388.

²³ Ibid, Articles 292 and 387.

²⁴ Ibid, Article 133.

²⁵ Legislative Decree No. 104 amending provisions of the Publications Law, Article 23. Pub. L. No. 104 (1977). http://www.legallaw.ul.edu.lb/LawView.aspx?opt=view&LawID=173857#Section_276882

²⁶ Penal Code (Legislative Decree No. 340), Article 387.

²⁷ Ibid, Article 133.

The Military Justice Code also discourages criticism of public officials. The law allows for prosecuting any allegedly defamatory publication related to the Lebanese Army, military incidents inside or outside the barracks, actions taken by the military authority against any of its members, orders or decisions issued by the military authority; or information related to the movement of units and divisions, military formations and promotions, the arrest of suspects or the tracking of rebels, or any operations carried out by state forces.²⁹ The law includes particularly harsh penalties, as perpetrators face between three months and three years in prison.³⁰

Cases involving **private figures** do not give the defendant the opportunity to prove the accuracy of the published allegations, no matter their nature.³¹ Therefore, cases involving private figures that concern the public interest place the defendant in a disadvantageous and untenable position. The laws also give relatives the right to sue in defamation cases where the defendant allegedly sullied the reputation of a deceased relative after their death.³²

As per the Publications Law, the penalty for the defamation of a private figure ranges from three months to one year in prison and/or a fine of LL6 million to LL10 million (\$3,983 to \$6,638).³³ Cases of libel incur more severe penalties than cases of slander. For libel, violators face three months to one year in prison and/or a fine of LL6 million to LL10 million (\$3,983 to \$6,638).³⁴ In slander cases, violators face one to six months in prison and/or a fine of LL2 million to LL6 million (\$1,328 to \$3,983).³⁵

Blasphemy and Suppression of Religion Speech

Although the Special Rapporteur to the U.N. has condemned blasphemy laws, the Penal Code and Publications Law still contain articles punishing blasphemy, which allow powerful public figures to exploit religion to suppress freedom of expression online.

Both the Penal Code and the Publications Law criminalize “contempt” of religion. Article 473 of the Penal Code punishes blasphemy with a prison sentence between one month to a year. Article 474 punishes the contempt of religious rituals with imprisonment from six months to

three years. According to the Publications Law, any use of media to publish speech in contempt of a recognized religion will lead to a minimum of one year and a maximum of three years in prison and/or a fine of LL50 million to LL100 million (\$33,188 to \$66,376).³⁶

The Penal Code also punishes any act that may incite religious or racial tensions or “conflict between the people” with imprisonment of one to three years and a fine of LL100,000 to LL800,000 (\$66 to \$531).³⁷ Public prosecutors have used this provision to send anyone who criticizes a recognized religion to trial. Similarly, the Publications Law reserves its severest penalty for publishing any material that may incite religious and racial tensions or threaten the safety of the state.³⁸

False News

The Penal Code punishes the publication of false news with imprisonment for at least three months.³⁹ However, in cases where the publication of false news may “distort the aura of the state or its financial status,” the sentence increases to at least six months and a fine ranging from LL100,000 to LL2 million (\$66 to \$1,328).⁴⁰ When the false news is deemed to threaten the security of the state, the fine increases to between LL6 million and LL20 million (\$3,982 to \$13,275). The Publications Law punishes publishing false news with a fine between LL10 million and LL30 million (\$6,638 to \$19,913).⁴¹

The Publications Law increases the sanction whenever the defendant repeats the same offense within a certain period of time. Therefore, if a second offense occurs within five years, the sentence doubles and the publication will be suspended for 15 days. For a third offense, suspension of the publication will increase to three months.⁴²

Criminal Proceedings

Lebanese jurisprudence treats speech that individuals post on social media platforms differently from speech posted by online media outlets. Under Lebanese law, publication offenses, and subsequent investigations, are subject to the jurisdiction of the Publications Court according to the 1962 Publications Law.⁴³ However, in 2016, the Cassation Court ruled that online speech on social media platforms

²⁸ Legislative Decree No. 104 amending provisions of the Publications Law, Article 22.

²⁹ Military Justice Code, Article 157. Pub. L. No. 24 (1968). <http://www.legallaw.ul.edu.lb/LawView.aspx?opt=view&LawID=244405>

³⁰ Ibid.

³¹ Penal Code (Legislative Decree No. 340), Article 583.

³² Ibid, Article 586.

³³ Legislative Decree No. 104 amending provisions of the Publications Law, Article 21.

³⁴ Ibid.

³⁵ Ibid, Article 20.

³⁶ Ibid, Article 25.

³⁷ Penal Code (Legislative Decree No. 340), Article 317.

³⁸ Article 25 of Legislative Decree No. 104/77.

³⁹ Penal Code (Legislative Decree No. 340), Article 296.

⁴⁰ Ibid, Article 297.

⁴¹ Legislative Decree No. 104 amending provisions of the Publications Law, Article 3.

⁴² Publications Law.

falls under the jurisdiction of the Penal Code, which does not afford defendants the same level of due process.⁴⁴ These cases often end up in separate courts with unequal protections. Such unstable jurisprudence has produced tactics that violate international norms, such as pre-trial detention, prolonged trials, deprivation of civil rights, and undefined statute of limitations.

“ In recent years, authorities have interrogated and detained defendants ahead of their trials and attempted to coerce them into signing pledges to refrain from using social media or to remove content from social media. ”

In recent years, authorities have interrogated and detained defendants ahead of their trials and attempted to coerce them into signing pledges to refrain from using social media or to remove content from social media. Although the Publications Law prohibits **pre-trial detention**,⁴⁵ the Penal Code allows it.⁴⁶ Under the latter, the judge may also deprive the defendant of some or all of their civil rights.⁴⁷

The Publications Law stipulates a **speedy trial** for defendants, while the Penal Code does not call for a fixed trial length. Trial proceedings in the Publications Court and appeals in the Cassation Court must start within five days of the case referral, and a decision must be made within 10 days of the start date. The period allowed for review is limited to 10 days for appeals. Cases covered by the Penal Code do not have speedy trials. Nonetheless,

cases in both the Publications Court and in front of Single Criminal Judges can drag out in the courts.

Each law also treats the **statute of limitations** differently. According to the Publications Law, the complaint must be lodged within a period of three months; however, the Penal Code allows for three years. Therefore, through the Penal Code, politicians and other prominent figures can take advantage of the long statute of limitations to take retribution on those who criticize or question them.

The Publications Court, also has established a precedent where the defendant's presence is not mandatory unless they are needed for interrogation. However, the Penal Code has not established a similar precedent.⁴⁸

Though the Publications Law offers more protections, the judges appointed to the Publications Court do not receive any training on human rights, including freedom of expression, and the rules outlined by the Publications Law, particularly the stipulation for a speedy trial, are not always followed.

43 Publications Law, Article 3. Legislative Decree No. 104 amending provisions of the Publications Law, Article 28.

44 “ما يرد على صفحات «الفيسوك» يخضع لقانون العقوبات لا المطبوعات” Addiyar, February 15, 2016. <https://goo.gl/5bXAfG>.

45 Legislative Decree No. 104 amending provisions of the Publications Law, Article 28.

46 Law No. 328 - Code of Criminal Procedure, Article 106. Pub. L. No. 328 (2001). <https://cyrilla.org/en/document/bz9budyqc19zumuh4xpskxm6r?page=1>

47 Penal Code (Legislative Decree No. 340), Article 266.

48 Law No. 328 - Code of Criminal Procedure, Article 165.

■ The Role of the Courts

Over the past three years, the courts have played a role in restricting freedom of speech, though there have been a few positive developments. The Publications Court is the competent authority for dealing with publication offenses, but jurisprudence around other online speech remains unstable. Single Criminal Judges, Judges Sitting for Urgent Affairs, and the Military Court handle many of the concerning online content at first instance.

The Role of the Publications Court

The Publications Court, a chamber of the Criminal Appeals Court, has established stable jurisprudence in prosecuting websites.⁴⁹ Initially, the Publications Court dealt with social media posts as well, but the Cassation Court later ruled that the Publications Law specifically oversees print publications and that because the Publications Court is an exceptional court, cases involving social media posts do not fall under its jurisdiction.^{50 51 52}

This jurisprudence has led to the referral of several cases involving social media platforms to Single Criminal Judges, or other judicial and non-judicial bodies. The law gives other courts the ability to implement harsher penalties against the defendants. Yet, even the Publications Court often opts to protect prominent public officials.

The Beirut Publications Court in 2018: Protecting the Powerful

The Beirut Publications Court largely protects the powerful and sanctions journalists with hefty damages payments. In 2018, the court issued 20 final decisions, all related to defamation, libel, and contempt, including 11 indictments, two indictments in spite of dropped charges, three acquittals, three dismissals, and one decision of non-jurisdiction. In 14 of those decisions, the plaintiff was a public official, public body, or political figure. Out of the 14 decisions, only two favored the defendant. In 2018, the Publications Court received 126 cases, of which 102 were defamation cases, including one for insulting the head of state, three for inciting religious tensions and endangering the unity of the country, one for publishing false news about the military and the remaining cases for breach of Electoral Media

“ The current chamber stipulated an imprisonment term, commuted to a fine, for an unprecedented five out of 13 indictment decisions. ”

Law. These statistics demonstrate that the Publications Court has become a place for shielding public officials from criticism instead of protecting the media.

A turning point in 2018 sanctions: commuted jail sentences and reduced fines

The current chamber, which was appointed in October 2017, has issued prison sentences, albeit commuted to a fine, and relatively small fines, but large damage payments. Since its establishment, the Publications Court has wavered between tolerance and suppression regarding jail sentences, fines, and damages. Prior to March 2009, the court restricted sanctions to fines. In March 2009, the court started to sentence those who committed publication offenses to prison terms. Later, it restricted sanctions to large fines and damages, issuing prison sentences in exceptional cases. Then, in 2014, the court restricted damages to LL1,000 (\$0.66), but the Cassation Court regularly reversed these decisions at the plaintiff's request. The current chamber, appointed in October 2017, has issued prison sentences, albeit commuted to a fine. Similar to the previous chamber, the current chamber has applied a traditional approach in the interpretation of defamation and other publication offenses by punishing almost any instance of defamation, libel, and contempt.

