

Lebanon: the importance of civil law

by Chibli Mallat

Precedent

There is no such concept as precedent in Lebanese or French law, which belong to the 'civil law' family, in contrast to the English and American 'common law' system. However, judgments may be highly persuasive. It is the persuasive use of previously rendered judgments, especially at the level of the higher courts, which makes for a good argument by a good lawyer.

Courts in Lebanon increasingly refer to their own previous judgments, departing therefore from the muted attitude of the French tradition.

But the courts here will just make reference to the case and avoid quoting it at length, as often happens in the common law tradition of precedents. It is in this manner that Lebanese and French judges are said not to make law, but merely to pronounce on it.

Legal Profession

The advocacy profession in Lebanon is not divided between two branches. A lawyer will be entitled to appear before any court after three years of practice as *avocat stagiaire*. But the law graduate may choose to become a judge. For this, he or she needs to pass a special exam, which will allow entry to a special school for judges.

This is radically different from Britain, where judges are chosen from among the most prestigious lawyers – known as QCs – (Queen's Counsel) or endearingly 'silks', for the little silk cloth they are entitled to wear after 20 years or more at the bar.

A young Lebanese graduate from the school of law at one of the five universities which teach law in the country can choose between a career at the bar and a career as judge.

Both will be paid poorly at the beginning, but a good lawyer can make money in corporate law or in a real estate career in Lebanon. A good judge will never make money, and judges' salaries remain depressingly low.

The Beirut bar association includes some 4000 lawyers covering all of Lebanon, except for the much smaller bar association of

Tripoli. There are some 350 judges in the country, who are overloaded with cases, some dating back before the war. In 1996, some 100,000 claims were lodged before the courts, and the ministry of justice is actively recruiting for the judiciary.

Court structure

There is a division within the Lebanese and French court structure between criminal courts and civil courts, but it is much less pronounced than the division between 'administrative' judges and 'civil' judges. Criminal courts are considered to be part of the 'civil' system as opposed to the 'administrative system'.

The civil jurisdiction takes the form of a pyramid. Depending on the pecuniary importance of the case, first degree courts consist either of a single judge or of a bench of three judges. There are five chambers in Beirut plus a chamber in each of the ten districts (*muhafazat*). There is one appeal court (*mahkamat isti'naf*) in each district.

The Court of Cassation (*mahkamat al-tamyiz*) is the highest court for all civil cases – civil law is understood here to include criminal and commercial law and some personal status matters for the non-Muslim communities in the country.

As in Britain, civil courts deal with all disputes between persons and/or legal entities such as companies and trade unions. However, the Lebanese system follows the unusual distinction established in France between administrative and civil law.

The administrative courts deal with cases involving the state or a public body as a full party. There is only one degree of administrative jurisdiction, the *Majlis al-shura*, which is the equivalent of the Conseil d'Etat. It is also overloaded with cases, which take years to be heard, and it might be appropriate to relieve the *Majlis* in less important cases with a first instance administrative judge, as is the case in France.

In the rare cases of jurisdictional uncertainty or conflict between administrative and civil jurisdictions, a tribunal of conflicts composed of judges from the Court of Cassation and from the *Majlis al-shura* solves the issue of competence.

The Court of Cassation also provides the

judges for the so-called Judicial Council (*al-majlis al-'adli*), which operates as original and final jurisdiction for particularly sensitive criminal offences of a political nature, like the Geagea trials.

Normal criminal cases are heard by one judge, if the case is minor. If it is a major offence, it will be heard by the Court of Assizes (*mahkamat al-jinayat*), before a bench of three judges.

The state is represented by a public prosecution office (*niyaba 'amma*), which is assisted by investigative judges (*qudat tahqiq*). There is no jury system in Lebanon.

Decisions of the Court of Assizes can be appealed, on a point of law, to the Court of Cassation. The Court of Cassation also hears appeals on points of law from the Court of Appeal (*mahkamat al-isti'naf*) in most civil cases. The Court of Appeal itself hears cases upon appeal from the court of first instance (*mahkamat al-bidaya*).

There are special tribunals for family law matters, which are the prerogative of each of the 18 recognised religious 'communities'.

For the three Muslim communities (Sunni, Shi'i and Druze), these tribunals deal with marriage, divorce, custody, inheritance and wills. For non-Muslims, personal status jurisdiction is split: the law of inheritance and wills falls under national civil jurisdiction, but the Christian and Jewish religious courts are competent for marriage, divorce, and custody.

All these courts have more than one degree, and Catholic communities enjoy a special and unusual extra-territorial right of appeal before the Vatican Rota court.

In 1993, a Constitutional Council (*al-majlis al-dusturi*) was established to review the constitutionality of legislation, but only upon the request of a number of officials (following the French Conseil Constitutionnel).

The Constitutional Council has ten members, half elected by parliament and half appointed by the government. Its first decision was rendered in February 1995, and decisions on recent challenges to the elections of the summer of 1992 are to appear within a few weeks.

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The System of Courts in Lebanon

