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THE MEANING AND LIMITS ON FREEDOM OF EXPRESSION IN LEBANON: PUBLICATIONS COURT JURISPRUDENCE ON FREEDOM OF EXPRESSION VS. DEFAMATION

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Abstract

In light of the legal issues raised by the Special Tribunal for Lebanon (STL) trial (April to June 2015) against the Lebanese Al-Jadeed television on charges of contempt of court and obstruction of justice, the present paper seeks to assess the state of freedom of expression in Lebanon and the role played by the Lebanese judiciary in defining this right and delineating its limits, especially when it clashes with another right—in this case the right to protect one’s dignity in general, and the dignity of the judicial body in specific.

The present study analyzes all Publications Court opinions and decisions that were published between 1999 and 2014 following trials where media institutions and individuals were prosecuted for infringing national laws on defamation, and where the courts made a decision as to which right had to be protected in each case. The main objective of such an analysis is to document and identify a jurisprudence-based, working definition of “freedom of expression” and “freedom of the media” that is derived exclusively from Lebanese case law. Doing so helps fill a research gap on the literature and build a better understanding of the controversy around the STL trial of Al-Jadeed.

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INTRODUCTION: THE AL-JADEED TRIAL AND THE STL

On 17 April 2015, the trial of the Al-Jadeed Television (also known as New TV or NTV), one of the most established and oldest private television stations in Lebanon, started in The Hague, with Contempt Judge Nicola Lettieri presiding over the proceedings of the Special Tribunal for Lebanon (STL). This UN-backed tribunal, tasked with prosecuting those responsible for the March 14, 2005 bombing that killed former Prime Minister Rafik Hariri in Beirut, officially opened in the Netherlands on March 1, 2009. In June 2011, it indicted five members of Hezbollah in connection with the assassination.

In the latest round of STL trials, Al-Jadeed and its Deputy Head of News and Political Programs Karma Khayat were tried on charges of contempt of court and obstruction of justice, or, more specifically, interference with the fair administration of justice. The charges were connected to a series of news reports that were broadcast in August 2012 and titled “the Witnesses of the International Tribunal”. These reports disclosed confidential details about a number of (alleged) secret witnesses in the Hariri trial, thereby making them possibly recognizable to their own friends and family members, despite attempts to cover the face of the witnesses.¹ The court issued a judicial order requesting that Al-Jadeed cease broadcasting the series of reports and remove the information regarding the alleged witnesses from the station’s YouTube channel. The stated purpose of the order was to protect the identity of the witnesses and prevent the reports from undermining the public’s confidence in the court. Al-Jadeed did not comply with the order. Accordingly, the STL prosecution claimed that, in ignoring the court order, the station was not only guilty of obstruction of justice, but also of contempt of court. Al-Jadeed, pleading not guilty, countered that it had not been notified of the relevant court orders through appropriate channels. It also argued that the public has a right to know about the failure of the court to protect its witnesses and about the existence of leaks within the STL, and accused the court of muzzling freedom of expression in the country. “If the tribunal fails to protect its witnesses,” Khayat said on the record, “it is not the media’s responsibility” to do so.²

In September 2015, Al-Jadeed’s Deputy Head of News Khayat was cleared of the charge of contempt of court, but was found guilty on a lesser charge of obstruction of justice for having

¹ “Al-Jadeed and Khayat contempt case to kick off at STL”, Elise Knutsen, *The Daily Star*, 16 April 2015.

² “No Al-Jadeed consensus to disclose STL witnesses”, Elise Knutsen, *The Daily Star*, 23 April 2015.

failed to respect the court order to remove the problematic broadcast from the stations' website and social media.³ Al-Jadeed was ordered to pay a fine of 10,000 Euros (US \$ 11,000). Khayat appealed the decision, and in March 2016 the Appeals Panel reversed Khayat's earlier conviction (regarding undermining the public's confidence in the Tribunal).⁴

The high profile Al-Jadeed media case generated widespread criticism not only of the television channel's trial, but also of the STL itself. Since its inception, the STL has faced a sustained negative media campaign in a country already deeply divided over the value, rationale, objectives, and impartiality of the STL. Most of the critics of the STL belong to the March 8 political alliance, the main rival to the Hariri-led March 14 alliance. They often accuse it of bias, and claim that the STL has singled out Al-Jadeed television while turning a blind eye to a number of Western media outlets that have also disclosed sensitive information about the Hariri trial.⁵ A number of Lebanese politicians, activists, and academics sent the court letters and amicus briefs opposing the Al-Jadeed trial and questioning its legitimacy, while defending freedom of the media in the country. The charges against Al-Jadeed television even caused a rift within the cabinet, as ministers' positions on the trials split across partisan lines.⁶

In her opening statement in The Hague in April 2015, Karma Khayat claimed she was carrying out her professional duties by broadcasting the reports that the STL prosecutors deemed objectionable. That is, Khayat argued, she was simply alerting the public about leaks coming from the tribunal. She accused the tribunal of hindering investigative journalism and of applying double standards by singling out Lebanese media outlets for prosecution.⁷ Nearly two months later, towards the end of her trial, Khayat accused the tribunal of infringing upon the sovereignty of Lebanon and of conducting a "bogus" trial.⁸ She promised that, regardless of the verdict, she and her fellow journalists would continue to cover freely the STL, asserting that the STL "will

³ "STL finds Al-Jadeed journalist Karma al-Khayat guilty of contempt", *The Daily Star*, 18 September 2015, available at <http://www.dailystar.com.lb/News/Lebanon-News/2015/Sep-18/315750-stl-finds-al-jadeed-journalist-guilty-of-contempt-not-guilty-of-undermining-public-confidence.ashx>, accessed on 20 August 2016.