The current chamber stipulated an imprisonment term, commuted to a fine, for an unprecedented five out of 13 indictment decisions. Though the court commuted most prison terms to fines in this period, it sentenced Jean Assi to jail for two months for a tweet offending the head of state in 2013. The previous chamber rarely issued prison sentences, regardless of whether they were commuted to a fine, except in sentences issued in absentia, which were usually removed upon objections submitted by the defendants.

In 2018, the current chamber sentenced the defendants

⁴⁹ “Lebanon: Spinneys Supermarket Chain CEO Sues for Libel Former Labour Minister Who Raised Labour Rights Concerns.” Business and Human Rights Resource Center, May 22, 2013. <https://www.business-humanrights.org/en/lebanon-spinneys-supermarket-chain-ceo-sues-for-libel-former-labour-minister-who-raised-labour-rights-concerns>. (Michael Wright against Charbel Nahas).

⁵⁰ Ibid.

⁵¹ “Lebanon: Lawyer Held for Facebook Posts.” Human Rights Watch, May 31, 2016. <https://www.hrw.org/news/2016/05/31/lebanon-lawyer-held-facebook-posts>. (Public Prosecution against Faisal Qassem).

⁵² “Print Court Decides Jail Sentence for Jean Assi over Libeling Lebanese President.” National News Agency. Accessed August 26, 2019. <http://nna-leb.gov.lb/en/show-news/21323/>. (Public Prosecution against Jean Assi).

to fines between LL6 million and LL10 million (\$3,970 and \$6,618). In one decision, the court issued a LL32 million (\$21,186) fine to an author and managing director of a publication. However, in seven indictment decisions, the court reduced the fines to a range between LL100,000 and LL2 million (\$66 to \$1,324). Though this constitutes a step in the right direction, the practice is still arbitrary and not founded on clear principles, because the fines are not reduced in all court decisions.

In addition to fines, the court also imposes damages, which in 2018 ranged from LL1,000⁵³ to LL25 million (\$0.66 to \$16,820).⁵⁴ None of the decisions justified the amount of damages or the harm inflicted on the plaintiff. Overall, and despite fine reductions in certain instances, the defendants still pay exorbitant amounts for alleged damage caused by their reporting, especially given that in most cases, the fine is doubled due to the liability of both the author and the managing director.

There is nothing in the court decisions that suggests the Publications Court will apply criminal recidivism.

Lengthy Proceedings

In most of cases, trials in the Publications Court last longer than a year.⁵⁵ Among the 20 decisions issued by the Beirut Publications Court in 2018, only one came within a year of the filing of the complaint.⁵⁶ The original complaints for the 2018 decisions originated as follows: one in 2011, one in 2012, one in 2013, two in 2014, eight in 2015, three in 2016 and four in 2017.⁵⁷ This length is partially due to the time lapse between the hearings, but also because the plaintiff often files the complaint in the Cassation Public Prosecution, Appeals Public Prosecution, or Investigation Judge,⁵⁸ thereby extending the proceedings contrary to the spirit and content of the Publications Law, which restricts the referral, when necessary, for investigation to the Investigation Judge. Most of the time, the plaintiff's decision to submit the complaint to the public prosecution or Investigation Judge suggests the plaintiff intends to intimidate the defendant and compel them to attend the investigation in person.

The Publications Court has established a stable practice regarding the court appearance of the defendant. The defendant, represented by a lawyer, does not have to

come to any hearing, except when the court requests their appearance for questioning. In these cases, the defendants usually request the questioning to prove their innocence.

“ The court punishes defamation regardless of the harm incurred by the plaintiff. ”

Similar to the previous chamber, the current chamber has applied a traditional approach in the interpretation of defamation and other publication offenses by punishing almost any example of defamation, libel, and contempt. As an exceptional court, it should protect journalists and strike a balance between the right to freedom of expression and the right to privacy, instead of simply defending the interests of public figures. Moreover, at the Publications Court, powerful political figures filed most defamation cases, which related to their public duties and rarely to their private life.

Other Courts: Violating the Spirit of the Publications Law

The Single Criminal Judge: Restricting Online Speech

The Single Criminal Judge is largely responsible for handling speech posted on social media, including complaints against journalists for content they have posted on social media. The Single Criminal Judge examines cases of misdemeanors and contraventions, except for those excluded by a special text. To file a case, the plaintiff directly submits the complaint to the Single Criminal Judge. In 2018, SMEX documented several decisions against online publications issued by Single Criminal Judges. The cases concern defamation and the punitive approach largely prevails: The court punishes defamation regardless of the harm incurred by the plaintiff. The sentences are heavier and the judges can deprive defendants of their civil rights.

In 2018, a number of the cases concerned criticism of prominent politicians. The court tried many of them in absentia because the defendants were not in the country.

53 محكمة المطبوعات تغزير ثلاثة صحافيين في جريدة "الأخبار" بدعوى تحقير ونشر أخبار كاذبة; SKeyes, March 21, 2018. <http://www.skeyesmedia.org/ar/News/Lebanon/7053>. (Upon request of the plaintiff in the case of Sarkis Sarkis against Ibrahim Amine and Ghassan Saoud).

54 "خاص" محكمة: "جويل حاتم تكسب دعواها على نضال الأحمدية" Mahkama (blog), August 9, 2018. <http://www.mahkama.net/?p=874>. (Joelle Hatem against Nidal Ahmadiyyeh and Ranim Matar).

55 Rana Saghih, "Decisions of the Publications Court in the first half of 2014," Legal Agenda, Issue No. 37, March 2016.

56 Lebanese Football Association against Ibrahim Dsouki and Ali Zeineddine. The complaint was filed on 01/31/2017 and the decision was issued on 05/24/2018.

57 One was closed due to settlement between the parties, one was issued in absentia.

58 Six cases were filed at the Cassation Public Prosecution; three cases were files at the Appeals Public Prosecution; one was filed at the Investigation Judge.

- On October 22, 2018, the Single Criminal Judge in Baabda sentenced Fidaa Itani to two months in prison and fined him LL35 million (\$23,120) for Facebook posts criticizing Gebran Bassil, the foreign minister. The court labeled this criticism as defamation.⁵⁹
- On June 28, the Single Criminal Judge in Beirut sentenced Daniel al-Ghosh in absentia to one year and six months in prison and fined him LL500,000 (\$330) and deprived him of his civil rights and public jobs for posting defamatory statements against Hezbollah on Facebook.⁶⁰
- On June 27, the Single Criminal Judge in Baabda sentenced Fidaa Itani in absentia to four months in prison and fined him LL10 million (\$6,606) for posting defamatory statements against Bassil on Facebook.⁶¹
- On June 7, the Single Criminal Judge in Baabda sentenced Rashid Jumblatt in absentia to six months in prison and fined him LL10 million (\$6,606) for tweeting defamatory statements against Bassil.⁶²
- On February 10, the Single Criminal Judge in Tripoli sentenced Walid Radwan to three months in prison, which was limited to the detention period, and fined him LL500,000 (\$331) for sharing a picture on Facebook in which then-Hezbollah MP Nawwaf Musawi posed before an image of the party's late military commander Mustafa Badreddine, who was one of the four suspects initially indicted by the Special Tribunal for Lebanon for former Prime Minister Rafik Hariri's assassination. The picture was captioned: "Sheikh Saad [Hariri], we killed [Rafik] Hariri and we are proud. And we gloat because you cannot do anything about it. Let us see if you can form a government or make any decision without the consent of your father's murderers. Soon we will put the names of the four indicted on the airport, hospitals, highways and universities. What do you think about that?"⁶³

Although the list of cases is not exhaustive, they share many similarities. In all cases, the plaintiff was a public official or the public prosecutor and in four of the five cases, the defendants were journalists. Therefore, in cases involving online speech, the data suggests that plaintiffs refer journalists to the Single Criminal Judges. The only case involving a non-journalist, which concerned an activist, resulted in a 19-day detention.

The punitive approach prevails: The court punishes defamation, regardless of the harm incurred by the plaintiff. Judges give out more punitive judgments in terms of fines and jail sentences, though many are in absentia. The judge even deprived one of the defendants of his civil rights.

The Judge Sitting for Urgent Affairs: A Pattern of Censorship

Judges Sitting for Urgent Affairs have jurisdiction under Articles 589 and 604 of the Code of Civil Procedure to take all "interim or precautionary measures to preserve rights and prevent damages," without necessarily applying the contradictory principle.⁶⁴ During the last few years, Judges Sitting for Urgent Affairs have used this language to order the removal of "offensive" online materials,⁶⁵ prohibit the publication of specific materials,⁶⁶ or prevent the future publication of materials that are perceived as damaging to the reputation of the plaintiff.⁶⁸

This practice can lead to preemptive censorship and develop into a tool that powerful figures exploit to silence dissenting opinions and the exposure of corruption.

Turning Points in Jurisprudence

A few Judges Sitting for Urgent Affairs have ruled in favor of freedom of expression. On October 29, 2011, the Judge Sitting for Urgent Affairs in Beirut, Jad Maalouf, rejected a singer's request to prohibit a television show from broadcasting allegedly defamatory news regarding

⁵⁹ "Fidaa Itani Sentenced to Two Months in Prison for Defaming Bassil." The Daily Star. October 22, 2018. <http://www.dailystar.com.lb/News/Lebanon-News/2018/Oct-22/467188-fidaa-itani-sentenced-to-two-months-in-prison-for-defaming-bassil.ashx>

⁶⁰ "بلاغ-بحث-وتحرر-بحق-جيري-ماهر", Al Modon, August 1, 2018. <https://www.almodon.com/media/2018/8/1/بلاغ-بحث-وتحرر-بحق-جيري-ماهر>

⁶¹ Chamoun, Hassan. "Lebanese Journalist Sentenced to Prison in Absentia, for 'Defaming' Foreign Minister on Facebook." Global Voices Advocacy (blog), July 3, 2018. <https://advox.globalvoices.org/2018/07/03/lebanese-journalist-sentenced-to-prison-in-absentia-for-defaming-foreign-minister-on-facebook/>

⁶² "حسيكي تقضي بسجن رشيد جنبلاط ستة أشهر بسبب تغريداته", SKeyes, June 8, 2018. <http://www.skeyesmedia.org/ar/News/Lebanon/7228>

⁶³ "شعبة المعلومات تحتفل ولید رضوان بعد استدعائه بسبب منشور على فايسبوك", SKeyes, September 26, 2018. <http://www.skeyesmedia.org/ar/News/Lebanon/7432>

⁶⁴ Code of Civil Procedure, Pub. L. No. 90 (1983). <http://legiliban.ul.edu.lb/LawView.aspx?opt=view&LawID=244565>

⁶⁵ "Sakker El Dekkene." Peace Insight, November 2018. <http://www.insightonconflict.org/conflicts/lebanon/peacebuilding-organisations/sakker-el-dekkene/> (The Lebanese State against Sakker El Dekkene.)

