

The role of the public prosecutor in the Lebanese legal system

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Abstract: The Public Prosecution in Lebanon plays a crucial role in the legal system, ensuring justice and protecting individuals' rights. In this article, we will explore the structure of the Lebanese Public Prosecution, including its establishment and attributes. Thereafter, we will examine its functions, along with its authority and relationship with the law enforcement agents. Finally, we will address the accountability of Public Prosecutors in Lebanon.

Keywords: Lebanon; criminal procedure; public prosecution; prosecutor; accountability.

Introduction

The Public Prosecution is a specialized judicial body whose origins can be traced back to the era of monarchy in France.

In the 14th century, the king had lawyers and agents who represented his interests before the courts. As their influence grew their jurisdiction expanded and they became representatives of the public authorities in the judiciary. They used to sit with the litigants in the courtroom, while the judges sat on a raised platform.

Later their position developed and they became a special type of judges who sat in the right corner of the trial arch. They were called "standing judges" because they stood when speaking, while the adjudicating judges remained seated.

The Public Prosecution is currently undeniably a judicial body that represents society in tracking criminals and referring them to the courts, and its members are judges. It has this status due to the nature of its work, as it participates in the criminal courts' sessions as part of these courts. The absence of Public Prosecution would render the session invalid as it would not be considered legitimately convened¹.

Pursuant to Article 5 of the new Lebanese Code of Criminal Procedure, "public lawsuits aimed at prosecuting criminals and accomplices, and applying penalties and measures against them, are the responsibility of the Public Prosecution appointed under this law." Thus, the primary role of Public Prosecution is to serve as a prosecution authority in criminal cases by initiating public lawsuits and pursuing them until their intended outcomes are realized, which include securing convictions and imposing

¹ A. Al Nakib, *Principles of Criminal Proceedings*, Oueidat Publications, Beirut, 1986, 47.

sanctions. It acts as a representative of society by directly initiating public lawsuits on its behalf. In the Lebanese legal system, Public Prosecution is considered as an integral component of criminal justice, and it possesses the independence granted to the judiciary by Article 20 of the Lebanese Constitution. This article aims to provide an overview of the structure of the Public Prosecution in the Lebanese legal system (I), and the functions of the Public Prosecution in Lebanon (II).

I. Structure of the Public Prosecution in Lebanon

The Public Prosecution plays a pivotal role in the country's legal system, ensuring the effective administration of justice and safeguarding the rights of individuals.

By examining its establishment (A), insights can be gained into the historical development and legal framework that contributed to the formation of the Public Prosecution in Lebanon. Additionally, the attributes that define this institution will be examined (B).

A. Establishment of the Public Prosecution

The organization and structure of prosecution services differ from one country to another. In Lebanon, prosecutors are judges and are integrated into the judiciary. According to Article 11 of the new Code of Criminal Procedure, "the functions of the Public Prosecution before the Court of Cassation shall be carried out by a Public Prosecutor assisted by Public Attorneys. A Financial Public Prosecutor, assisted by Public Attorneys, will handle the Financial Public Prosecution under the Cassation Public Prosecution. The functions of the Public Prosecution before the Court of Appeal shall be carried out by a Public Prosecutor assisted by one or more Public Attorneys. The Military Public Prosecution shall be carried out by a Government Commissioner who is subject to the authority of the Public Prosecutor before the Court of Cassation, assisted by one or more Public Attorneys".

Article 11 highlights that the Public Prosecution consists of several judicial bodies on top of which is the Public Prosecutor before the Court of Cassation. Thus, the Minister of Justice no longer holds the highest position in the Public Prosecution hierarchy, as was previously the case. Moreover, Article 14 of the same law defines the authority of the Minister of Justice concerning Public Prosecution, granting him solely the power to request the Public Prosecutor before the Court of Cassation to conduct investigations regarding crimes under his jurisdiction².

Furthermore, as per the aforementioned article, the Public Prosecution consists of:

- The Public Prosecutor before the Court of Cassation, based in Beirut, who holds the managerial and supervisory role over the Public Prosecution. The Public Prosecutor before the Court of Cassation is assisted by five Public Attorneys before the Court of Cassation.

- A Financial Public Prosecutor who operates under the authority of the Public Prosecutor before the Court of Cassation. The responsibilities of the Financial Public Prosecution have been outlined in Decree No. 1937, dated 16/11/1991, as amended by Decree No. 3094/1993.

² Dr. Phelomene Nasr, *Principles of Criminal Proceedings*, Sader Library, 466.

- Each Court of Appeal in the various regions has its own Public Prosecution, led by a Public Prosecutor who is assisted by several Public Attorneys. The number of Public Attorneys for each Court of Appeal differs across regions: six in Beirut, four in North Lebanon, five in Mount Lebanon, two in the South, three in the Bekaa (with one residing in Baalbek), and one in Nabatieh.

- A Government Commissioner (i.e., the Military Public Prosecutor) before the Military Court (which is a special court for military matters), assisted by three Public Attorneys, who are all subject to the authority and supervision of the Public Prosecutor before the Court of Cassation.

a. Appointment of Public Prosecutors

The Public Prosecution, being a part of the judicial system, consists of judges who adhere to the same system. As per Lebanese legislation, members of the Public Prosecution hold judicial status and are subject to the same regulations as the judiciary, including provisions related to their appointment, promotion, and transfers³. Neither Decree-Law no. 150/83 (the “Judicial Organization Law”), nor the Code of Criminal Procedure, prescribe specific, clear, and objective criteria for the selection and appointment of public prosecutors.

In accordance with Article 31 of the Judicial Organization Law, the leadership of the Public Prosecution before the Court of Cassation is entrusted to a Public Prosecutor who is appointed by a decree issued by the Council of Ministers upon the recommendation of the Minister of Justice...”

Hence, in Lebanon, judges of the Public Prosecution are appointed by the executive authority, similar to various contemporary legal systems⁴. These judges are appointed in a manner identical to the appointment of judiciary judges, through a decree issued upon the recommendation of the Minister of Justice, and subsequent approval from the High Judicial Council. They underwent a three-year training period at the Institute of Judiciary Studies⁵.

In Lebanon, the Public Prosecution at the Court of Appeal is headed by a Public Prosecutor, who is a judge of grade 14 or above, appointed through a decree issued by the Council of Ministers based on the recommendation of the Minister of Justice. The Appellate Public Prosecution consists of an appellate Public Prosecutor in each governorate, who is a judge of grade 6 or above, who is assisted by appellate Public Attorneys, who are judges of grade 4 or above, assigned to perform the duties of the appellate Public Prosecutor as specified in the Code of Criminal Procedure⁶.