⁴ "Al Jadeed TV editor acquitted by STL on appeal in Hariri case", *yalibnan.com*, 8 March 2016, available at <http://yalibnan.com/2016/03/08/al-jaded-tv-editor-acquitted-by-stl-on-appeal-in-hariri-case/>, accessed on 20 August 2016.

⁵ "Ex-STL employee grilled in Al-Jadeed case", Hashem Osseiran, *The Daily Star*, 18 April 2015.

⁶ The two major political alliances at odds in Lebanon and which are represented in the Council of Ministers are the Hizbollah-led March 8 alliance and the Hariri-led March 14 alliance.

⁷ "Al-Jadeed defense blasts 'double standards' ", Hashem Osseiran, *The Daily Star*, 17 April 2015.

⁸ "Khayat: lan nastakin aan kashf akhtaa al-mahkama", *As-safir*, 19 June 2015.

never be above the rights of the Lebanese people.”⁹ On June 19, 2015, in a ten-minute address to the STL court made at the conclusion of the trial, Khayat called the charges against her “a waste of time and resources” and an “attack on free speech.”¹⁰

COMPETING RIGHTS: A CONCEPTUAL FRAMEWORK

Freedom of expression and freedom of the media are abstract concepts related to basic human rights, which are protected in the Lebanese Constitution. Yet they are also subject to various national laws that often restrict them, including the Press Law, the Broadcasting Law, and the Penal Code.¹¹ The legal restrictions on freedom of expression are often exacerbated when it clashes with other human rights also protected by national laws, prompting courts to rule in favor of other rights, such as the right to maintain one’s dignity or to protect privacy.

The defendants in the Al-Jadeed case and their supporters have framed the case as one exclusively related to freedom of expression in Lebanon. They also maintain that freedom of expression in the country is guaranteed and that any attempt to restrict it by the STL court is unacceptable and against common practice in the country. However, the Lebanese Publications Court decisions in the last fifteen years paint a very different, much more nuanced picture. Specifically, they show that other human rights have often been at odds with freedom of expression, and have superseded it in many cases.

Indeed, whether national or supranational, court cases involving freedom of expression typically embody a tension between at least two sets of competing rights. Often, both rights are protected under various national and international laws, and constitutions. Consequently, for one right to be protected, another right has to be forgone or restricted. This is especially the case with those basic rights that are not absolute and are always understood to be qualified, even when relevant language in national laws and constitutions does not always state so explicitly.

Indeed, freedom of expression is not an absolute right in any of the existing national or international laws. Moreover, it often competes with other human rights. Thus, court cases

⁹ “Khayat: STL wasting Lebanese resources”, Elise Knutsen, *The Daily Star* 20 June 2015.

¹⁰ “Khayat: STL case a ‘waste of time’ ”, Elise Knutsen, *The Daily Star*, 19 June 2015.

¹¹ Toby Mendel, *Assessment of Media Regulation in the Southern Mediterranean Region*, BBC Media Action, 2014.

dealing with freedom of expression when it is in competition with other rights are crucial in helping define the scope of that freedom and its limits. Such cases also reflect the extent to which freedom of expression is protected and considered to be basic to the democratic process in a given society, in a given historical period.

For instance, in grappling with competing rights, judges have to deal with the media's or journalists' right to express and publish opinion about public figures as part of their engagement in open political debate – an activity at the heart of democratic practice. At the same time, judges confront the need to address the right of individuals and citizens, including politicians, to be treated with dignity or have their privacy protected. It is at the court level that the tensions between these competing rights become salient, and it is in ensuing court decisions that it becomes clearer to what extent freedom of expression is a right worth protecting in a given social, legal, and political context. In the United States context, for instance, and in the absence of major national security issues (e.g. times of war), it is often held by the Supreme Court that, because freedom of expression is a fundamental right that is more fragile and easier to sacrifice than other rights that are equally guaranteed by the Constitution, this right is in need of more protection when colliding with another right. Consequently, when grappling with the aforementioned tensions, the court tends to tilt the balance slightly in favor of the right to free expression. This theory of the First Amendment, which the United States Supreme Court often applies, is known as the “preferred position.”¹²

Characterizing the Al-Jadeed case were tensions between a number of competing rights protected by national laws and international conventions. These are the right to freedom of expression and of the media to act in the public interest on the one hand, and the right to a fair trial, specifically preventing interference with the administration of justice, on the other hand. All these rights are qualified: unlike the case with the few existing absolute rights (e.g. right not to be held in slavery and the right not to be subjected to torture), qualified rights have boundaries in democratic and plural societies.¹³ They can be restricted not only in times of war or emergency, but also in other

¹² First Amendment Center, available at <http://www.firstamendmentcenter.org/glossary>, accessed on 5 January 2015.