⁶⁶ Al-Akhbar Ordered to Pay Fine for AUB, LF Slander." The Daily Star, October 18, 2017. <https://www.dailystar.com.lb/News/Lebanon-News/2017/Oct-18/423069-al-akhbar-ordered-to-pay-fine-for-aub-lf-slander.ashx> (the decision issued in the case of AUB against Al-Akhbar in 2014, requesting the removal of the report on AUB leaks scandal titled, "Will allegations of corruption at AUB go to U.S. courts?" from the website of the newspaper).

⁶⁷ Loyal Haddad. "هل يُقفل أنطون الصحنوي الـOTV؟", Al-Akhbar, June 16, 2010. https://al-akhbar.com/Media_Tv/110567 (Antoun Sehnaoui against OTV in 2010, prohibiting OTV from broadcasting a sketch of a comedy show called Ovrira).

⁶⁸ "قرار قضائي يمنع قناة 'أل.بي.سي.' من التعرض لشركة 'إيدن باي ريزورت'", SKeyes, May 16, 2017. <http://www.skeyesmedia.org/ar/News/Lebanon/6468> (Eden Bay against MTV and LBCI in 2017, prohibiting LBCI and MTV from the use of insulting words against the plaintiff under threat of a fine of LL30 Million.)

her financial, emotional, and familial issues.⁶⁹ Then on June 12, 2012, Maalouf issued another decision⁷⁰ that affirmed the high risk of prohibiting the publication of artistic or intellectual works and turning the judiciary into a new tool for preemptive censorship. The decision called for the courts to not only abide by the Constitution and international conventions, but also to preserve the social and political benefits of media.

Most recently, on April 18, 2018, the Judge Sitting for Urgent Affairs in Beirut, Hala Naja, issued a landmark decision in the challenge presented by Lebanese NGO Sakker El Dekkene against the state's attempt to remove a report about the South Lebanon Council from the group's social media and other online platforms. The decision cited Article 13 of the Constitution, Article 19 of the International Covenant on Civil and Political Rights, Article 13 of the U.N. Convention against Corruption and the right of the public to access information in order to affirm the right of the NGO to publish the report. It said the plaintiff did not prove that the published information was false or that the defendant was acting in bad faith. The Publications Court can always discuss the accuracy of the information, but this landmark decision pushed back the jurisprudence of the Judges Sitting for Urgent Affairs and reduced the dangers of prior censorship by affirming the right of every person to disclose corruption and the right of whistleblowers to protection.⁷¹

The Military Court: Never the Right Place For Civilians

The Military Court, which has also prosecuted online offenses, does not offer citizens the right to defend themselves, lacks transparency, and employs military judges who are less impartial than civil judges. The Military Court, which "falls under the jurisdiction of the Defense Ministry ... has broad jurisdiction over civilians, including in cases involving ... crimes that harm the interest of the military or the Internal Security Forces, or General Security, as well as any conflict between civilians and military or security." Under Article 157 of the Military Justice Code, the court has the authority to punish any person, including a minor, who publishes material related to the army without any justification or limits, online or offline.⁷²

- In 2018, the court filed a case against Adam Chamseddine over a post titled "State Security and the AIDS Scourge," in which he criticized the security forces for their arrest of a salon owner under the pretext of "transmitting the AIDS virus to customers."⁷³ The defendant did not appear before the court and was sentenced in absentia to three months in jail. Then, on November 4, the Military Court accepted the formal objections of the defendant and declared that the military judiciary was not competent to adjudicate this case.

Investigations of publications offenses prior to referral to the Publications Court

Certain courts, including the Investigation Judge, the Appeals Public Prosecution, and the Cassation Public Prosecution, can hear online freedom of expression cases, sometimes involving journalists, before the Publications Court hears them. This practice violates the spirit of the Publications Law.

The Investigation Judge

The plaintiffs and public prosecutors may submit complaints directly to the Investigation Judge, obliging the defendant to appear before the judge after the phase of formal defense. In 2018, SMEX documented three cases against online publications before the Investigation Judges.

- In the case of Fouad Ayoub against Mariam Saifeddine,⁷⁴ Ayoub, the president of the Lebanese University, sued Saifeddine, a journalist at Al-Modon, for publishing an article titled, "Lebanese University: An Uprising Against the President." The article compared a statement on behalf of the Independent Teachers' Association to the statement issued by the Lebanese University. Because the article was posted on a news website, the Publications Court should have heard the case instead of an Investigation Judge.
- Likewise, in the case of Wafic Safa against Fidaa Itani, the First Investigation Judge in Beirut issued an indictment against Itani for defamation and libel of Safa, the head of Hezbollah's security division, on August 7, 2018.⁷⁵ Itani had tweeted that "money

69 Nizar Saghih. "نحو تكريس مبدأ التناسب: أي تأثيرات سلبية للرقابة المسبقة؟ تعليقاً" 29-10-2011 December 19, 2011. http://www.legal-agenda.com/article.php?id=60#_ftn5

70 القاضي معلوف يؤكد مجدداً خطورة الرقابة المسبقة: هذه هي أسسها الاجتماعية والسياسية" Legal Agenda, March 8, 2012. <http://www.legal-agenda.com/article.php?id=150>

71 من يدافع عن الدولة، وكيف؟ حكم قضائي يكرس دور الناس في مكافحة الفساد ويفضح دور "هبة القضاة" Legal Agenda, April 24, 2018. <http://www.legal-agenda.com/article.php?id=4394> (A copy of the case is attached here).

72 For more information about the trial before the Military Court, see: <http://74.220.207.224/article.php?id=1145&folder=articles&lang=ar>

73 "Military Tribunal Sentences Al-Jadeed Correspondent over Facebook Post." The Daily Star, March 7, 2019. <https://www.dailystar.com.lb/News/Lebanon-News/2019/Mar-07/478304-military-tribunal-sentences-al-jadeed-correspondent-over-facebook-post.ashx>

74 قاضي التحقيق يستجوب الصحافية مريم سيف الدين بدعوى رئيس 'اللبنانية' ويؤجل "الجلسة إلى نيسان" SKeyes, March 5, 2019. <http://www.skeyesmedia.org/ar/News/Lebanon/7708>

75 "قرار طني بحق صحفي لبناني متهم بدمر وقدم مسؤول من حزب الله" Zaman Al-Wasl, August 15, 2018. <https://www.zamanalwsl.net/news/PrinterFriendlyVersion/90732>

laundering and a Hezbollah cover-up is behind the fall of Nader and Nohad,” referring to prominent political figures Nader Hariri and Nohad Machnouk. After the initial complaint, the judge sent the case to the Publications Court.

- In the case of Ashraf Moussawi against Maria Maalouf, the First Investigation Judge in Beirut issued an arrest warrant against Maalouf for defamation, libel, and incitement to crimes on January 4, 2018. The decision to issue the warrant came after Maalouf tweeted: “If Israel sees [Hezbollah leader] Hassan Nasrallah as its enemy, why doesn’t it carry out an airstrike that would rid us of him, thus gaining credibility and protecting itself?”⁷⁶

In the three cases, the defendants are journalists, but they tweeted these comments. The plaintiffs or public prosecutors could have referred all three cases to the Publications Court.

The Appeals Public Prosecution:

In some instances, the public prosecution may decide to interrogate the defendant before referral to the trial judge and the Cybercrime Bureau or the Investigation Judge. In 2018, the Appeals Public Prosecution filed three cases before referring them to the Publications Court.

- In the case of Ali Mourtada, the Appeals Public Prosecutor summoned him in 2018 for accusing former prime minister Najib Mikati of obtaining housing loans backed by Banque du Liban.⁷⁷

Unlike the Publications Court, If the defendant does not appear in front of the Appeals Public Prosecution, the prosecution can issue a search warrant.

The Cassation Public Prosecution:

The plaintiff can submit complaints to the Cassation Public Prosecution. Usually, the Cassation Public Prosecution only handles the most important files, but legally, it has the right to investigate any matter. However, the prosecution has not established a precedent of handling free expression cases, suggesting that plaintiffs are referring cases to the Cassation Public Prosecution to humiliate the defendant and make the process as exhausting, costly, and lengthy as possible. Unlike the Publications Court, the defendant must appear in person with or without a lawyer. If the defendant does not appear, the Cassation Public

Prosecution may issue a search warrant. The Cassation Public Prosecutor often holds several hearings, demands the presence of lawyers, and accepts written motions, similar to ordinary courts, which does not align with Article 17 of the Code of Criminal Procedure or the Publications Law.

- In 2018, SMEX documented the case of Samir Geagea against Jean Elias, which took place in front of the Cassation Public Prosecution.⁷⁸ Geagea, who heads the Lebanese Forces, sued Elias for posting offensive language on Facebook about the Lebanese Forces’ martyrs.⁷⁹ Legally, Geagea did not need to file the case at the Cassation Public Prosecution, and the prosecution’s decision to interrogate the defendants multiple times confirms that Geagea used this court as an intimidation tactic.

While SMEX only observed one case concerning online publications, the Cassation Public Prosecution heard six cases against printed and audiovisual media, all of which concerned defamation. In all six cases, the plaintiff identified the author and the managing director, which casts doubt on whether they were required to be in the Cassation Court at all.