Unfortunately, judicial appointments in Lebanon are not exclusively based on judges' competence and degrees, but take into consideration an unwritten rule, which is sectarian balance, whereby all positions, not just the sensitive ones, are distributed in a manner that respects this balance.

³ A. Al Nakib, *Principles of Criminal Proceedings*, previous reference, 48.

⁴ D. Bcherraoui, *Principles of Criminal Proceedings*, Volume 2, Criminal Judiciary, Sader Publications, 112.

⁵ Article 64 of the Judicial Organization Law.

⁶ J. Samaha, *Explanation of the Criminal Procedure Law*, Saint Joseph University, Beirut, 2021.

Unfortunately, it is not possible to reconcile between the criteria of competence and maintaining sectarian balance, as the latter may prevent the most qualified individuals from reaching the positions they deserve.

Therefore, there must be continuous efforts to enhance the independence of the judiciary and ensure a transparent, clear, objective and merit-based judicial appointments process based on only competence, integrity and degrees, without any sectarian consideration. This necessitates amending the legal provisions and the practical procedures governing the appointment of Judges in general and Public Prosecutors in particular.

b. Transfer of Judges

As Public Prosecutors are considered members of the judiciary and are therefore subject to the same regulations in terms of transfers, Article 48 of the Judicial Organization Law specifies that they may be transferred to public administrations or institutions, as follows: "Contrary to any general or special provision, a judge may be transferred with their consent, to the staff of any of the public administrations or institutions, regardless of its nature. This transfer is executed through a decree issued by the Council of Ministers, based on recommendations of both the Minister of Justice and the competent minister, after receiving approval from the High Judicial Council. However, a judge can only be seconded to the staff of a public administration or institution if their regulations permit the secondment of judges. The duration of the secondment may be for a limited or unlimited period."

c. Recusal of the Public Prosecutors

The new Code of Criminal Procedure does not include specific provisions addressing the recusal of Public Prosecutors. However, recusal is mentioned in Article 128 of the Lebanese Code of Civil Procedure, specifically in relation to representatives of the Public Prosecutor's office. The first paragraph of this article states that the provisions pertaining to the recusal and disqualification of judges are applicable to Public Prosecutors, arbitrators, and experts.

Consequently, Public Prosecutors are subject to the provisions of recusal and disqualification set forth in Article 120 of the Code of Civil Procedure, which states:

"Parties or any of them may request the recusal of a judge for the following reasons:

1. If the judge, his spouse, or his fiancé has a direct or indirect interest in the case, even after the dissolution of the marriage or engagement.
2. If there is a kinship or affinity up to the fourth degree between the judge and any of the parties, their agents, or legal representatives, even after the dissolution of the marriage that caused the affinity.
3. If the judge has a kinship or affinity up to the fourth degree with a member of the board of directors of one of the parties or one of its directors, and if this board member or director has a personal interest in the case.
4. If the judge was previously appointed as an attorney for one of the parties or their legal representative, or if one of the parties has chosen him as an arbitrator in a previous case.
5. If the judge or any of his relatives or in-laws up to the fourth degree previously presided over the case as a judge, expert, or arbitrator, or

gave testimony in it. This does not apply if the judge is considering an objection, an objection by a third party, or a retrial against a judgment in which he or one of the mentioned relatives or in-laws participated.

6. If the judge expressed an opinion in the case, even if it was before his appointment to the judiciary. This can only be proven by written evidence or the judge's admission.

7. If there is enmity or friendship between the judge and one of the parties, such that it is likely to affect his ability to rule impartially. The judge cannot be recused solely based on the contempt shown by one of the parties.

8. If one of the parties is a creditor, debtor, or servant of the judge or one of his relatives up to the second degree."⁷

Jurists have different opinions regarding the recusal of public prosecutors. The prevailing view among the majority of jurists⁸ is that Public Prosecutors cannot be recused in criminal matters where they act in the public interest, and the reference to Public Prosecutors in article 128 only applies to the recusal of the Public Prosecutors when they act as an additional party working in the interest of the law in civil matters.

On the other hand, the opposing opinion argues for the permissibility of recusing members of the Public Prosecutor's office in public interest lawsuits whenever there are reasons that affect their integrity and independence. According to this opinion, the object of the recusal is the representative of the Public Prosecutor's office and not the entire office and the opinion of the Public Prosecutor's office may have an impact on the court despite its discretionary authority.

In our perspective, the recusal of public prosecutors in criminal cases should be restricted to situations where the criteria specified in Article 120 of the Code of Civil Procedure strictly involve the relationship between the Public Prosecutor and the accused. This limitation is essential because the dynamics between the Public Prosecutor and the plaintiff do not directly impact the case, as the Public Prosecutor act as an opposing party to the defendant.

It should be noted that the High Judicial Council is the competent authority to consider recusal requests within a maximum period of three days.

B. Attributes of the Public Prosecution

Public Prosecution is regulated according to standards based on attributes unique to this judicial authority, whereby Public Prosecutors have attributes that other judges do not have.

These attributes lie in the unity of the Public Prosecution and the adherence of its judges to the principle of hierarchy (a), as well as the autonomy of the Public Prosecution (b).

a. Organizational Hierarchy of the Public Prosecution

⁷ *Unofficial translation of the original Arabic text.*

⁸ M. Al-Awji, *Lectures in Criminal Procedure Law*, 1st Edition, Halabi Legal Publications, Beirut, 2002, P. 471, and Dr. Phelomene Nasr, *Principles of Criminal Proceedings*, Sader Library.

The Code of Criminal Procedure organizes the Public Prosecution in Lebanon as a hierarchy. This approach is only adopted by the Lebanese judicial system at the Public Prosecution level.⁹

The rationale behind this is that hierarchical systems create subordinates that are compelled to follow the head of the hierarchy's orders which contradicts the basic and core fundamentals of the judicial system, notably the constitutional principles of autonomy and independence of judges.

The structure of the Public Prosecution is as follows:

At the top, there is the Public Prosecutor before the Court of Cassation. He is the head of all Public Prosecution in Lebanon and is assisted by a group of Public Attorneys at the Court of Cassation. He holds the necessary powers to administer and settle disputes, in addition to his judicial powers. The authority of the Public Prosecutor before the Court of Cassation extends to all judges of the Public Prosecution Office. Furthermore, he has the power to give all Public Prosecution judges written or oral instructions for the conduct of the public prosecution, and these instructions are mandatory for the judges although they retain their freedom of speech at trial hearings¹⁰.