¹³ Absolute rights, by contrast, have to be protected and maintained by public authorities even in times of war or other national emergencies. Moreover, an absolute right, unlike a qualified right, cannot be balanced against the needs of individuals or the public interest. The only exception here is when two absolute rights have to be balanced against each other. For more details see *Freedom of Expression: Essays in Honour of Nicolas Bratza*, J. Casadevall, E. Myjer, M. O'Boyle, and A. Austin (eds), The Netherlands: Wolf Legal Publishers, 2012.

instances when authorities' restrictions on a given right are necessary to protecting the wider public interest. According to the European Convention on Human Rights, for instance, qualified rights are those related to the respect of private life, freedom of thought and religion, freedom of assembly and association, and freedom of expression.¹⁴ With respect to the latter right, according to Article 10 of the Convention, while "everyone has the right to freedom of expression," paragraph 2 of the same Article enumerates the various situations wherein freedom of expression can be legally restricted:

The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, *for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.* (Emphasis mine)

Consequently, it is not enough for the press to claim that it is in the public interest to publish material that invades a person's privacy or interferes with criminal investigations just because the material appeals to the public. In that case, courts can decide to curb freedom of expression and punish the involved media outlet in order to uphold the other competing rights and related interests.

OBJECTIVE OF THE STUDY AND METHODOLOGICAL APPROACH

Court cases involving issues related to freedom of expression are a good starting point to understand the meaning, value of, and limits on free speech that exist in a given society, above and beyond the brief and vague wording mentioned in legal texts. Such cases, which form the basis of case law, can be a valuable source of legislation that can be called upon in subsequent cases.¹⁵ More importantly, examining these court cases brings to light the meaning of "freedom

¹⁴ Classification of Convention Rights, available at http://www.cps.gov.uk/legal/h_to_k/human_rights_and_criminal_prosecutions_general_principles/#a10 accessed on 9 July 2015.

¹⁵ "Case law" as used here refers to the "body of documents consisting of published written judicial opinions. Judges write these opinions when there is a dispute over an issue of law in a case being litigated in [their] court room. These opinions are then published, and subsequently used in other cases as precedent for other litigants to make their cases". See "Legal Research for Historians", Princeton University Library, available at <http://libguides.princeton.edu/USlawforhistorians>

of expression” and its limits in the Lebanese context. This endeavor is especially pertinent considering the total lack of philosophical or legal essays and academic writing on the *meaning* of “freedom of expression” in a country founded on democratic principles that protect various freedoms.¹⁶ This is also an important contribution considering the limited understanding of the Lebanese media landscape that can be gleaned from the various human rights reports that are routinely produced by national and international NGOs.

Human rights reports on the state of media freedom in Lebanon (or any other Arab country) routinely and systematically compile cases where media outlets and/or media practitioners are penalized for violating national laws. They also include incidents where journalists and outlets are subjected to extra-legal measures such as physical threats and violence. Such compilations are then used in order to assess—often through the creation of indices—the extent to which the media are free or not within a given national context. Such an approach is valuable because it documents, among other things, cases of physical intimidation and attacks against media and media practitioners. It also helps to identify the problematic laws (or articles of laws) that need to be revised in order to make them conform to international standards and to expand the (narrow) margin of freedom of expression in a given country. At the same time, this approach fails to account for other (multiple) dimensions of the problem under study. It proceeds on the assumption that any prosecution against media outlets is a priori unacceptable and a serious breach of the right to freedom of expression. It pays little attention to the details of each case or the legal reasoning behind them, and instead focuses on the final outcome, such as a court verdict. Exacerbating the situation is the lack of access to information and to court documents and rulings in almost all Arab countries. Thus, researchers are often unable to understand the details of individual court cases or to extrapolate from them court jurisprudence on freedom of expression in a given Arab country.

For instance, a given media outlet found in infringement of the law and whose “freedom of expression” has been limited as a result may not actually be a victim of repressive regimes or a loose interpretation of libel laws. In some cases, such outlets are in fact guilty of having infringed on one of the internationally accepted rights limiting freedom of expression (e.g. right

accessed on 5 May 2015.

¹⁶ Lebanon is notable in the region for its protection of freedom of religion. Various monotheistic denominations (Christians, Muslims, and Jews) are recognized by law and guaranteed representation in parliament.

of privacy for individuals, right to dignity, right to a fair trial, etc.). Conversely, the text of a given article from any of the applicable laws could be acceptable from a human rights perspective. Still, national courts can prosecute and penalize a media outlet based on a highly restrictive (and perhaps politicized) interpretation of this article. Such legal information about actual court cases and court jurisprudence is not only missing in any such reports, it is also missing in academic legal literature on freedom of expression in Arab countries, including Lebanon.

The present study seeks to fill this research gap by proposing to do the following: based on Lebanese case law and jurisprudence between 1999 and 2014, it will examine two of the (related) legal and acceptable limits to freedom of expression which are listed above (i.e. in Article 10, paragraph 2 of the ECHR) and which are reiterated in the International Covenant on Civil and Political Rights (ICCPR) to which Lebanon is a signatory.¹⁷ Specifically, I will be dealing with court cases involving the tension between freedom of expression and the imperative to protect individuals and institutions from defamation while maintaining the authority and impartiality of the judiciary.¹⁸ Although Al-Jadeed was charged with both contempt of court and obstruction of justice by disclosing the identity of the STL witnesses, due to space limitations, the paper will focus almost entirely on the Lebanese Publications court cases involving tradeoffs between freedom of the press on the one hand, and defamation and contempt of court on the other. It should be noted that Publications Court cases involving media disclosure of confidential information pertaining to criminal investigations were quite frequent during the period covered in the present study, and came second in number after court cases involving defamation.¹⁹

¹⁷ Lebanon is a signatory party to the International Covenant on Civil and Political Rights (ICCPR), where similar restrictions/limitations on freedom of expression apply (see Article 19, paragraph 3, a & b of the ICCPR).