⁷⁶ “قاضي التحقيق يُصدر مذكرة توقيف غيابية بحق الإعلامية ماريا معلوف” SKeyes, January 4, 2018. <http://www.skeyesmedia.org/ar/News/Lebanon/6873>

⁷⁷ “سالم زهران وعلي مرتضى امام القضاء... ومصادر ميقاتي توضح الـLBCI خلفيات الدعوى” LBCI, July 25, 2018. <https://cutt.ly/qwgj9sj>

⁷⁸ In 2015, there were also the cases of Mohamad Mashnouk against Mohamad Zbeeb and Hezbollah against Dima Sadek.

⁷⁹ “جعجع يدعي على مشعل صفحة Jean Elias على فاسبوك بجرم القذف والذم” LBCI, August 27, 2018. <https://cutt.ly/Uwg17or>

■ Non-Judicial Bodies: Silencing Freedom of Expression Online

Non-judicial bodies, including the Cybercrime and Intellectual Property Bureau, State Security, the Army Intelligence Directorate, the Criminal Investigations Department, and the General Directorate of General Security, have developed a habit of using intimidation tactics to suppress freedom of expression online. Cases are often filed at the Appeals Public Prosecution, which refers the matter to the Cybercrime Bureau or the Criminal Investigations Department, or at the Cassation Public Prosecution. State Security, General Security, and the Army Intelligence Directorate have also summoned people for expressing themselves online, though less frequently, according to Muhal.

The Cybercrime and Intellectual Property Bureau

While a number of non-judicial bodies have occasionally restricted freedom of expression online, the Cybercrime and Intellectual Property Bureau has habitually questioned and detained defendants who have criticized politicians or mocked religious figures and symbols.

The Service Memorandum 204/609 (March 8, 2006) established the Cybercrime and Intellectual Property Bureau and attached it to the Special Criminal Investigations Department of the Internal Security Forces' Judicial Police, which traditionally focuses more narrowly on state security crimes, terrorism, money laundering, and international larceny. The state did not issue an official decree to create the bureau, leading civil society organizations to question its legality.⁸⁰

“ The bureau has exceeded the limits of its powers, conducting investigations without providing legal guarantees for the privacy of internet users and monitoring users' online activities. ”

The Cybercrime Bureau acts either on referral from public prosecution or on its own accord in cases of *in flagrante delicto* and when it receives information related to illegal

cyber activities. The public prosecution offices currently refer all complaints of internet-related crimes to the bureau and grants it the right to summon any person for investigation to its offices. The current practices of the bureau do not merely address the technical crimes, but cover almost all cases involving the internet, regardless of the nature or the details of the crime.

The bureau has exceeded the limits of its powers, conducting investigations without providing legal guarantees for the privacy of internet users and monitoring users' online activities. The bureau summons defendants, including journalists, for long interrogations that last hours, refuses them access to lawyers, prevents them from contacting the outside world, and occasionally detains them ahead of their trial. At the end of the investigation, the bureau, at the behest of the General Prosecutor, regularly compels detainees to sign pledges to refrain from aggression against the plaintiff. Then, the bureau uses these pledges, which have shaky legal ground, to intimidate detainees. Moreover, the ISF officers who comprise the bureau do not have expertise in dealing with the constraints and challenges related to freedom of expression or laws on defamation and libel.

In 2018, the Cybercrime Bureau summoned 15 defendants, according to Muhal. The bureau interrogated all of them, except for Anne-Marie El-Hage,⁸¹ Yara Shehayeb,⁸² and Elie Khoury.⁸³ Historically, a few defendants have refused to attend the summons: In 2013, journalists Muhannad Haj Ali and Hayat Mershad refused the requests and went to the Cassation General Prosecutor, who then withdrew the file from the Cybercrime Bureau, thereby protecting them from investigation by the security forces.⁸⁴

The bureau holds defendants for prolonged periods and searches their phones. Detentions last between two and 12 hours.⁸⁵ During the interrogation of journalist Timour Azhari, who documented the mistreatment of an Ethiopian migrant worker, the bureau accused him of “defamation” and searched his phone.⁸⁶ In the case of Joy Slim, the bureau asked her “whether she was baptized,” because “no one writes a joke about religion unless they are inhabited by devil spirits.”⁸⁷

Likewise, the bureau compels detainees to sign pledges.

⁸⁰ Hamzeh, Rania. “ نقيب المحامين في بيروت يشكك في شرعية مكتب مكافحة جرائم ” Legal Agenda, May 13, 2015. <http://74.220.207.224/article.php?id=1105&lang=ar>

⁸¹ “مكتب 'جرائم المعلوماتية' يستدعي الصحافية أن ماري الحاج بسبب تقرير صحافي” SKeyes, June 18, 2018. <http://www.skeyesmedia.org/ar/news/lebanon/7244>

⁸² “مكتب 'جرائم المعلوماتية' يستدعي الناشطة يارا شهب بسبب تغريدة عن ياسيل” SKeyes, August 8, 2018. <http://www.skeyesmedia.org/ar/News/Lebanon/7355>

⁸³ In the case of Elie Khoury, the interrogation was canceled: <https://al-akhbar.com/Lebanon/254738>

⁸⁴ Ghida Frangieh. “ مكتب مكافحة الجرائم المعلوماتية: رقابة غير منظمة على المساحات الإلكترونية ” Legal Agenda, December 3, 2013. [http://74.220.207.224/article](http://74.220.207.224/article.php?id=594&folder=articles&lang=ar)

[http://74.220.207.224/article](http://74.220.207.224/article.php?id=594&folder=articles&lang=ar)

⁸⁵ Two hours for Safaa Ayyad; four hours for Rabih Damaj; four hours for Imad Bazzi; eight hours for Timour Azhari; eight hours for Charbel Khoury; eight hours for Joy Slim; eight hours for Rawan Khatib; 12 hours for Firas Bou Hatoum;

⁸⁶ Afef Abrougui. “Lebanese Journalist Goes on Trial for Covering Migrant Worker Abuse Allegations.” Global Voices Advocacy (blog), December 10, 2018. <https://advox.globalvoices.org/2018/12/10/lebanese-journalist-goes-on-trial-for-covering-migrant-worker-abuse-allegations/>

⁸⁷ Timour Azhari. “Lebanon Ramps up Interrogations of Online Activists.” Global Voices Advocacy (blog), August 13, 2018. <https://advox.globalvoices.org/2018/08/13/lebanon-ramps-up-interrogations-of-online-activists/>

With the exception of Safaa Ayyad, Timour Azhari, and Anne-Marie El-Hage, who refused to sign the pledge, the bureau forced the others to sign a pledge promising not to repeat the offense,⁸⁸ and asked all detainees to sign a pledge to remove the content. Furthermore, lawyers of the defendants were not allowed to be present with their clients.

The Cybercrime Bureau summoned 15 defendants.



A sample of the 15 cases reveals that the Cybercrime Bureau attempts to intimidate citizens and journalists to stymie criticism of powerful politicians and public figures.

- On August 24, Samir Geagea sued Abbas Saleh after he described Geagea and a group of ministers as thieves and accused him of stealing state funds. The lawsuit was dropped two days later after a third party intervened.⁸⁹
- On August 6, the Cybercrime Bureau detained Yara Shehayeb regarding one of her tweets from June. In the tweet, she replied, “Your father taught you looting and robbery” to Foreign Minister Gebran Bassil’s tweet in memory of his father. Bassil then filed a suit and two months later the Cybercrime Bureau detained her.⁹⁰
- On July 17, the bureau investigated Imad Bazzi after he urged people to negatively review the Facebook page of Eden Bay, a private resort on Beirut’s last public beach. Though Bazzi refused the initial summoning, on July 27, the bureau called him in a second time and attempted to force him to sign a pledge, but he refused. Resort shareholders filed

the initial complaint against Bazzi.⁹¹

- On July 24, the bureau detained Rawan Khatib a week after he wrote a Facebook post criticizing Lebanese President Michel Aoun and his son-in-law, Bassil. The bureau asked him to sign a pledge and forced him to delete the controversial post.⁹²
- On July 11, Charbel Khoury mocked St. Charbel, the symbol of the Maronite Church, on Facebook. In turn, the Catholic Information Center filed a suit against Khoury, invoking Article 473 of the Penal Code. The bureau compelled him to sign a pledge and released him once he did.⁹³ Then, on July 17, the bureau interrogated Joy Slim for a comment she made on Khoury’s post.⁹⁴ Again, on August 30, the bureau detained Wadih al-Asmar, the president of EuroMed Rights, for sharing Khoury’s original post. Though he arrived with three lawyers, the bureau did not let any of them enter the room during questioning. Regardless, Asmar refused to answer any questions.⁹⁵
- Daily Star journalist Timour Azhari wrote an article and tweeted about the case of Lensa Lelisa, an Ethiopian migrant worker who was beaten by her employers and died by suicide. On June 20, the Cybercrime Bureau summoned him for interrogation, where officers took his phone, extracted information from it, and forced him to delete certain tweets. In response, The Daily Star also removed Azhari’s article from the website. Originally, Azhari was supposed to be tried on November 27, but the trial was pushed back to February 23.⁹⁶
- On June 11, The Cybercrime Bureau summoned L’Orient-Le Jour journalist Anne-Marie El-Hage. They attempted to force her to remove an article she wrote about Lensa Lelisa, which exposed the mistreatment and abuse she experienced at the hands of her employers. Eventually, the prosecutor referred El-Hage’s case to the Publications Court.⁹⁷

The bureau frequently detains and intimidates individuals concerning online speech, but it does not hold them for as long as the other non-judicial bodies.

⁸⁸ For Rabih Damaj, the bureau asked him to sign a pledge not to publish any other information about the persons involved in this case or any other indictment bills. For Elham Al Hallak, the bureau asked her to write an apology on her Facebook page, but she refused and was released after signing a pledge not to repeat the offense.