At a lower level, we can find the Public Finance Prosecutor, the Government Commissioner, and the Public Prosecutor before the Court of Appeal. Each of them is the head of his department and exercises his powers and duties with the assistance of Public Attorneys to which he assigns activities falling within his jurisdiction.

b. Autonomy of the Public Prosecution

The Public Prosecution is considered part of the criminal judiciary and has the independence granted to the judicial authority by Article 20 of the Lebanese Constitution.

Prosecutorial independence is a matter of public interest that ensures the possibility of prosecutors to work without undue or other inappropriate influence or obstruction, including when investigating and prosecuting cases of criminal abuse of power and human rights violations. Therefore, any improper influence or interference from any source outside the Prosecutor's Office and any attempts to undermine the independence and impartiality of prosecutors should be prohibited.

To ensure the proper administration of justice and uphold the rule of law, right to a fair trial, and procedural guarantees of freedom, judges and prosecutors must exercise their respective key roles independently of one another. To this end, prosecutors should not be given the power to exercise judicial functions.

For the avoidance of any ambiguity, it is recommended that the law clearly and explicitly prohibits the possibility of a prosecutor simultaneously serving as a court judge or being appointed as a judge in a case where he or she was previously involved as a prosecutor.

As for the relationship between the Public Prosecution and the Government in this regard, it should be mentioned that the Minister of

⁹ D. Bcherraoui, *Principles of Criminal Proceedings*, Volume 2, Criminal Judiciary, Sader Publications, 134 – 135.

¹⁰ Article 13 of the Lebanese Code of Criminal Procedure.

Justice has the right to request the Public Prosecutor before the Court of Cassation to prosecute any criminal offense of which he has knowledge¹¹; however, and in conformity with the Constitutional principle of separation of powers between the executive and the judicial powers, the Public Prosecutor retains his discretionary power to decide whether or not to file a claim.

II. Functions of the Public Prosecution in Lebanon

In this second section, we will explore the functions of Public Prosecution in Lebanon, focusing on the authority of Public Prosecutors (**A**) and the accountability for their actions (**B**) to ensure adherence to legal and ethical standards.

A. Authority of Public Prosecutors

Public Prosecution in Lebanon exercises some of its powers independently, while it may seek assistance as needed while exercising other powers.

a. Scope of the Authority of Public Prosecutors

i. Determination

Two theories exist regarding the nature of criminal prosecution: the discretionary theory and the mandatory theory.

The Lebanese law, in line with the French, Syrian, Polish, and many other legal systems, adopted the discretionary theory granting the Public Prosecutor the right of discretion. This position is adopted by the Lebanese Code of Criminal Procedure.

Pursuant to the discretionary theory, the Public Prosecutor has the right to proceed with the preliminary investigation or refrain from doing so, and to initiate or not a lawsuit by considering whether an action constitutes or not an offense, whether there is sufficient evidence that an offense has occurred, and whether the time limit to prosecute has lapsed for one of the reasons set out in Article 10 of the Code of Criminal Procedure¹².

However, such discretion is not absolute: the Public Prosecutor cannot relinquish the public prosecution or negotiate a settlement¹³.

In any case, even if the Public Prosecutor decides not to initiate a penal lawsuit, the aggrieved party has the right to initiate such a lawsuit by filing a direct lawsuit before the investigative judge or the penal judge.

Furthermore, the Public Attorney loses his right of discretion when he receives a clear and direct order, either in writing or orally, from his hierarchical superior. For instance, the Public Prosecutor before the Court of Cassation may issue such an order to the Public Prosecutor before the Court of Appeal, or a Public Prosecutor may give that order to a Public Attorney.

The Public Prosecutor is informed about the occurrence of offenses through one of the following means: (a) Investigations conducted by its own

¹¹ Article 14 of the Lebanese Code of Criminal Procedure Code.

¹² Article 50 of the Lebanese Code of Criminal Procedure.

¹³ Article 6 of the Lebanese Code of Criminal Procedure.

office, (b) Reports from the official authorities, (c) Preliminary inquiries conducted by the judicial police, (d) Complaints and denunciation, and (e) Any lawful means that enables it to obtain information regarding the offense¹⁴.

It is worth noting that, pursuant to Article 8 of the Lebanese Criminal Code, if a person is prosecuted for a specific crime, the issuance of a new law that abolishes its punishment stops the prosecution of the perpetrator constituting another limit to the discretionary power of the Public Prosecutor.

The specific authorities of each Public Prosecution are as follows:

- Public Prosecutor before the Court of Cassation:

According to Article 16 of the Code of Criminal Procedure, the Prosecutor before the Court of Appeal, the Financial Prosecutor, the Government Commissioner at the Military Court, the General Director of the Internal Security Forces, the General Director of the General Security, and the General Director of State Security shall inform the Public Prosecutor before the Court of Cassation of serious offenses of which they have knowledge and shall comply with his instructions in this regard.

The Public Prosecutor before the Court of Cassation may inspect the file pertaining to an investigation being conducted by an Investigating Judge and ask the competent Public Prosecutor to show that the submissions comply with his written instructions.

The authority of the Public Prosecutor before the Court of Cassation extends to all the judges of the Public Prosecution, including the Government Commissioner at the Military Court. He is empowered to provide them all with written or oral instructions for the conduct of the public prosecution. They remain free, however, to make oral statements at trial hearings.

According to Article 17 of the same law, the Public Prosecutor before the Court of Cassation undertakes specifically the following activities: applying for the setting aside of judgments and decisions in criminal proceedings in accordance with the procedures laid down in the Code of Criminal Procedure, demanding the designation of a judicial authority and transferring cases between courts, prosecuting offenses referred to the Judicial Council, prosecuting offenses committed by the judiciary whether arising from their function or not, representing the Public Prosecutor's Office before the Court of Cassation and before the Judicial Council, dealing with extradition requests and forwarding them to the Minister of Justice with relevant observations, compiling detailed report for insertion in the case file of persons sentenced to death when the case is referred to the Pardon Commission, and carrying out any other duties and powers mentioned in the Code of Criminal Procedure and in any other legislation.

- Financial Public Prosecutor's Office:

Decree No. 1937 dated 11/16/1991 determines the functions and powers of the Financial Public Prosecution.

¹⁴ Article 25 of the Lebanese Code of Criminal Procedure.

It consists of a special division that concentrates on looking into and prosecuting financial offenses such as money laundering, corruption, and economic crimes.