¹⁸ For details of international treaties signed by Lebanon, please see http://www.geneva-academy.ch/RULAC/international_treaties.php?id_state=126, accessed on 5 April 2015. Articles 7 and 8 of the ICCPR to which Lebanon is a signatory are the equivalent of Articles 3 and 4 in the ECHR on torture and slavery, respectively. Lebanon is also bound, through the ICCPR, to respect Article 14 of the ICCPR (on the impartiality of the judiciary & the secrecy of some trials), and Article 17 on a person's right to have protection of his/her "honour and reputation".

¹⁹ Most of the court cases dealt with by the Publications Court between 1999 and 2014, based on Article 53 of Law 328 of 2001 regulating criminal court procedure, involved media outlets publishing summaries of, or general information about, confidential investigations, in addition to details of indictments. See details in "Freedom of expression in Lebanon: Publications court jurisprudence on competing fundamental human rights", unpublished expert report submitted to the Special Tribunal for Lebanon, by Dima Dabbous, September 2014.

The study analyzes these Publications Court decisions on cases involving the media, libel, and the judicial body (as the defamed body). It does so with a view to document and help establish court jurisprudence on the subject, by highlighting the balancing role played by the Publications Court every time it decides which basic human right to uphold when two or more rights clash in court cases, and by identifying whether these choices exhibit any discernable patterns.

This study demonstrates that the relatively high number of Publications Court cases dealing with defamation or libel, compounded by the high number of guilty verdicts for media and journalists, is clearly indicative of an important tension. That is, a tension between media practice and freedoms on the one hand, and Lebanese courts and legal provisions which infringe and limit freedom of expression on the other hand. It is the objective of the present study to shed some light on this tension by trying to understand how the Publications Court reasoned or justified its verdicts whenever a media outlet was tried for having infringed on one of the various legal provisions that regulate its content.

In the initial phase of the archival search, 104 court decisions published between 1999 and early 2014 were collected from the two existing legal databases in Lebanon.²⁰ Both these databases are not always exhaustive and are often incomplete, with names of litigants and media outlets involved systematically omitted (and sometimes the assigned number of the court case also missing). Therefore, the search for the Lebanese Publications Court decisions was complemented by a printed collection of all 74 media-related cases that were processed by the Court of Appeals (or 2nd circuit court) between January 2006 and December 2010. This collection, which does not cover the full 15-year period considered in this study, has the advantage of including the names of people and media outlets involved in the appeal. It is also valuable because the Court of Appeals opinion in each case is published without being edited or abridged, as is the case with the above-mentioned databases.

²⁰ These are Cassandre Online Database, available at <http://www.usek.edu.lb/en/Research-Tools/Databases>, and Sader Publishers Online Database, launched in September 2011, available at <http://lebaneselaws.com/targetPolicy.aspx>. Another 27 cases against the media that were still pending by the end of 2014 are also included in the study.

I also relied on a desktop search of news articles (where names of litigants involved were mentioned) in order to follow up on the more recent court cases (2013-2014).²¹ The search yielded 38 court cases against the media between October 1, 2013 and July 15, 2014.

It is important to note here that it is *not* an objective of the present study to analyze and deal with the merit of the STL court case against Al-Jadeed or to determine the validity of the claims presented in the case. It is *not* an objective either to examine the Lebanese Publications Court rulings themselves and to evaluate whether they are fair or impartial (e.g. to determine whether the verdicts were reached without external political interference – a common practice in Lebanon). Rather, the specific and limited aim of this paper is to provide a much needed (and so far missing) *jurisprudential background* on freedom of expression in Lebanon for this unique case in the modern history of the country.

TRYING THE MEDIA: HOW THE LEBANESE PUBLICATIONS COURT BALANCES COMPETING RIGHTS

The present section reviews Publications Court cases based on verdicts that were published during the period between 1999 and the end of 2014. It also relies on news reports from news agencies and media watchdog groups and NGOs with respect to the cases that were dealt with by the Publications Court during the period extending from October 1, 2013 till July 1, 2014, several of which were still pending at the time of writing. The total number of media-related court verdicts published during the above-mentioned periods and considered in the present report is 104, of which 73 were decisions by the Court of Appeals.²² Another 13 pending cases were also included, from the period extending from October 2013 to July 2014, bringing the total to 117 cases.

²¹ Court cases in Lebanon can routinely take several years before the trial is concluded and a verdict is reached.

²² This is not to suggest that this number represents the absolute, total number of all cases related to the media that were dealt with in the Publications Court during the years included in the present study. This number is simply the total number of court cases that could be found based mostly on legal publications and databases and were collected and examined for the purpose of this study. In other words, it is possible that some cases are missing from the above count due to the fact that they were not included in the consulted databases and the legal sources used. It should also be noted that whenever a verdict was appealed, I considered the appeal decision and the justification the court gave, and did not include the initial court case in the count (i.e. when the case was dealt in by the Publications Court). Consequently, the number 104 reflects 104 *different* court cases and/or decisions, as every case was counted once (whether it was appealed or not). Information about the recent, pending cases was obtained from national and international human rights reports.