⁸⁹ “...جججج يَدعي على عباس صالح على خلفية ما كتبه على فايسبوك...”, LBCL, August 25, 2018. <https://cutt.ly/hwgKujA>

⁹⁰ “مكتب ‘جرائم المعلوماتية’ يستدعي الناشطة بارا شهيب بسبب تغريدة عن باسيل”

⁹¹ Azhari, “Lebanon Ramps up Interrogations of Online Activists.”

⁹² Mona Alami. “Lebanon’s Shrinking Freedom of Expression | Mona Alami.” Arab Weekly, July 29, 2018. <https://theabweekly.com/lebanons-shrinking-freedom-expression>

⁹³ “Charbel Khoury.” Muhal, March 2019. <https://muhal.org/en/cases/rec7wzmnrhakfrzsz/>

⁹⁴ “Joy Slim.” Muhal, March 2019. <https://muhal.org/en/cases/recibfhrccmgauysz/>

⁹⁵ “Asmar: I Stayed Silent at ISF Questioning.” The Daily Star, September 1, 2018. <http://www.dailystar.com.lb/News/Lebanon-News/2018/Sep-01/461964-asmar-i-stayed-silent-at-isf-questioning.ashx>

⁹⁶ Abrougui. “Lebanese Journalist Goes on Trial for Covering Migrant Worker Abuse Allegations.”

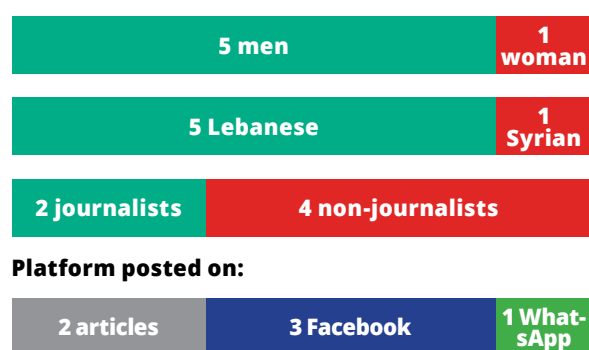
⁹⁷ “مكتب ‘جرائم المعلوماتية’ يستدعي الصحافية آن ماري الحاج بسبب تقرير صحفي”

Army Intelligence Directorate

The Army Intelligence Directorate is directly linked to the army commander. Its official mission is to preserve the safety of the army and its positions, collect information and intelligence on the state's enemies, and protect the safety of the officers, military establishments, and documents. The Army Intelligence Directorate also detains people over freedom of expression online and usually, for much longer than the Cybercrime Bureau.

In 2018, SMEX documented six cases in which the Army Intelligence Directorate interrogated defendants about online posts. In all cases, the defendants resided outside of Beirut.

The Army Intelligence Directorate summoned 6 defendants.



Platform posted on:

- On September 24, 2018, the directorate interrogated Mahmoud Al Masri, director of the Olba Aviation page, because he posted information about the presidential plane. The directorate detained him for two days.⁹⁸
- On July 24, the directorate interrogated Khaled Aboushy over a picture he posted on Facebook. He claimed the directorate beat him upon his arrest and held him for two days. The directorate only released him after he signed a pledge not to criticize the president or the foreign minister.⁹⁹
- The directorate also detained a minor. On June 19, officers questioned a 15-year-old over his WhatsApp profile picture, which they claimed insulted the president. During the interrogation, they asked his father to leave, but he refused and insisted on returning to the interrogation room, where he saw

his son handcuffed and blindfolded, without the presence of a lawyer or a social worker. A lawyer asked to be present during the interrogation, but the directorate did not allow him to visit the teenager. The teenager spent 38 hours in detention. During this time, the directorate questioned him about the source of the image and whether he knew any people who had insulted the president. The directorate only released him after he and his father signed pledges vowing not to repeat the offense.¹⁰⁰

- In the case of Abdul Hafiz al-Houlani, a Syrian journalist who wrote for the Zaman al Wasl website and questioned whether the water in Syrian refugee camps led to abortions, the directorate detained him on May 2¹⁰¹ and held him for seven days.
- On January 31, the Army Intelligence Directorate interrogated Tima Hayek about Facebook posts offending the president. The directorate detained her for two days.¹⁰²
- On January 1, The directorate summoned and interrogated Obada Youssef over a number of articles criticizing the president and other public officials. The directorate detained him for four days.¹⁰³

While the Army Intelligence Directorate summons people less frequently than the bureau, detainees face worse conditions. In addition to long detentions, the directorate has physically abused defendants, as demonstrated in the case of Khaled Aboushy. Moreover, the detention process remains opaque; the directorate acts on its own accord and does not necessarily require a legal order.

How Long is the Army Intelligence Directorate Detaining People?



State Security Directorate

The State Security Directorate infrequently summons defendants over online speech. The directorate, which answers directly to the president and prime minister, officially collects information about internal state security,

⁹⁸ "مديرية المخابرات تستدعي محمود المصري وتوقفه يومين بسبب منشور على 'فيسبوك'", SKeyes, September 28, 2018. <http://www.skeyesmedia.org/ar/News/Lebanon/7437>

⁹⁹ Azhari, "Lebanon Ramps up Interrogations of Online Activists."

¹⁰⁰ "Lebanon: Detained Activists Blackmailed into Signing Illegal Pledges." Amnesty International, July 11, 2018. <https://www.amnesty.org/en/press-releases/2018/07/lebanon-detained-activists-blackmailed-into-signing-illegal-pledges/>

¹⁰¹ "Lebanese Intelligence Service Arrests Syrian Reporter near Lebanon-Syria Border." Committee to Protect Journalists, May 30, 2018. <https://cpj.org/2018/05/lebanese-intelligence-service-arrests-syrian-repor.php>

¹⁰² "مخابرات الجيش توقف الناشطة تيمّا حايك بسبب منشورات على 'فيسبوك'", SKeyes, February 2, 2018. <http://www.skeyesmedia.org/ar/News/Lebanon/6944>

¹⁰³ "مخابرات الجيش تستدعي الناشط عبادة يوسف وتوقفه ثلاثة أيام بسبب منشورات على 'فيسبوك'", SKeyes, January 26, 2018. <http://www.skeyesmedia.org/ar/News/Lebanon/6932>

surveys foreigners and their relationships with Lebanese parties, counters espionage, and conducts preliminary investigations on acts that may jeopardize internal and external state security. In 2018, SMEX recorded just one case involving State Security.

- On November 21, 2018, State Security interrogated and detained Syrian journalist Abdul Hafiz al-Houlani. State Security summoned him over another article he wrote for Zaman Al Wasl about the impact that polluted water had on abortions in Syrian refugee camps. This time, he remained in detention for 24 days.¹⁰⁴ Only Syrian websites and activists reported on the case, while the Lebanese media barely covered the issue. SMEX reached out to al-Houlani on Facebook, but he declined to discuss the case.

Regardless of the truth of the allegations, this case highlights a major problem with non-judicial bodies' interrogation on free speech issues: The public is stripped of its right to know the truth and journalists are deterred from investigating and disseminating information on sensitive issues.

The General Directorate of General Security

The General Directorate of General Security does not intervene as frequently on issues regarding freedom of expression online. General Security works under the supervision of the Interior Ministry, primarily to collect data concerning political, economic and social issues; participate in judicial investigations relating to state security; participate in the surveillance of territorial, maritime, and aerial borders; and monitor the entry of foreigners to Lebanon, their stay, their residence, and their departure. SMEX catalogued only one case involving General Security.

- In the case of journalist Mohamad Awaad, on July 20, 2018, four armed General Security offices arrested him on his way to work over online articles he had written, without informing him which article had inspired the complaint. During the interrogation, General Security told him not to mention religious and sect leaders, including the president, the head of the Higher Shiite Council, the Sunni grand mufti and the Maronite patriarch.¹⁰⁵

Once again, a different non-judicial body repeats the same pattern of interrogation and detention. Though Awaad posed no legitimate threat to state security, General Security still detained him. As a journalist, Awaad should have appeared in the Publications Court instead of in front of a non-judicial body.

Criminal Investigations Department

The Criminal Investigations Department is a division of the Internal Security Forces, with a mission to prohibit crimes threatening state security, including crimes against the aura of the state and national unity, incitement to tensions and terrorism; financial crimes; international theft; and crimes considered important due to the identity of the defendants, the tools used, or the impact it had on the public opinion." In 2018, only one case involved the Criminal Investigations Department:

- SMEX documented the case of journalist Hani Nsouli, whom the Criminal Investigations Department interrogated over a WhatsApp voice recording. On September 19, 2018, the department summoned Nsouli by phone and interrogated him. The WhatsApp voice recording in question criticized a photo of Nader Hariri, the former chief of staff to Prime Minister Saad Hariri, meeting with Taha Mikati, who has close ties with the Syria regime. After four hours, Nsouli signed a pledge not to criticize Nader Hariri as long as the latter is no longer technically participating in political life. Then, Nsouli was referred to the Single Criminal Judge in Beirut.¹⁰⁶

As a journalist, Nsouli could have refused the interrogation. Moreover, Hariri is a member of one of the most influential political families in Lebanon, which demonstrates that the Criminal Investigations Department's demand that he sign a pledge represents a dangerous precedent.

The increase in detentions at the hands of non-judicial bodies presents a worrying trend, though the total number remains limited. Although many of these individuals work as journalists, non-judicial bodies still used their authority to intimidate them. The practice of pre-trial detentions contravenes a letter that the justice minister sent to the Cassation General Prosecutor on February 20, 2017 calling for an end to such detentions in cases related to the expression of opinions on social media platforms.¹⁰⁷ The dilemma is especially acute in the case of defendants who were sued for posting defamatory articles on websites. Repeated jurisprudence has confirmed that websites fall under the jurisdiction of the Publications Law, which expressly prohibits pre-trial detention, while many of these individuals experienced pre-trial detention. Many of these cases were also referred to investigation, although if there was such a need, the interrogation authorities would have limited the interrogation to questions related to the identity of the authors and would not have forced the defendants to sign pledges to not repeat the offenses in the future.