The first article of the decree No. 1937 provides: “The Public Prosecution before the Court of Cassation has established by virtue of Article 31 of Legislative Decree No. 150 dated 16/09/1983 a Financial Public Prosecution under the authority of the Public Prosecutor before the Court of Cassation”.

Article 19 of the Code of Criminal Procedure enumerates the powers of the Financial Public Prosecutor:

«(a) Offenses arising from breaches of the provisions of the legislation relating to duties and taxes in the various public utilities and establishments and municipalities, including state and municipal taxes, customs duties, and telecommunication and wireless communication fees;

(b) Offenses arising from breaches of the legislation concerning banks, financial institutions, and the stock exchange, particularly those defined in the Code of Money and Credit;

(c) Offenses arising from breaches of the legislation on joint-stock companies and offenses by multinational companies;

(d) Offenses that adversely affect the State’s financial standing, or Lebanese or foreign banknotes circulating by law or by custom in Lebanon, and offenses involving the counterfeiting, forgery, and circulation of currency, public securities, stamps, and stamped papers;

(e) Offenses involving the embezzlement of public funds;

(f) Offences pertaining to bankruptcy»¹⁵

- Public Prosecutor’s Office before the Court of Appeal:

A- Article 11 of the Code of Criminal Procedure was amended by virtue of Law No. 251 of 2014 to provide that among the Public Attorneys mentioned in the third paragraph of Article 11, there shall be one or more full-time environmental Public Attorney assigned by the Public Prosecutor before the Court of Appeal to prosecute environmental crimes in accordance with the rules specified in the applicable laws.

Environmental Public Attorneys prosecute environmental crimes. They may file a claim against an unknown person before the investigating judge, and can therefore initiate a public action or a claim directly before the competent courts.

Environmental crimes encompass various violations of laws and regulations pertaining to the protection of forest wealth, forests, natural reserves, biodiversity, and the protection of air, water, and soil from pollution, along with measures aimed at mitigating damage caused by sound and noise. These crimes extend to breaches of regulations concerning quarries, sands, and crushers, as well as violations of environmental laws delineating specific conditions for differently classified institutions. Furthermore, they include violations against laws and regulations protecting public and private property owned by the state, municipalities, and regional waters, waters, and environmental encroachments on marine, river, and groundwater properties. Additionally, environmental crimes encompass the violation of the laws related to the disposal of waste of all

¹⁵ *Unofficial translation of the original Arabic text.*

kinds, especially medical and hospital waste, as well as chemical and nuclear waste.

- The Government Commissioner and his assistants at the military court:

They exercise the functions of the Public Prosecutor before the Court of Appeal, and they are entrusted with prosecuting all crimes that are within the jurisdiction of the military courts in accordance with the principles set forth in the Military Justice law and in the Code of Criminal Procedure.

ii. Limitations

Although in principle, the authority of the Public Prosecution is *ex officio*, in that it does not require the intervention or authorization of a third party, there are three limitations to this principle and those limitations prohibit the Public Prosecutor from taking any action even when he discovers that a crime was committed or obtains proof in that regard.

Those limitations arise either from the capacity of the accused person, the nature of the crime, or an interlocutory issue.

First limitation: Capacity of the accused person

There are 5 categories where the capacity of the accused person constitutes an essential limitation to the *ex officio* authority of the Public Prosecution:

(1) **Political immunity.**¹⁶

This immunity is given to the President of the Republic, and to the ministers, to preserve the constitutional principle of independence of the executive authority from the judicial authority.

The Public Prosecutor is prevented from prosecuting the President of the Republic, whether for violating the Constitution or for high treason, or for an ordinary crime, as his accusation is exclusively reserved to the parliament. In case of accusation by the parliament, the President should be tried before the Higher Court for the trial of presidents and ministers¹⁷.

The Public Prosecutor is prevented from filing lawsuit against ministers, whether for high treason or for breaching their job duties, as the matter of their accusation, in the mentioned subjects, is exclusively up to the parliament¹⁸. In case of accusation by the parliament, the ministers and the prime minister are tried before the Higher court for the trial of presidents and ministers¹⁹.

(2) **Parliamentary Immunity.**

Parliamentary immunity does not contradict the principle of equality between citizens because it was given to the members of the parliament for the benefit of the citizens. It allows the representatives of the citizens to speak freely and work for their service.

The members of the parliament benefit from two kinds of immunity: criminal immunity²⁰, and temporary Immunity²¹. Criminal Immunity protects them from being held criminally responsible for the opinions and

¹⁶ Dr. Phelomene Nasr, *Principles of Criminal Proceedings*, Sader Library, 47 – 54.

¹⁷ Article 60 of the Lebanese Constitution.

¹⁸ Article 70 of the Lebanese Constitution.

¹⁹ Article 71 of the Lebanese Constitution.

²⁰ Dr. Phelomene Nasr, *Principles of Criminal Proceedings*, Sader Library, 54 – 60.

²¹ Dr. Phelomene Nasr, *Principles of Criminal Proceedings*, Sader Library, 60 – 76.

ideas they express during their mandate²². Temporary immunity prohibits the prosecution of a member of the parliament during a parliament session without special permission given by the parliament, taking into account that the parliament holds two regular sessions each year.

This temporary immunity does not protect the members of the parliament from criminal liability for crimes they committed, but it suspends the prosecution until permission is granted by the parliament. This immunity exists only during the sessions of parliament²³.

(3) Diplomatic Immunity.

Since 1961, diplomatic immunity²⁴ has been endorsed by the Vienna Convention. It encompasses three distinct types: jurisdictional immunity, personal immunity and custom exemption. Jurisdictional immunity shields diplomats, who benefit from this immunity, from being subject to legal actions or lawsuits. Personal immunity prohibits the search of diplomats' residences and bags. Customs exemption grants diplomats, who benefit from it, immunity from paying customs duties on items imported for their personal needs.

(4) Judiciary Immunity.

Judges have immunity in Lebanon when they commit a criminal offense, whether it is related to their position or not.

The prosecution of a judge can only proceed before the Court of Cassation regardless of the type of criminal offense committed and whether it is related to the position of the judge or not²⁵.

(5) Administrative Immunity.

When a public servant, other than a judge, commits a criminal offense arising from his position, his/her criminal prosecution shall be suspended until the competent authority authorizes such prosecution.

Second limitation: Nature of the crime

There are three different categories of crimes in this respect:

(1) For some crimes, the Public Prosecution is only initiated if the aggrieved party files a complaint.

In such cases, even if the Public Prosecutor discovers that a crime was committed, the latter cannot initiate any prosecution unless the aggrieved party files a complaint.