The analysis of these 117 cases shows that the media in Lebanon are charged and tried in court for the following press crimes related to content (listed by order of frequency): libeling individuals and disrespecting state institutions; disclosing the identity and full name of minors in criminal investigations; disclosing confidential information related to ongoing criminal investigations; publishing secret or confidential documents; and violating the election law during elections.²³

Predominance of libel cases: when dignity comes first

Out of the total 103 court cases that were concluded and led to a conviction, 43 were libel-related cases. That is, 41% of all media cases that led to a court decision between 1999 and 2014 involved libel.²⁴ In 39 out of these 43 libel cases (90% of the cases), the defendants were found to be guilty of libel and were asked to pay a fine in addition to having to compensate the plaintiffs for the moral damage they caused.²⁵

Many of the libel cases processed by the Publications Court eventually went to the Appeals Court. Of the 73 Appeals Court verdicts (between 2006 and 2010, where data on these appeals are accessible), 45 were related to content.²⁶ Thirty-six out of the 45 content-related cases that were appealed were libel cases. In other words, more than three fourth of all content-related cases dealt with by the Appeals Court during the abovementioned period were libel cases (80%) -- a significantly high percentage of libel-related court cases which reached new heights by mid-

²³ During this 15-year period, there was one case where the issue of an MP's immunity and freedom of expression was also considered.

²⁴ Often the libel charge was also combined with the charge of publishing "false news", and in a few cases with the additional charge of threatening public safety (see Appeals Court decision No. 28 of 2012, of 31/5/2012, appealing decision of 13/1/2010 on an article in an unnamed magazine which defamed MP Skaff in its issue No. 1308 of 1/10/2007, and the court opinion on the difference between false news and defamation through the example of what was written about Skaff).

²⁵ Only in two cases out of the 39 guilty verdicts in these libel cases were the defendants sentenced to prison. In February 2014, twitter user Jean Elias Assi was found guilty of defaming President Suleiman and sentenced to 2 months of prison. In the other (older) case, the defendant was sentenced in absentia to two years of prison (court decision No. 6 of 19 May 2003 against the Arabic-language magazine based in the UK, *Al-Diplomasi* or "The diplomat"). He was found guilty of defaming the army and publishing false news about it.

²⁶ 28 out of the 73 cases did not relate to content per se and had more to do with legal technicalities related to court jurisdiction in press-related offences.

2014. Moreover, the Appeals Court issued guilty verdicts in 80% of the libel cases (29 out of the 36 appealed libel cases).

Between 1 October 2013 and 15 July 2014, there were 25 verdicts and 13 pending court cases involving the media. Of these 38 cases, 37 cases involved libel and/or false news, and one had to do with disclosing secret information relating to ongoing criminal investigations (the case of *eLNASHRA Online*).²⁷

Of the 25 recent verdicts related to libel, defendants were found not guilty in only three cases (12% of the cases). These defendants are Murr TV, LBCI, and Al-Jadeed TV.²⁸

The media outlets with the highest number of charges and/or verdicts related to libel in the abovementioned period of nine months were: *Al-Akhbar* newspaper (3 guilty verdicts, 1 pending case); Al-Jadeed TV (2 guilty verdicts, 1 not guilty verdict, 3 pending cases); *Al-Mustakbal* newspaper (2 guilty verdicts); the Lebanese Forces website (1 guilty verdict, 4 pending cases); and *Al-Dyar* newspaper (6 pending cases).²⁹

The Publications Court dealt with a variety of cases related to different media outlets during that period of nine months: seven different national TV stations out of the existing eight, private TV stations (NBN, Al-Jadeed, al-Manar, OTV, Murr TV, LBCI, and Future TV); nine different newspapers (of which one was Kuwaiti, which was found guilty); one tabloid magazine (*al-Jaras*); four different websites; and one twitter user.

²⁷ Find details about the case on the *eLNASHRA* website, in Arabic, posted on 30 April 2014, at <http://www.elnashra.com/news/show/741229/%D9%85%D9%87%D8%A7%D8%B1%D8%A7%D8%AA-%D8%B9%D9%84%D9%82%D8%AA-%D8%B9%D9%84%D9%89-%D8%A7%D9%84%D8%AD%D9%83%D9%85-%D8%A8%D8%AD%D9%82-%D8%B3%D9%85%D8%B9%D8%A7%D9%86-%D8%A7%D9%84%D9%85%D8%B5%D9%84%D8%AD%D8%A9-%D8%A7%D9%84%D9%85%D8%B4%D8%B1%D9%88%D8%B9%D8%A9-%D8%A7> accessed on 15 May 2015.

²⁸ Press-related offences are misdemeanors in Lebanese laws. The Publications Court is a special court of first instance where the media are tried once an indictment or committal order is issued by the first investigative judge. It is in nature a court of first instance, but its structure is that of an appeals court, because 3 judges sit on it (instead of one, which is the case in regular courts of first instance). It is commonly and legally referred to as “the appeals court looking into publication offences”. Appealing its decisions is done with the Court of Cassation (which is practically the 2nd circuit court *and* the court of last resort in the case of press-related offences). In this study, I refer to the Court of Cassation dealing with media crimes as “Appeals Court”.