¹⁰⁴ "السلطات اللبنانية تطلق سراح عبد الحفيظ الحولاني بكفالة" The Syrian Journalists Association, December 17, 2018 <https://cutt.ly/EwgX10S>

¹⁰⁵ "توقيف محمد عواد لا اعتراضه على... لكنه اعتقل ووقع تعهداً" Al Modon, July 20, 2018. <https://www.almodon.com/media/2018/7/20/-توقيف-محمد-عواد-لا-اعتراضه-على-لكنه-اعتقل-ووقع-تعهداً-سياسة-حزب-الله>

¹⁰⁶ "حساسية مفردة لنادر الحريري إزاء النقد السياسي: فصل جديد من لعبة الاستدعاء" Legal Agenda, September 21, 2018. <http://www.legal-agenda.com/article.php?id=4844>

¹⁰⁷ "إطلاق سراح أحمد أمهز... هل طويت صفحة التوقيف الاحتياطي؟" UPR Lebanon (blog), March 29, 2017. <https://www.upr-lebanon.org/archives/1128>

■ “Objectionable” Online Speech

The vast majority of speech that sends people to the courts or leads to their detention falls into three categories: defamation of public officials and figures, defamation of private figures, and contempt of religion. The available cases demonstrate that political figures play an outsized role in influencing the courts.

The reputation of public officials and figures:

Throughout 2018, the most of the cases documented by SMEX concerned government officials and prominent political figures. In 2018, SMEX recorded seven cases against the head of state, eight cases against public officials, seven cases against public figures, six cases against private entities, four cases against religious entities, and four miscellaneous cases.

The reputation of the head of state

Insulting the head of state, including a foreign head of state, carries heavier penalties than other defamation cases. The Lebanese head of state and people in their orbit are often able to influence the prosecution and the courts to pursue or drop charges, violating both the right to online freedom of expression and the right to a fair trial.

Cases

In 2018, SMEX has documented seven cases against online publications for defamation of the head of state.¹⁰⁸ One case has also been opened at the Publications Court in Beirut against Charles Ayoub for writing a newspaper article in 2018 insulting the head of state.

Nominally, the General Prosecutor refers cases involving heads of state to the courts. Previously, former Justice Minister Salim Jreissati claimed that the Cassation Public Prosecutor initiated such prosecutions without a complaint from the president.¹⁰⁹ Following the detention of Ahmad Amhaz in 2017, Rafik Shelala, the director of the Presidential Palace’s Information Office, declared that “the president does not want to sue anyone; the judiciary acted on its own accord and the president does not and will not interfere with the Judiciary.” A day later, Prime Minister Saad Hariri declared that he agreed with President Michel Aoun to drop the charges in this case.¹¹⁰ The defendant was released the next day. A day before the 2018 detention of Tima Hayek, Aoun announced that he forgave any offense made against him or his family.¹¹¹ Of the seven defendants who allegedly insulted the president,

one was a journalist¹¹² and one was a 15-year-old.¹¹³

What constitutes an offense to the president?

The 1962 Publications Law and its amendments treats the presidency as a symbol, giving the president greater protection than other public officials. This protection is based on four pillars: The public prosecutor may act on its own accord without a complaint from the president; the accuracy of the allegations does not lead to acquittal; dropping charges will not halt the complaint, although it will reduce the sanction; and the sanctions are more severe than in the case of defamation of public officials or ordinary people.

The following cases are examples of offenses to the president:

- A picture depicting the president and his two sons-in-law, Gebran Bassil and Chamel Roukoz, next to a picture of the late Syrian president Hafez al-Assad and his two sons, Bassel and Bashar, with the caption: “What’s the difference?”
- A complaint about the poor level of public services in Lebanon, which accused the president of turning the country into his “family’s home.”
- A profile picture on a 15-year-old’s WhatsApp.

Because the prosecutor did not refer many of these cases to the courts, scant information about each post is available. Therefore, civil society cannot assess whether the content in question violates the letter of the law. When the public prosecution acts on behalf of the president and refers the author of allegedly defamatory content to the courts, the defendant still has a chance for defense. However, the current practice instantly punishes the defendant.

In this case, the public prosecutor has arbitrarily decided what speech violates the law, without establishing a precedent. Moreover, the decisions do not reflect those of society: An independent judiciary interacts with society and should reflect the values of the society it serves. Compared to the decisions issued by Judges Sitting for Urgent Affairs or the Publications Court, the current practice leaves no room for public debate about the right to freedom of expression.

¹⁰⁸ Khaled Aboushy, Mahmoud Al Masri, Mohamad Awaad, Tima Hayek, Youssef Abdallah, Obada Youssef and Elie Khoury.

¹⁰⁹ “جريساتي: توقيف حسن سعد لم يحصل بناء على طلب من رئاسة الجمهورية” Lebanon Files, February 2, 2017. <http://www.lebanonfiles.com/news/1141709>

¹¹⁰ Awada, Ali. “والدة أحمد أمهن تطالب الرئيس عون بالعفو... وهكذا ردّ القصر الجمهوري” An-Nahar, March 28, 2017. <https://cutt.ly/FwgMbwO>

¹¹¹ Sbat, Zainab. “رئيس الجمهورية اللبنانية يقول انه يسامح كل من اساء له ولعائلته ويدعو” شبكة وكالة نيوز - لبنان - مسؤولة بالمسؤولية حفاظا على لبنان - Wakala News, January 30, 2018. <https://wakanews.com/archives/52805>

¹¹² محمد عواد لم يعرف تهمة.. لكنه اعتقل ووقع تعهداً”

¹¹³ “Lebanon: Detained Activists Blackmailed into Signing Illegal Pledges.”

Legal Precedents

SMEX did not find any legal precedents in 2018; however, in 2014, the Publications Court sentenced journalist Jean Assi to jail for two months for his tweets.¹¹⁴ The three-page decision discarded Assi's plea, which argued that he had tweeted in the delicate context of assaults against the Lebanese Army, and they reflected a deep anger against the incapacity of the government, not a personal insult against the president. The judgement stated that Assi's words crossed a limit and could not be considered as "freedom of the press," but gave no further explanation. It did not distinguish between the response from frustrated social media users and the words of the journalist himself. Assi's case also raised serious concerns about the right of the general public to express anger toward leaders and other public officials.¹¹⁵

In the 1999 case against Nawfal Daou, prior to the use of social media, the Publications Court ruled for an acquittal and dropped all charges against the defendant of allegedly attacking then-President Elias Hrawi.¹¹⁶ The court found the article to be within the parameters of permissible criticism despite the severity of the language.

The reputation of the head of a foreign state:

Cases

In 2018, SMEX did not find any case against online publications for defamation of a foreign head of state, not including complaints filed directly to the Publications Court. However, SMEX documented two offline cases: one against Hisham Haddad, a television presenter who mocked Saudi Crown Prince Mohammed bin Salman,¹¹⁷ and another against Charles Ayoub, the managing editor of Ad-Diyar, who wrote a column blaming the Crown Prince for the war in Yemen and the murder of journalist Jamal Khashoggi.^{118 119}

Offenses to the head of a foreign state

The Publications Law protects foreign heads of state as symbols, affording them greater protection than public officials. The protection consists of three key components: the public prosecutor may act on its own accord without a complaint from the president; the accuracy of the allegations does not lead to acquittal; and the sanctions

are more severe than in defamation cases involving other public officials.

“ The Publications Law protects foreign heads of state as symbols, affording them greater protection than public officials. ”

In cases involving foreign heads of state, the public prosecution has the right to sue the defendant without a complaint from the offended person. The decision of the Publications Court in the case of the public prosecution against Hisham Haddad, issued on December 13, 2018, stipulated that because the Crown Prince was not the head of Saudi Arabia, the prosecution could not bring a case against him without a formal complaint. Accordingly, the court did not prosecute Haddad.¹²⁰ The prosecutor may have referred the case to the Publications Court for political reasons knowing that the court would reject it. Nevertheless, prosecuting without a complaint from the foreign head of state is not justified, and the state should reconsider this policy in light of international law.

Legal Precedents

SMEX has not recorded any legal precedents related to insulting foreign heads of state on online media.

The reputation of public officials and public bodies:

Public officials also take advantage of defamation to protect themselves from criticism, though they remain more vulnerable than the president or foreign heads of state. While most of the cases from 2018 did not make it to court, judges have previously ruled against freedom of expression. The courts have issued one ruling in favor of the defendant, but usually they side with the public officials in an attempt to paint the defendant's claims as false or inaccurate.

Cases

In 2018, SMEX documented the initiation of eight cases against online publications for defamation of public officials.¹²¹ The plaintiffs in three cases are Foreign Minister

114 "Jean Assi," n.d. <https://www.legal-agenda.com/uploads/1392380735-%D9%82%D8%B1%D8%A7%D8%B1%20%D9%85%D8%B7%D8%A8%D9%88%D8%B9%D8%A7%D8%AA.pdf>

115 ما علينا أن ندافع عن جان عاصي: الشتم تعبيراً عن الغضب ضد مسؤولين نعجز عن "محاسبتهم", Legal Agenda, April 11, 20014. <https://www.legal-agenda.com/article.php?id=898>

116 Nizar Saghie, Rana Saghie, and Nayla Geagea. "Censorship in Lebanon: Law and Practice." The Censorship Observatory. Heinrich Boll Stiftung, December 2010. <https://lb.boell.org/en/2010/12/15/censorship-lebanon-law-and-practice>

117 "Prosecution Sues Comedian Hisham Haddad over MBS Remarks." Naharnet, January 25, 2018. <http://www.naharnet.com/stories/en/241367>

(Public Prosecution against Hisham Haddad).

118 "Prosecution Sues Ad-Diyar and Its Editor for 'Insulting' Saudi King." Naharnet, January 28, 2018. <http://www.naharnet.com/stories/en/241458> (Public Prosecution against Charles Ayoub).

119 "تواصل مواقف التنديد بشارل أيوب.. وحمود طلب الادعاء عليه" أخبار لبنان/سياسة/تواصل-مواقف-التنديد-ب-شارل-أيوب-، <http://aliwaa.com.lb/>، November 1, 2018. <http://aliwaa.com.lb/>، November 1, 2018. <http://aliwaa.com.lb/>

120 "إبطال دعوى الحق العام عن هشام حداد... وهذا نص قرار محكمة المطبوعات" An-Nahar, December 13, 2018. <https://cutt.ly/nwheCFk>

121 Yara Shehayeb; Rashid Jumblatt; Ali Mourtada; Elham Hallak; Hanady Gerges, Abdul Hafiz al-Houlani and Mariam Saifeddine.