This rule applies to various crimes, among which publicly insulting a foreign country, its army, its national emblem, its ministers, or its political representative in Lebanon²⁶, the crime of incest²⁷, intentional beating and abuse resulting in sick leave of less than ten days²⁸, violating the sanctity of others' houses and places²⁹, unintentional abuse that requires sick leave for

²² Article 39 of the Lebanese Constitution.

²³ Article 40 of the Lebanese Constitution.

²⁴ Dr. Phelomene Nasr, *Principles of Criminal Proceedings*, Sader Library, 77 – 101.

²⁵ Article 344 of the Lebanese Code of Criminal Procedure.

²⁶ Article 292 of the Lebanese Penal Code.

²⁷ Article 431 of the Lebanese Penal Code.

²⁸ Article 554 of the Lebanese Penal Code.

²⁹ Article 572 of the Lebanese Penal Code.

less than ten days³⁰, threatening to harm³¹, and certain financial misdemeanors occurring between ascendants and descendants³².

(2) For other crimes, the Public Prosecution is only initiated if the aggrieved party takes the capacity of the personal claimant.

In these cases, even if the Public Prosecutor discovers that a crime was committed, the latter cannot prosecute unless a party takes the capacity of the personal claimant. Therefore, filing a complaint is not enough for these crimes.

This rule applies to the following crimes: adultery³³, insults and defamations³⁴.

(3) For a third category of crimes, Public Prosecution is only initiated upon the administration's request.

In some cases, in order to preserve the financial interests of the state, the Public Prosecution cannot proceed without a request issued by the relevant administration. For example, the provisions of the income tax law, the penalties, and fines are not adjudicated by courts except at the request of the Ministry of Finance. Also, violations arising from the dispatch of animals within postal parcels, as stipulated in the legislative decree of 30/5/1944, require a request for prosecution.

Third limitation: The interlocutory issues

In essence, the judge examining a case has the right to consider every subsidiary issue that arises during the course of a case, since it is deemed that the judge who deals with the principal case should also deal with the secondary/subsidiary issues related thereto.

However, this rule is not absolute; some issues require that the Penal Judge in charge of the case stays the proceedings before him until the competent judge renders his judgment on an interlocutory question at hand.

An issue shall be deemed an interlocutory question when two conditions are met: first, the issue falls outside the jurisdiction of the judge handling the case and second, the issue needs to be decided before proceeding with the penal file.

b. Relationship of the Public Prosecution with the law enforcement agents

The Public Prosecution does not prosecute criminals and file charges against them without the help of other authorities. It is assisted in its tasks by a body called the Judicial Police. To define the concept of the Judicial Police, we must refer to Article 38 of the new Code of Criminal Procedure which provides that "the functions of the Judicial Police under the supervision of the Public Prosecutor before the Court of Cassation, are carried out by the General Prosecutors and Public Attorneys. The Public Prosecution assists and supervises the performance of the tasks of the Judicial Police, each within their jurisdiction as specified in this law and in their respective special laws, including the following:

1. Governors and District Commissioners.

³⁰ Article 565 of the Lebanese Penal Code.

³¹ Article 578 of the Lebanese Penal Code.

³² Article 674 of the Lebanese Penal Code.

³³ Article 489 of the Lebanese Penal Code.

³⁴ Articles 582, 584 and 586 of the Lebanese Penal Code.

2. General Director of the Internal Security Forces, officers of the Internal Security Forces, Judicial Police officers, the officials working in regional sectors, and the heads of Internal Security Forces stations.

3. General Director of General Security, General Security officers, officers of General Security investigation, General Director of State Security, Deputy General Director, officers of State Security, and officers of State Security investigation.

4. Village mayors.

5. Naval and aircraft commanders."³⁵

The Judicial Police, acting as an assistant to the Public Prosecution in the investigation, arrest, and referral of criminals to the competent criminal court for trial, is primarily subject to the authority of the Public Prosecutor. The law empowers the Public Prosecutor to initiate public interest proceedings and carry out these procedures in the pre-trial stage. The Public Prosecutor before the Court of Appeal holds such a position under the Lebanese Code of Criminal Procedure³⁶.

On that basis, the Public Prosecutor before the Court of Appeal is considered the head of the Judicial Police, and the personnel of the Judicial Police can be divided into two categories: the first category consists of judges (General Prosecutors and Public Attorneys), and the second category consists of non-judges who have security and administrative status (governors, district commissioners, Internal Security Forces, General Security, and State Security).

It should be noted that there is a third category of Judicial Police personnel mentioned in Article 39 of the Code of Criminal Procedure which provides that "the heads of villages, health inspectors in the Ministry of Health, forest inspectors, consumer protection officers, customs control officers, officers in charge of tobacco and tobacco control, in ports, airports, the Ministry of Tourism, and night guards shall have the authority, within the limits of their jurisdiction and according to the applicable regulations, to detect violations, record them in organized reports, and submit them to the competent judge."³⁷

Thus, the Judicial Police can be defined as a body composed of a group of public employees known as Judicial Police officers who are responsible for carrying out investigation procedures. They collect information about the committed crime to enable the investigative authorities to decide whether or not to initiate public interest proceedings. It is evident that the Judicial Police only exercises its authority once a crime has occurred. This differs from the Administrative Police, whose role precedes the commission of the crime. In other words, the Judicial Police intervenes when a crime occurs to gather evidence and track down the perpetrators, while the Administrative Police is primarily responsible for maintaining order and preventing crimes, and operates under the authority of the executive branch. Although it may seem that the two police forces are separate, in reality, they are carried out

³⁵ *Unofficial translation of the original Arabic text.*

³⁶ D. Bcherraoui, *Principles of Criminal Proceedings*, previous reference, 185.

³⁷ *Unofficial translation of the original Arabic text.*

by the same individuals. Most employees responsible for investigating crimes also act as administrative employees to prevent crimes³⁸.

Based on the provisions of Article 12 of the Code of Criminal Procedure, the Public Prosecutor before the Court of Appeal heads the department under his jurisdiction and distributes the tasks among the Public Attorneys who assist him³⁹. Therefore, the relationship between the Public Prosecutor before the Court of Appeal and his assistants is a hierarchical relationship, and his leadership of the Public Prosecution is an administrative leadership based on the distribution of tasks.