²⁹ The order of classification of these outlets is based on the number of guilty verdicts, with the outlet convicted the most during the 9 month period studied between October 2013 and July 2014 coming first in the classification. Both *Al-Akhbar* newspaper and Al-Jadeed TV, who top this list, were charged with contempt of court and obstruction of justice by the STL.

This study is specifically concerned with the jurisprudence of the Lebanese Publications Court and the Court of Cassation or Appeals Court (when the verdict was appealed) and the position of these courts with respect to libel and freedom of expression. Thus, it examines, qualitatively and in depth, actual court decisions on libel that were published following the issuing of verdicts. It deals in particular with 25 decisions on libel published between 1999 and 2014, of which nine are about defaming the judiciary, one about defaming the army, two about defaming private individuals, while the remaining decisions are about defaming various politicians and public servants, including the President.

These libel-related court cases involve 3 types of media outlets (ten cases about newspapers, five about magazines, and four about TV channels). *Al-Jadeed TV*, *Al-Mustakbal* newspaper, and *Al-Akhbar* newspaper were the outlets most often tried in court in these libel cases. The outlet was acquitted in only two of the 25 libel cases: *Al-Jadeed TV* (Appeals Court decision No. 87 of 2010) and *Al-Mustakbal* (Publications Court decision No. 137 of 2010). In both these cases, the relevant court found the media outlet not guilty because truth is accepted as a defense when a judge is libeled (*Al-Jadeed TV* case) and because political criticism (i.e. opinion) that is not libelous is allowed (in the case of *Al-Mustakbal* newspaper). In all the cases where the media outlet was found guilty of libel, the sentence was a fine often coupled with a monetary compensation for (moral) damage caused to the plaintiffs (that is, the defamed party in such cases).

The purpose of the above brief quantitative overview is to give an idea about the extent and nature of the limits on the right to freedom of expression/freedom of the media in Lebanon. As this initial, quantitative assessment shows, not only are most court cases against the media about libel, these cases almost always end up with a guilty verdict for the media in Lebanon. This situation, which became exacerbated towards the end of 2013 and by mid- 2014, prompted a national outcry among local human rights activists and NGOs. They saw such frequent convictions on libel charges, where the media are almost always found to be guilty for criticizing politicians and public servants, as evidence of the bias of the Publications Court in favor of politicians and against the media. They considered the Publications Court to be a tool in the hands of the economic-political elite, who indeed constitute the majority of plaintiffs in libel

cases, who eventually win, and who are seen to be using libel laws and national courts in order to stifle media criticism of their questionable actions.³⁰

It should also be noted that the punishment for individuals found guilty in libel cases in Lebanon could include prison terms of up to two years for this press-related offence. The terms can be combined with a monetary fine that can reach up to a hefty 100 000 million LBP (c. 66 000 USD). Moreover, according to the applicable Lebanese laws (both the Press Law and the Penal Code), the higher the rank of the defamed person the greater the penalty (i.e. the longer the prison sentence and the greater the fine). By way of example, defamation can lead to a maximum prison sentence of one year when a private person is defamed (Article 20 of the Press Law), and up to 2 years if the defamed is the President (Article 23). Insulting (through expressions or gestures) or defaming a judge presiding in court (or in the line of duty in general) will also lead to a maximum prison term of 2 years (Article 22).³¹ Such harsh prison sentences and fines, which seek to protect individuals in positions of authority much more than ordinary citizens, are not in line with international practice and jurisprudence where the opposite is true, and where good democratic practice makes it more possible, in the public interest, to criticize politicians and public servants without fear of retribution.

Libel & false news

In many of the cases where a media outlet was charged with libel, a concomitant charge was often that of having disseminated “false news” (Article 3 of the Press Law). This pairing of charges is to be expected, considering that libel in Lebanese laws means attributing *false* (and verifiable) acts to an individual, with the purpose of harming his/her reputation. Article 385 of the Penal Code defines libel as follows: “attributing something [*amr*] to someone” that leads to

³⁰ Lama Fakih, “Freedom of expression under fire in Lebanon: Lebanese journalists feel under threat and under-protected”, 2 April 2014, available at <http://www.hrw.org/news/2014/04/02/freedom-expression-under-fire-lebanon> accessed on 18 March 2015. See also “Maarakat mahkamat al matbouaat” (i.e. The battle of the Publications Court), *Legal Agenda*, 8 April 2015, available at <http://www.legalagenda.com/newsarticle.php?id=636&folder=legalnews&lang=ar>, accessed on 31 August 2014:

³¹ This is the court interpretation of Article 22 of the Press Law, justified in Appeals Court decision No. 24/2010.

hurting his/her dignity and honor.³² Article 387 of the Penal Code accepts truth as a defense in specific types of libel cases: the defendant (person accused of libel) is exonerated when the libelous statements are made about a public servant (and have to do with his/her work in the line of duty) and are proven to be true (with the exception of the President of the Republic who cannot be libeled under any circumstance). Moreover, according to Article 583 of the Penal Code, those charged with having made libelous statements cannot be allowed to “justify themselves by proving the truth of the attributed acts/statements related to libel.” In other words, according to Lebanese law, libelous statements, whether proven true or false, are considered to have been made with the intent to hurt and defame (actual malice), and are punishable as such, regardless of their truth value.³³ This means that truth alone is not an absolute defense in all defamation cases, as is the case in other international jurisprudential systems (the United States and the European Union).