Gebran Bassil, former premier Najib Mikati in two cases, the Army in one case, State Security in one case, and Lebanese University President Fouad Ayoub in one case. The cases demonstrate that public officials strive for an immediate remedy to repress the defendants' speech regardless of the result of trial.

Offenses to public officials or public bodies

The law gives public officials a privileged status based on two core ideas. First, the sanctions are more severe if the offense concerns public officials who exercise public authority. Second, dropped charges reduce the sanctions, but do not lead to dismissal of the case. The Publications Court has adopted a traditional approach to cases of defamation, libel, and contempt, ignoring that it is relatively easy to sue for defamation and relatively difficult to defend such a claim. In 2018, the Publications Court did not issue any decisions against online publications. Among the Publications Court's 20 decisions in 2018, public officials filed nine cases and won eight times.

The following online content was considered offensive to public officials or public bodies:

- An accusation that Mikati's group had obtained housing loans backed by Banque du Liban;¹²²
- A news story on the impact polluted water had on abortions in Syrian refugee camps;¹²³
- A Facebook post accusing Bassil of robbery and looting;¹²⁴
- A tweet accusing Mikati of financing the war in Tripoli;¹²⁵
- An article about disputes within the Lebanese University regarding fraudulent diplomas.¹²⁶

The non-referral to the court prevents us from assessing the red lines of the judiciary vis-à-vis the defamation of public officials and bodies. Therefore, this report relies on decisions against print and audiovisual media in order to understand the court's approach to defamation laws.

Legal Precedents

The court has previously stated that "the mission of the journalist is to impart accurate and sober information and raise awareness of the public opinion without offending others."¹²⁷ Therefore, although any public exposure of corruption or incompetence will harm the reputation of political officials, it falls within the court's jurisdiction.

In two rulings, the court has confirmed that journalists can criticize public officials. In the case of former Culture Minister Gaby Layyoun against archaeologist Naji Karam,¹²⁸ the Publications Court ruled that the media has a duty to report in the public interest, especially regarding the criticism of politicians and public officials.¹²⁹ The judge referred to a landmark decision issued in 2002 by the European Court for Human Rights in the case of Colombani and others against France, which recognized that although public officials can have their reputation protected,¹³⁰ "the limits of acceptable criticism ... are wider with regard to a politician acting in his public capacity than in relation to a private individual."¹³¹ The Publications Court ruled that the use of harsh words, including phrases such as "crime against heritage," "ignorance," and "threat to heritage," do not constitute defamation because they objectively assess the performance of the Culture Ministry. Moreover, the judge ruled that the journalist did not hold the minister in contempt and his article relied on official ministerial documents.

Additionally, in a landmark 2016 decision issued by the Cassation Court in the case of former Prime Minister Fouad Siniora against journalist Rasha Abu Zaki and Al-Akhbar, the court ruled that although Zaki's article included harsh criticism against the plaintiff, including such phrases as "the Finance Ministry did not perform its duties," "without audit or accountability or supervision," "doubts," and "inaccuracy of accounts," these statements could not be considered contempt.¹³² The decision also ruled that the press is obligated to raise awareness among the public.

¹²² "سالم زهران وعلي مرتضى امام القضاء... ومصادر ميثاقتي توضح للاحقيات الدعوى"

¹²³ "السلطات اللبنانية تطلق سراح عبد الحفيظ الحولاني بكفالة"

¹²⁴ "مكتب 'جرائر المعلوماتية' يستدعي الناشطة يارا شهيب بسبب تغريدة عن باسيل"

¹²⁵ "التعبير عن الرأي ممنوع!" Al Akhbar, December 28, 2018. https://al-akhbar.com/Media_Tv/263920

¹²⁶ "Mariam Seifeddine." Muhal, March 2019. <https://muhal.org/en/cases/recuriogzbxauiy/>

¹²⁷ "Ghassan Saoud." Muhal, March 2019. <https://muhal.org/en/cases/recgux0zssg8nce6r/> (Suzane Khoury against Ibrahim Amine and Ghassan Saoud).

¹²⁸ إن محكمة الإستئناف في بيروت الغرفة العشرة الناظرة بالدرجة الأولى في جميع القضايا المتعلقة بجرائم المطبوعات و المؤلفات من الرئيس رفول البستاني و من المستشارين هبة عبد الله جديل Legal Agenda, December 2018. <https://cutt.ly/gwheNm4f>

¹²⁹ Nizar Saghie. "قضية حماية الأكار: لا يستقيم عدالة" Legal Agenda, December 12, 2018. <http://www.legal-agenda.com/article.php?id=5129>

¹³⁰ In fact, the European Court of Human Rights has argued since the 1980s that there are a number of good reasons why public officials should enjoy less protection from criticism than others. Decisions issued in the case of Ligens against Austria and Castells against Spain clearly state that public officials are subject to criticism.

¹³¹ Colombani and others v France (App no 51279/99), ECHR. June 25, 2002, <https://www.hr-dp.org/contents/477>

¹³² Lama Fakih, "Freedom of Expression under Fire." Executive Magazine, November 30, 2014. <https://www.executive-magazine.com/opinion/comment/freedom-expression-fire> (The article does not contain the decision itself, but background information on the case).

Higher Social Status Leads to More Protection

Despite the Publications Court's decision against Naji Karam, it often protects prominent officials, almost always mentioning the status of the plaintiff to justify strict sentences.¹³³ This practice reflects the court's sensitivity to the defamation of public figures, to the extent that the definition of defamation according to the court's decisions includes "harming the honor and social status of the person." The court's past rulings suggest that it overestimates the harm inflicted to public officials and politicians because they are powerful figures.

“ A review of Publications Court decisions confirms that the court has neglected the language in Article 387 of the Penal Code, which absolves those accused of defaming public officials when the allegations prove true. ”

Neglecting Article 387

A review of Publications Court decisions confirms that the court has neglected the language in Article 387 of the Penal Code, which absolves those accused of defaming public officials when the allegations prove true. The court often makes an effort to prove defendants' claims false, claiming they either failed to prove the accuracy of allegations,¹³⁴ provided inaccurate information,¹³⁵ or included personal opinions and criticisms.¹³⁶ This pattern implies that the court would have considered implementing Article 387 if the defendant could prove the accuracy of the allegations. However, the court never questions the plaintiff or hears witnesses to investigate the accuracy of the allegations. Moreover, the court ignores the importance of the source confidentiality and considers the testimony in court a duty for everyone.¹³⁷ If journalists and editors are always required to verify every published statement to the high standard of the courts, the process would undermine their role as public watchdogs.

The court has implemented Article 387 sparingly in the past. In the case of Riad Khalifeh, a high-ranking Health Ministry official, against Ghada Eid, the Cassation Court relied on Article 387 to rule against Khalifeh.¹³⁸ The judge ruled that "the public trust in an employee" does not "require absolute culpability in cases of libel if an incident cannot, perhaps, be proven, as long as the incident falls within a broader framework of general proof that an employee has shown financial misconduct and conduct harmful to public monies and funds, which is of even

greater importance than the actual incident." Moreover, the court affirmed that in enacting Article 387 of the Penal Code, "legislators wanted every public servant's conduct and performance ... with the exception of the president to remain under the scrutiny and watchful eye of public opinion." The court continues: "the general impetus and aim of legislators was to warn all those serving in the public sector that, by virtue of accepting employment in it, it shall deprive him or her of all the latitude that private employment and services may grant the average person in terms of their individual and personal conduct." Therefore, the court gave citizens the right "to shed light on all that invokes suspicion with regard to any irregularities related to public services [and failures in good governance in the public sector] as required by the laws and regulations in force." The court even described the role of the press as "providing support [to the judiciary and to public authorities] in combating the scourge of chronic waste and abuse that can undermine the state."¹³⁹

Yet this is the only instance when the court has invoked Article 387. Though Khalifeh was a relatively high-ranking official, he was less prominent than many public officials who prosecuted freedom of expression cases in 2018.

The reputation of public figures

The court affords public figures, including former politicians, stronger legal protections. Furthermore, the court refuses to implement Article 387 to absolve defendants and in the rare cases that it does find them innocent, it relies on the defense of public interest.

Cases

In 2018, SMEX documented the initiation of seven cases against online publications for defamation of public figures, whom we define as "well known in the political public sphere." The plaintiffs are Samir Geagea, Wafic Safa, Nader Hariri, and Fadi Alama, the chairperson of Sahel Public Hospital and a former parliamentary candidate.

Offenses to public figures

The law does not offer formal protection to public figures. However, growing jurisprudence treats them differently than ordinary citizens. Though they are not elected officials, these individuals have a substantive role in political life and should bear the burden of proving the falsity of any defamatory statements, but the court treats the cases in the opposite way.

To our knowledge, the following cases were considered offenses to public figures:

¹³³ Najib Mikati against Aouni Kaaki.

¹³⁴ Suzane Khoury against Abdul Rahim Uqab and Ghasseb Mohamad Salah.

¹³⁵ "Ghassan Saoud."

¹³⁶ Ibid.

¹³⁷ Ibid.

¹³⁸ Mohammed Nizzal. "المطبوعات تزيء غادة عيد رغم جرائتها." Al Akhbar, October 13. https://al-akhbar.com/Archive_Justice/103304

¹³⁹ Sagieh et. al, "Censorship in Lebanon."

courts should assess the evidence against the private entities and evaluate the impact on the public interest. The current practices discourage journalists from holding corporations to account, for fear of being sued and sanctioned. Eden Bay Resort is a prime example. NGOs filed lawsuits against constructing the resort in favor of protecting maritime public property, but Eden Bay sued the detractors for defamation. Therefore, the case is a matter of public interest and does not concern the reputation of the company or the shareholders. The courts should not penalize any alleged defamation against Eden Bay. The same principle applies to reports about the abuse of migrant domestic workers. In certain cases, criticism, which the courts have misconstrued as defamation, becomes a duty and not just a right.