Moreover, Article 15 of the same code has subjected all the personnel of the Judicial Police specified in Article 38 to the authority and supervision of the Public Prosecutor before the Court of Appeal as assistants to the Public Prosecution. The relationship here is a subordinate relationship between the Public Prosecutor before the Court of Appeal and his assistants, where the former has the right to provide his assistants with any observations, he deems necessary regarding their assigned tasks. He also has the right to request the Financial Prosecutor, or the Government Commissioner at the Military Court to prosecute any individual of the Judicial Police who commits a criminal offense while performing his/her duties or as a result of them, without the need for a prior authorization to initiate prosecution. It is worth noting that granting the Public Prosecutor before the Court of Appeal this authority to prosecute judicial officers before the judiciary authorities, notwithstanding any provision to the contrary, and without the need for prior permission from the competent administrative authority, constitutes a fundamental guarantee among the guarantees provided by the new Code of Criminal Procedure.

Indeed, this ensures that the rights and freedoms of individuals are protected against abuse and excesses by the members of the Judicial Police during preliminary investigations⁴⁰.

When dealing with a serious crime, the security forces must immediately inform the Public Prosecutor before the Court of Appeal and execute his instructions (Article 24, first paragraph of the new Code of Criminal Procedure).

Therefore, the investigations conducted by the Judicial Police, as well as the reports and intelligence they prepare, have a preliminary nature aimed at gathering evidence. They are examined by the Public Prosecution before the Court of Appeal which decides based on them whether to prosecute or dismiss the case. It should be noted that the investigation of crimes only applies to misdemeanors and felonies.

The Judicial Police, as an assistant to the Public Prosecution in conducting investigations, inquiries, and the arrest of criminals to refer them to the competent criminal court for trial, is primarily subject to the authority of the Public Prosecutor, who is empowered by law to initiate public interest proceedings and carry out these procedures in the pre-trial stage. The Public

³⁸ P. Nasr, *Principles of Criminal Proceedings*, previous reference, 427.

³⁹ E. Abou Eid, *Principles of Criminal Proceedings, a Comparative Study*, published by Al Halabi Legal Publications, Volume 2, 2003, 14.

⁴⁰ W. Ghiyad, *Lectures of the Principles of Criminal Proceedings*, Lebanese University, 2001/2002, 15.

Prosecutor before the Court of Appeal holds this position, in accordance with the Lebanese Code of Criminal Procedure⁴¹. It is worth mentioning that the investigative procedures to discover the crime, the perpetrator, and those involved, are considered evidential procedures aimed at revealing the identity of the accused or the suspect. These investigations are carried out by the members of the Judicial Police based on an assignment issued by the Public Prosecution. These investigations can lead to uncovering the circumstances surrounding the offender and the crime.

It is imperative for judicial police officers to carry out their executive mission of investigating and gathering evidence in accordance with ethical standards, ensuring objectivity and avoiding infringement upon individuals' personal freedom⁴².

In case the Public Prosecutor is absent from the scene of the crime (a witnessed offense), the judicial police must promptly proceed to that location and assume all the powers of the Public Prosecution until the arrival of the Public Prosecutor or the Public Attorney. In practice, judicial officers are responsible for going to the scene of witnessed offenses and initiating investigative procedures under the supervision of the Public Prosecutor or one of his deputies. The Public Prosecutor may also assign a judicial officer to conduct a search in the residence of a suspect or an accused person under their supervision and control, in accordance with the procedures followed by the Public Prosecutor.

Furthermore, the Public Prosecutor may also delegate to the judicial officer various exceptional measures in the case of a witnessed offense, including interrogating the suspect, as explicitly stated in Article 44 of the Code of Criminal Procedure.

It is worth noting that General Security is granted the same powers as the Internal Security Forces by the new Code of Criminal Procedure.

The same applies to the State Security. As for the Military Judicial Police, it performs its functions through:

- The Government Commissioner at the Military Court, his deputies, and the investigating judges at the Military Court.
- Officers and non-commissioned officers appointed for this purpose by the Minister of National Defense upon the proposal of the High Military Authority.
- Army Police officers, non-commissioned officers, and heads of stations.
- Permanent Clerk of the Military Court, appointed by the Government Commissioner.

Based on the foregoing, it can be inferred that while the primary function of the judicial police lies in investigating crimes of all types, particularly those based on complaints, the Code of Criminal Procedure allows them the exclusive power to carry out certain investigative acts that fall within the powers of the Public Prosecutor when the offense is of a witnessed nature (a witnessed felony or misdemeanor) or upon the request of the judicial officer for investigation purposes.

⁴¹ D. Bcherraoui, *Principles of Criminal Proceedings*, previous reference, 185.

⁴² E. Abou Eid, *Principles of Criminal Proceedings*, previous reference, 112.

In case of a witnessed misdemeanor, the judicial officer only makes an arrest under the supervision of the Public Prosecutor or one of his deputies. In other words, the judicial officer must immediately contact the Public Prosecutor or one of his deputies to issue an order regarding the possibility of arresting the suspect.

In case of a judicial commission:

A judicial commission is the assignment by which the judicial authority in charge of the case appoints another authority (a judge or a judicial officer) to perform an investigative task that falls within their jurisdiction and cannot be accomplished by them personally.

The principle is that the Code of Criminal Procedure allows a commission from one judge to another judge only, without permitting a commission from a judge to a judicial officer. This is clearly inferred from Articles 84, 94, and 104 of the Code of Criminal Procedure. Article 84 goes even further by prohibiting the investigating judge from commissioning a judicial officer to interrogate the accused, except in the case of a witnessed offense.

From the above, it can be understood that the judicial commission from a judge (public prosecutor or investigating judge) to a judicial officer is an exception to the general rule and is limited to the case of a witnessed offense. This is confirmed by Article 44 of the Code of Criminal Procedure, which states that if the Public Prosecutor or the investigating judge is present, the judicial officer shall cease their proceedings unless one of them commissions them in writing to continue. The commission may include interrogating the suspect. After the witnessed offense has ended, the judicial officer is not entitled to conduct any further investigation but must submit the reports they prepared, along with the evidence seized during the search, to the Public Prosecutor immediately after the conclusion of this case.

In light of the above, if a judicial commission is issued from a judge (public prosecutor or investigating judge) to a judicial officer to interrogate a suspect outside the case of a witnessed offense, this commission would be invalid, and the interrogation would also be considered invalid because what is built on a corrupt foundation is corrupt. Thus, interrogation is permissible by the judicial officer when they are specifically commissioned in writing by the Public Prosecutor or the investigating judge, and this is a new provision that did not exist in the previous version of the Lebanese Code of Criminal Procedure.