In the evening news on April 28, 2006, Al-Jadeed TV spoke of a close relationship between an individual (the defendant, who is unnamed in the published court decision) and Muhammad Zuheir el-Siddiq, one of the early controversial key witnesses in the Hariri murder investigation. According to the Al-Jadeed news bulletin, the Hariri family was using the services of the defendant to “take care of” Siddiq and “satisfy his financial wishes”, or, in other words, to influence his statements and compromise his role as a court witness.

When asked by the Appeals Court to prove the truth of the claims made about the libeled person, the news editor of Al-Jadeed, Maryam Al-Bassam, failed to do so. She, along with Al-Jadeed TV, was found guilty of broadcasting false news and defamation (Article 3 and Article 20 of the Press Law). Not only was the appeal by Al-Jadeed rejected, the Appeals Court rejected the reduced sentence of the first court (the Publications Court) and increased the fine of Al-Bassam to 12 million LL. (Appeals Court decision No. 16/2010, published on 24 June 2010).

³² “*amr*” in Lebanese jurisprudence in cases of libel is “a verifiable act”, such as when claiming that someone has stolen a car, for instance. The theft of the car is a verifiable act: one can prove if it was committed or not by the libeled person. The burden of proof is on the person charged with libel.

³³ For an explanation of the meaning of libel and insulting words in Lebanese law and jurisprudence, see “Crimes of libel and insult and their penalty in Lebanese laws” by Nader Abdel Aziz Shafi, *Majallat al Jaish*, issue 301, July 2010, available at <http://www.lebarmy.gov.lb/ar/news/?25540#.VBcrBfmSxj0> accessed on 15 January 2015.

Maintaining the dignity of public institutions: defaming judges and the judicial body

Not only are individuals protected from insults and libelous statements, state and public institutions are also protected. According to Article 388 of the Penal Code, insulting, through the media, “the courts”, “the army”, or “public institutions” (and administrations), is punishable by law and can lead to a prison sentence. In Appeals Court decision No. 12/2014 (published on 6 March 2014), the author of a magazine article was found guilty of defaming the judicial body as a whole, according to Articles 19, 20, 21, and 26 of the Press Law. In the article, she wrote about female celebrities and wives of celebrities who bribe judges (the judges remained unnamed in the article) in lawsuits involving them, in order to get favorable judgments from these judges and affect the administration of justice.

The Appeals Court reasoned as follows:

Although the article did not name any judge by his name, through the style of narration and phrases and titles which it highlighted and which are partially mentioned above, it [the article] generalized the issue of bribery to a lot of judges and attributed to the judicial body as a whole acts that demean its honor and dignity, in addition to using insulting words.³⁴

It later added:

Although the press has the right to freedom of expression and the right to seek the news and the right to criticize as the defendant asserts, this right and this freedom which are guaranteed by the Lebanese Constitution do not give individuals the right to overstep the law.

The following are cases where the media outlets were tried for defaming/disrespecting individual judges or the judicial body during the period considered:

1. **Appeals Court Decision No. 12/2014**, published on March 6, 2014, **upheld** the decision of the Publications Court (**guilty** verdict) against the writer of a magazine article for defaming the Lebanese judiciary (summarized above).
2. **Publications Court Decision published on February 24, 2014**: *Yaqzan vs. Al-Akhbar* (represented by its General Manager Ibrahim al-Amine), where al-Amine and journalist

³⁴ All translations from Arabic court rulings are by the author.

Mohammad Nazzal were found **guilty** of false news and libeling the plaintiff (a judge) and the judicial body.

3. **Appeals Court Decision No. 87/2010**, published on March 24, 2010: the Appeals Court **overturned the guilty verdict** against Al-Jadeed. Truth was accepted as defense, as per Article 387 of the Penal code.
4. **Appeals Court Decision No. 11/2010**, published on May 18, 2010: the Appeals Court **upheld the guilty verdict** against *Al-Akhbar* newspaper, for having libeled two judges in an article published on October 6, 2006.
5. **Appeals Court Decision No. 24/2010**, published on October 19, 2010: the Appeals Court **upheld the guilty verdict** against Al-Jadeed TV for having libeled a judge.
6. **Appeals Court Decision No. 16/ 2009**, published on December 17, 2009, found *Al-Akhbar* newspaper **guilty** of libeling a Lebanese judge. The Appeals Court decision **upheld** the Publications Court decision against the journalist who wrote the libelous article.
7. **Appeals Court Decision No. 10/2008**, published on June 12, 2008: the **conviction** of Al-Jadeed TV for libeling a judge in its news bulletin was **upheld**.
8. **Appeals Court decision of July 30, 2002** found Al-Jadeed TV presenter Ghada Eid **guilty** of defaming the Lebanese judiciary. The decision was appealed, and the **Appeal Court upheld** the decision against the Al-Jadeed presenter in its decision No. 6 of 2003, published on May 14, 2003.
9. **Appeals Court decision of June 3, 2002** found the writer of a newspaper article **guilty** of defaming a judge. The decision was appealed, and the **Appeals Court upheld** the Publications Court decision against the journalist/writer of the article in its decision No. 5 of 2003, published on April, 30 2003.