Legal Precedents

So far, the Publications Court has failed to issue any decisions protecting the criticism of private entities. The cases against Timour Azhari and Anne-Marie El-Hage for the defamation of Alexis and Crystal Khalil, the employers of Lensa Lelisa, are still pending. The law states that the accuracy of an impugned statement shall absolve the defendant of any liability, especially in a matter of public interest, but the court holds journalists to an extremely high standard of legal proof.

Private entities and any other plaintiff should never use defamation cases to intimidate or harass the defendant and the court should reject such practices, no matter how harmful the allegations of the defendants were.

Religious Defamation

The courts have protected religious authorities from any criticism and established a precedent that threatens citizens who make satirical comments about religion or question its influence of religion in everyday life.

Cases

In 2018, SMEX has documented the initiation of four cases against online publications for religious defamation.¹⁵⁷ In all cases, the Catholic Information Center acted as the plaintiff.

Offenses to Religion

The Publications Law prohibits the defamation of religions,

while the Penal Code criminalizes blasphemous libel and the denigration of religious rituals.

In 2018, defamation charges largely revolved around one topic:

- Posting, commenting, and sharing a sarcastic joke about the medical miracles of St. Charbel, one of the most important Maronite saints.¹⁵⁸

The right to freedom of religion or belief, as enshrined in relevant international legal standards, does not preclude criticism or ridicule of religion.¹⁵⁹ Yet the Catholic Information Center's increased level of influence over cinema, theatre, printed, audiovisual media, and social media raises major concerns. Moreover, religious defamation suits have contributed to shrinking the space for humor, leading to a more tightly-censored media landscape.^{160 161 162}

Legal Precedents

The Publications Court has largely ruled in favor of the plaintiff in blasphemy cases. In the court's most striking decision, in 2009, it sentenced three young men at a comic magazine to pay steep fines (totaling \$20,000) for allegedly offending Christianity and Christians. The information minister sent a letter to the justice minister requesting the initiation of legal procedures. Then, the justice minister referred the case to the Cassation Public Prosecutor, who prosecuted the three men for religious contempt and incitement of religious tensions. The Publications Court found these two comics offensive and found the three men guilty of both charges based on a biased interpretation of these two comics.¹⁶³ The Cassation Court then confirmed the decision of the Publications Court.

However, Single Criminal Judges have displayed higher tolerance. On January 31, 2019, the Single Criminal Judge in Baabda halted the prosecution of two people, including a priest, on charges of religious defamation. The judge argued that the courts need to expand the definition of freedom of belief and prevent excessive application of limitations and exceptions.¹⁶⁴ Another example is the 2007 case of Public Prosecution against Joseph Haddad for writing a series of articles that included one titled, "Al-Allah Al-Makhtouf" (The Kidnapped God"). The decision, which acquitted the writer from any wrongdoing,

¹⁵⁷ Charbel Khoury; Joy Slim; Rawan Khatib and Wadih Asmar.

¹⁵⁸ "Charbel Khoury" and "Joy Slim."

¹⁵⁹ Bernard Mouffe, *Le Droit à l'Humour*, éd. Larcier, 2011.

¹⁶⁰ Mouffe, *Le Droit à l'Humour*, 17-29

¹⁶¹ There is also the prosecution of Charbel Khalil for religious defamation over comedy sketches based on two complaints: the first submitted on 13/07/2018 by the Higher Shiite Council and the second submitted on 15/10/2018 by a group of lawyers. <http://www.skeyesmedia.org/ar/News/Lebanon/6945>

¹⁶² Bernard Mouffe, *Le Droit à l'Humour*, éd. Larcier, 2011.

¹⁶³ The first presents several Lebanese recipes for revenge; each is represented by a popular saying such as "May God burn your religion," "May God destroy your house," "May God take your life," and all of them leading in one way or another to more violence and self-destruction. The second is about revenge and torture against a newly-established religious sect for the assassination of a high-ranked Roman officer.

¹⁶⁴ Maryam Mehanna. "قرار قضائي يوسع مدى حرية المعتقد في لبنان: لا محلّ" للحماسية الدينية غير الطبيعية *Legal Agenda*, February 2, 2019. <http://www.legal-agenda.com/article.php?id=5295>

clarified that freedom of expression and belief include the freedom to state opinions that are “secular and not religious, and that believe in a civil society, and that are not partial to the existence of sects inside society, and that reject the violence practiced in the world in the name of religion and upon notions not just related to faith in God, but also to upbringing.”¹⁶⁵ In the 1999 case of Public Prosecution against Marcel Khalifeh, which began when Dar al-Fatwa issued a complaint because Khalifeh sang verses from the Qur’an, the judge held the view that “that it is not possible to consider any act that violates or that is not compatible with religious provisions and teachings as being a criminal act.” The judge also mentioned that “the poem is sung in a respectful and sober manner, which does not show any contempt whatsoever towards religious practices or rites or disdain towards them.”¹⁶⁶ Despite these few positive cases, the recent jurisprudence concerning online “defamation” of religion has often sided with the plaintiff.

In 2018, religious and political issues remain most objectionable to the courts. In the eyes of many judges, the dignity of political figures and religious symbols remain paramount. The elevation of the status of public officials and private figures leads to censorship and limits artistic freedom. Private companies are filing for defamation to prevent any criticism of projects that harm the environment and sacrifice the public interest. Furthermore, private figures have attempted to protect their reputations against the allegations of migrant domestic workers by suing the journalists who cover their stories. Likewise, religious bodies, notably the Catholic Information Center, have used their power to restrict any criticism of religion and foster a hostile environment for satire and humor. Unfortunately, these trends are continuing in 2019.

¹⁶⁵ Saghieh et al., “Censorship in Lebanon: Law and Practice.”

¹⁶⁶ Ibid.

■ Recommendations

The status of freedom of expression in Lebanon has deteriorated over the past three years. However, there are opportunities for reform based on legality, proportionality, and legitimacy of restrictions on freedom of expression. Currently, parliamentary committees are reviewing a draft law on media as well as a draft law on the independence of the judiciary.

The draft law on media, as modified on December 5, 2018, largely maintains the status quo, though with a few key differences. On a positive note, the draft law subjects all online publications to the Publications Court. Still, the law does not strictly state where social media posts fall under this definition. The law also upholds many of the same punishments, including prison sentences, for defamation and blasphemy offenses.

A draft law on the independence of the judiciary appears more promising. In September 2018, ten MPs submitted the law to Parliament. The legislation, which Legal Agenda helped draft, proposes four key changes:

- Amending the formation and powers of the Higher Judicial Council;
- Providing guarantees for judges (i.e. approval of transfer, equal pay, guarantees for freedom of expression, etc.);
- Increasing oversight of the judiciary (i.e. regular review of the judiciary's performance, yearly competitions to enter the Institute of Judicial Studies, etc.);
- Building the independence and efficiency of the Judicial Inspection Committee.

The recommendations below are based on an analysis of the legal framework and current practices, General Comment No. 34, and the concluding observations on the third periodic report of Lebanon issued in 2018. Some of these recommendations include legislative reform, while others might take place at the judiciary level.

Regarding freedom of expression:

- 1.** Decriminalize publication offenses.
- 2.** Extend the Publications Law's protection to all online speech, whether posted on social media or on a blog.
- 3.** Reinforce judicial expertise on freedom of expression, media, and access to information.
- 4.** Reform the court procedures:
 - a)** Reinstate the three-level court system.
 - b)** Do not prolong cases and respect the time frame laid out in the Publications Law.
 - c)** Do not compel defendants to attend court hearings.
 - d)** Alleviate the burden of proof
 - 1)** Matters of public interest:
The defendant shall have the opportunity to reasonably prove the truth of allegations in matters of public interest, regardless of the status of the plaintiff.
 - 2)** Substantial truth:
The defendant shall not be required to justify every word of the alleged defamatory statements. In many instances, the journalists rightly points out corruption but fails to justify every single detail of the story. Such a situation shall not result in the indictment of the journalist.¹⁶⁷
 - 3)** Defense of reasonable publication:
The defense of reasonable publication based on due diligence and good faith shall apply. Such defense protects social media users who are often less familiar than journalists with the rules of proof.

¹⁶⁷ On May 30, 2013, Al-Akhbar published an investigative report by journalist Mohammad Nazzal titled, "Judges and Officers Protect a Drug Network: The Son of a Powerful Man Escapes Punishment." This report pointed to the release of two suspects – both holders of U.S. passports – involved in a drug-dealing network and resulted in the resignation of Judge Jaafar Kobeissi and the demotion of two ranks of the plaintiff by a verdict of the High Disciplinary Council. It is worth mentioning in this respect that demotion of two ranks means losing four years of service in the judiciary,

and there are many other less severe punishments that the judge could have been subjected to. However, the Publications Court has belittled the truth of the published facts and ruled that the article contained defamatory statements that the defendant did not prove. It sentenced the journalist and the managing director to a fine of LL6 million each and compelled them to pay LL15 million (\$9,977) in damages to compensate for the "great moral damage" that was inflicted on the plaintiffs.

5. Repeal the protection for certain categories of individuals:

a) Heads of state and public officials:
Repeal the protection of public officials, the head of state, and foreign heads of state. Under international standards, these officials have to tolerate more, rather than less, criticism than private figures.

b) Public bodies:
Repeal the protection of public bodies and private bodies that undertake public services.

6. Remove inappropriate sanctions:

a) Jail:
Prison sentences, suspended prison sentences, and commuted prison sentences are never appropriate sanctions for cases involving freedom of expression.

b) Fines:
Fines shall not be exorbitant.

c) Damages:
Plaintiffs must prove that the damages are equivalent the harm. Moreover, the status of the plaintiff does not in itself justify the payment of damages.

7. Decriminalize blasphemy and religious defamation.

Regarding the general climate for freedom of expression

8. Establish a national commission for fighting corruption in order to enable the enforcement of the Access to Information Law and the Protection of Whistleblowers Law.

9. Issue the draft law on the independence of the judiciary.