Procedures conducted outside the scope of a witnessed crime:

The “procedures conducted by the Judicial Police outside a witnessed crime” refer to the preliminary investigations initially conducted by the Judicial Police based on a mandate from the Public Prosecution. This is known as preliminary investigation under normal circumstances.

These procedures are measures carried out by members of the Judicial Police, as designated by Article 38 of the Code of Criminal Procedure. They can be summarized into three main stages: interrogating the suspected witnesses, conducting a search and an inspection, and making the necessary arrests.

Considering the increasing number of lawsuits and complaints and the impracticality of assigning judges to preliminary investigations, the intervention of the Judicial Police becomes necessary.

Numerous legal studies and reports have supported this view, highlighting the inherent benefits of assigning the Judicial Police to preliminary investigations, both in terms of speed and effectiveness in identifying crime evidence, revealing perpetrators, and apprehending them.

However, the absence of clear and explicit legal regulations regarding the Judicial Police in the past, especially outside the scope of witnessed crimes, highlighted the absence of a clear legal framework for preliminary investigations. As a result, it became an unstable customary system subject to changes and variations based on the discretion of the public prosecution and the police⁴³, until the issuance of the new Code of Criminal Procedure, which was based on the principle of presumption of innocence and focused on protecting liberties, especially during the initial investigation stage.

The limits of these procedures:

Article 14 of the new Code of Criminal Procedure provides that: “the Minister of Justice may request the Public Prosecutor to conduct investigations regarding crimes related to his/her work. The Public Prosecutor has the right, when necessary, to conduct investigations directly or through his/her assistants, who may be judges attached to the Public Prosecution or members of the Judicial Police under his/her authority, without having the right to prosecute.”⁴⁴

Article 47 of the same Code specifies the tasks performed by the assistants of the Public Prosecutor, including police officers, based on a mandate from the Public Prosecution. These tasks include investigating unwitnessed crimes, collecting information, conducting inquiries, interviewing witnesses, searching, detaining, and other related activities. All of these tasks are performed under the supervision and monitoring of the Prosecutor General.

However, the authority of the Judicial Police to conduct searches can only be exercised after obtaining prior authorization from the Public Prosecution in this regard. Thus, if the Public Prosecution authorizes the search of a suspected person or residence, the Judicial Police officer must adhere to the principles specified by the law for the Public Prosecutor in witnessed crimes, according to the provisions of Article 33 of the Code of Criminal Procedure.

Furthermore, the Judicial Police does not have the automatic right to conduct searches of residences, even if the crime is witnessed. Article 43 of the Code of Criminal Procedure clarifies this when it imposes on the Judicial Police officer, upon having suspicions about the presence of certain items in a residence, to report it to the Public Prosecutor or the investigating judge. Neither one of them can then conduct the search without the presence of the Judicial Police officer, unless the owner of the residence voluntarily agrees to allow the search.

From the above, it can be concluded that the Public Prosecution, the prosecutorial authority in Lebanon, cannot fulfill its function without relying on the Judicial Police.

The new law has also clarified the powers of the Public Prosecution and the Judicial Police in both witnessed and unwitnessed crimes while

⁴³ P. Nasr, *Principles of Criminal Proceedings*, previous reference, 445-446.

⁴⁴ *Unofficial translation of the original Arabic text.*

enacting new provisions regarding the initial investigation carried out by the Judicial Police outside the scope of witnessed crimes. The new law which is based on the presumption of innocence, has thus established a set of rights for the suspects, detainees, and defendants before both the prosecutorial and investigative authorities, namely the Public Prosecution and the Judicial Police.

B. Accountability of Public Prosecutors

In Lebanon, the principle of presumption of innocence is a fundamental principle. It states that a person is considered innocent until proven guilty.

Consequently, when it comes to public statements given by the Prosecutors, they should avoid making statements that could prejudice a fair trial, unduly influence public opinion, or compromise the presumption of innocence. Presumptions that are not supported by any other tangible or material evidence, may be sufficient for accusation, but are not sufficient for conviction, as they raise doubt in the mind of the court, and doubt benefits the accused⁴⁵.

Regarding the relationship between the Public Prosecutor and the media, there are no particular rules governing this interaction under Lebanese regulations. However, when speaking with the media, prosecutors should uphold ethical standards and principles.

The privacy of those participating in criminal proceedings as well as the confidentiality of ongoing investigations should be respected by prosecutors. They should refrain from revealing confidential information or making statements about specific instances that would jeopardize the validity of the inquiry or harm the rights of the accused or present facts in a way that might improperly sway public opinion.

Additionally, Public Prosecutors are held accountable for their actions through internal supervision and external mechanisms, as follows:

a. High Council of the Judiciary

The Judicial Organization Law defines the conditions for judicial guarantees, taking into account the system of "ordinary" courts and the High Judicial Council.

The High Judicial Council is responsible for ensuring the proper functioning, dignity, and independence of the judiciary, as well as the proper functioning of the courts by making necessary decisions.

Composition:

Pursuant to Article 2 of the Judicial Organization Law, the High Judicial Council is composed of ten members as follows:

- Three *ex officio* members:

a) The First President of the Court of Cassation as the President.

b) The Public Prosecutor before the Court of Cassation as the Vice President.

c) The President of the Judicial Inspectorate.

- Five judges appointed by a decree of the Council of Ministers, upon the recommendation of the Minister of Justice:

a) A judge chosen from among the chamber presidents of the Court of Cassation.

⁴⁵ P. Nasr, *Principles of Criminal Proceedings*, previous reference, 200.

b) Two judges chosen from among the chamber presidents of the Courts of Appeal.

c) A judge chosen from among the chamber presidents of the First Instance Courts.

d) A judge chosen from among the presidents of tribunals or heads of departments of the Ministry of Justice.

- Two judges elected from among the Chamber Presidents of the Court of Cassation by all the presidents and associate judges of the Court of Cassation through a secret ballot.

The term of the three *ex officio* members' mandate is not specified, as they can be transferred or dismissed according to the provisions of the Judicial Organization Law.

The mandate of the remaining seven members of the High Judicial Council - the appointed and elected members - is three years, non-renewable. In case of vacancy, another member shall be appointed or elected - following appropriate procedures - to complete the term.

The High Judicial Council can propose individual or collective judicial transfers, attachments, and appointments and submit them to the Minister of Justice for approval. It can also establish the disciplinary council for judges, examine the file of any judge, and request the Judicial Inspection Authority to conduct necessary investigations and take appropriate measures and decisions.

The President of the High Judicial Council may, when necessary, issue a warning to any judge of the judiciary, excluding judges of the Council itself or the court they preside over. Similarly, the Public Prosecutor before the Court of Cassation, the First President of the Court of Appeal, and the Public Prosecutor before the Court of Appeal may issue warnings to judges under their jurisdiction, excluding judges of the presiding panel.

In light of the above, it is unfortunate that the composition of the High Judicial Council, as outlined in the Judicial Organization Law, does not conform to international standards that emphasize the independence of the judiciary authority. The composition of the Judicial Council is crucial for judicial independence because it requires objective, impartial, and independent decision-making in the appointment of judges. The provisions of the Judicial Organization Law allow for the executive power's influence over the composition of the High Judicial Council.

b. Disciplinary proceedings and mechanisms

Upon their appointment and prior to exercising their functions, judges must take the following oath: "I swear in the name of God that I will exercise my judicial functions with absolute loyalty and independence, that I will be just with the people and protect their rights, that I will maintain the confidentiality of deliberations, and that I will execute all my duties as an honest and honorable judge."⁴⁶

In Lebanon, disciplinary proceedings are generally initiated by the Judicial Inspectorate, which is the institution in charge of supervising the proper functioning of the judiciary and the work of the judges, staff of the registrar, and other affiliated persons. The Judicial Inspectorate is composed of one President, four General Inspectors, and six Inspectors, all appointed

⁴⁶ *Unofficial translation of the original Arabic text.*

by decree of the Council of Ministers upon proposal of the Minister of Justice, and from among various judicial grades (depending on the position). The President and members of the Judicial Inspectorate are bound by professional secrecy.

The Judicial Inspectorate Council, composed of the President and the four General Inspectors, is the body that decides whether to refer a case to the Disciplinary Council after investigation. The Judicial Inspectorate Council meets at the request of the President and requires a quorum of the President and two of the General Inspectors. All decisions are adopted through a majority vote and, in case of a tie, the President's vote is decisive.

At the beginning of each judicial year, the Judicial Inspectorate Council is to put forward an annual inspection program and present it to the Minister of Justice. The President is responsible for the program's implementation, and should personally perform the investigation of the Court of Cassation, the State Council, the Audit Bureau and the General Directorate of the Ministry of Justice, as well as the investigation of "judicial" judges of the seventh grade and above, but may assign a General Inspector to do so. The President must promptly investigate any complaints he/she receives, whether they are received directly or through the Minister of Justice, and may decide not to pursue a complaint addressed directly to him if he deems that it is not serious.

Any violation of official duties or any act that affects honor, dignity, or decorum constitutes a disciplinary offense punishable accordingly pursuant to Article 83 of the Judicial Organization Law. Specifically, a violation of official duties includes absence to hearings, delays in adjudicating cases, failure to set a specific date for pronouncing judgments at the end of deliberations, discrimination among litigants, and the disclosure of deliberations.

A standing Disciplinary Council undertakes disciplinary proceedings following the referral of cases from the Judicial Inspectorate. The standing Disciplinary Council is exclusively composed of judges appointed by the President of the High Judiciary Council at the beginning of each judicial year.

The Disciplinary Council is chaired by the Court of Cassation Chamber President, and the President of the Judicial Inspectorate serves as State Commissioner before the Council. When a case is referred to the Disciplinary Council by the Judicial Inspectorate, the President of the Council, or one of its members assigned to do so, conducts the necessary investigations, hears the concerned judge, receives witness testimonies under oath, and then provides a report to the Disciplinary Council expeditiously. Following the receipt of the report, the President of the Disciplinary Council is to immediately provide the concerned judge with access to his or her file, including the report, and to convene him/her to a hearing before the Disciplinary Council, which is to be conducted confidentially.

The judge has the right to present his/her defense against the allegations brought against him or her and may be represented by a lawyer or another judge. Possible disciplinary sanctions include warnings, blame, delay in promotion for no more than two years, downgrading, suspension

for no longer than one year, dismissal, or removal from office, and deprivation of compensation or retirement pension.

The decision is subject to an appeal by the concerned judge or by the President of the Judicial Inspectorate within 15 days of the day it is rendered. The appeal is heard by the High Body for Judicial Discipline, which is composed of the President of the High Judiciary Council or his deputy, and of four judges who are appointed by the High Judiciary Council at the beginning of every judicial year. The High Body for Judicial Discipline applies the same procedures as the Disciplinary Council, but its decisions are not subject to any review, including by the Court of Cassation.

The decision is final and directly applicable as soon as the concerned judge is formally informed. If the disciplinary decision includes a dismissal or removal from office, that the existence of disciplinary proceedings and the sanction imposed are made public once the final decision is issued. However, all other proceedings and decisions by the Disciplinary Council or High Body for Judicial Discipline, that do not result in dismissal or removal, are not published.

c. Civil and Criminal liability

Articles 741 and following of the Lebanese Code of Civil Procedure address the Lebanese State's liability resulting from acts committed by "judicial" judges.

Under Lebanese law, judges are potentially civilly liable in cases of "miscarriage of justice", "deception", "fraud", and "bribery", as well as "serious errors which should not have occurred had the judge exercised a normal degree of attention to his or her duties". Suits are to be brought before the Plenary Assembly of the Court of Cassation and, if the complaint is substantiated, the State is held liable for damages. The State then has recourse against the offending judge. During this procedure, the judge can intervene voluntarily and present his arguments and must abstain from examining any legal case concerning the party who sued him.

The Plenary Assembly of the Court of Cassation shall consider the criminal and misdemeanor cases attributed to judges of the Court of Cassation, members of the Public Prosecution therein, the presidents of the Courts of Appeal, and the Public Prosecutors therein, as well as the heads of departments of the Ministry of Justice and the first-instance investigative judges. The Criminal Chamber of the Court of Cassation shall consider the criminal and misdemeanor cases attributed to other judges. The First President of the Court of Cassation and the Public Prosecutor therein each exercise the powers attributed to the President of the Court of Appeal and the Public Prosecutor therein.

If the defendant is the President of the High Judicial Council, the Public Prosecutor before the Court of Cassation, the President of the Council of the State, the President of the Financial Court, or the President of the Judicial Inspection Authority, a special judicial panel composed of five judges is formed to conduct the trial. These judges are appointed by a decree issued by the Council of Ministers upon the proposal of the Minister of Justice, and they are selected from among the working or retired judges holding an

honorary position, provided that none of them has a rank lower than the seventeenth⁴⁷.

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⁴⁷ J. Samaha, *Explanation of the Criminal Procedure Law*, previous reference.