As already mentioned, defamation cases make up the majority of court cases involving the media in Lebanon. Every year, dozens of lawsuits by private citizens (business owners, directors, etc.), public servants (including judges) and politicians (MPs, Ministers, party leaders) are filed against a wide range of media outlets operating in Lebanon. Defamation suits filed by judges are no exception, especially since the Press Law provides judges with strong protection against acts of defamation. Indeed, Article 21 of this law (which equally applies to broadcasting and the internet in Lebanon) gives greater protection to judges who are victims of libelous statements and

insulting expressions (through words or actions) than to most individuals (with the exception of the president, who is protected the most from any attacks on his dignity). For instance, whereas libeling a private individual or public servant will lead to a prison sentence ranging between 3 months to one year, libeling judges will lead to a much higher prison sentence, ranging from one to two years (Article 22 of the Press Law). In other words, the law doubles the maximum sentence for the same crime when the victim of libel is a judge and not a regular citizen or lower level public servant. The same article requires that the courts “take into consideration the moral and material damages, be they direct or indirect, on the condition that they [the damages] are a consequence of the crime itself.”

In all nine cases mentioned above, the Press Court (as a court of first instance) found the media outlets guilty of defaming judges (when an individual judge is singled out in the libelous statements) or the judicial body as a whole (when libelous statements were directed towards judges in general). Eight out of the nine decisions/convictions were appealed by the media outlets involved. The Court of Appeals upheld the decision of the Publications Court in all cases, except one.

Decision of July 30, 2002 against Al-Jadeed TV charged with defaming judges

In this section, I will deal with a court case involving a well-known presenter on Al-Jadeed TV who was tried for statements she made that were critical of Lebanese judges in the way they performed their professional duties. Her show, *Al-Fasad* (or “corruption”) hosted a citizen who complained about the inefficiency and lack of professionalism of the judges who dealt with his case. The presenter readily accepted his accusation that his file “disappeared” in court. The Publications Court, in its decision of July 30, 2002, asserted

...the right of the journalist to criticize court procedures in terms of the speed with which the court deals with cases, its impartiality, objectivity, and independence...on the condition that the style used by the journalist and the questions posed do not lead to shaking people’s trust in the judicial body and eroding its credibility...journalists should be bound by a sense of responsibility, the laws, objectivity, seriousness, and the truth, and refrain from obtaining or publishing news and false information that can hurt the reputation of the judicial body unless they check their veracity [or truth value] first...the defendant had the right to express her point of view and personal beliefs that the case dealt with by the judges was taking too long. She also had the right to give her opinion about legal matters related to the case, but she should have done so without adopting a style and expressions and language that cast doubt on and demean the judicial body

and its credibility... she exercised her right to criticize by adopting a sarcastic style and expressing dismay and wonder, using questions and expressions that can lead the viewer to imagine the worst about the judicial body and its neglectful behavior, and to believe that judges are somehow involved in a conspiracy by losing files or hiding them for years, and failing to take proper action in the service of justice... This adopted style of criticism was paired with an act that was not proven to be true, an act which defames the judicial body and affects its credibility—i.e. the hiding or loss of the file.

As a result of her television episode, the presenter was faced with triple charges: libeling judges (Article 21 of the Press Law), broadcasting false news (Article 3 of the same law), and violating the secrecy of investigations (Article 12 of the Press Law and Article 53 of Law No. 328 of 2001 regulating criminal court procedure).³⁵ The Publications Court dropped the second and the third charges, after having determined that there was “no criminal intent” when the presenter spoke of the “act of disappearance of the files.” To be convicted based on Article 3 of the Press Law (i.e. for broadcasting false news), the court reasoned, the defendant had to be aware that the news was false and still go ahead and broadcast it despite this prior knowledge. Instead, she was found guilty of having relied solely on the “words of the mother (of the guest in the show) when speaking about the disappearance of the file and did not do what she should have done in terms of serious investigation to prove the veracity of the information before relaying it publicly.”³⁶

With respect to infringing on Article 12 of the Press Law which protects the secrecy of court investigations, the court ruled that “what was discussed in the episode *bordered* on exposing the confidentiality of investigations by dealing with a number of legal issues that were part of ongoing investigations, without this amounting to disclosure or publishing of secret information, as understood in Article 12 of the Press Law and Article 53 of law No. 328 of 2001 regulating criminal procedure” (italics mine). The Al-Jadeed presenter was only found guilty of defaming Lebanese judges (in general), and the court reduced her fine of 10 million LBP to 1 million (Article 254 of the Penal Code on courts giving a reduced sentence for a misdemeanor). When the case went to the Appeals Court, the court’s opinion was more critical of the attitude and words of the presenter, finding that “she sought to hurt judges and

³⁵ According to Article 35 (paragraph 2) of Broadcasting Law No. 382 of 1994, licensed television and radio stations are subject to the provisions and penalties of “the Press Law, the Penal Code, and other applicable laws”. In this case, all content-related provisions of the Press Law apply to broadcasting content as well.

³⁶ The Publications Court, decision of 30 July 2002.

the judiciary, and her intention from the beginning was to create confusion and doubt in the public about the integrity [soundness] of the work of judges and court procedure by accusing [judges] of procrastination and inefficiency.” The appeal by Al-Jadeed was rejected, and the decision of the Publications Court was upheld on 14 May 2003.

Libeling the President of the Republic: when truth is not a defense

The Penal Code reiterates the penalties for libel already included in the Press Law (Articles 383 to 386 of the Penal Code). With the exception of the President, it adds, truth can be used as defense in defamation trial cases when the plaintiff is a public servant (i.e. the defendant is exonerated if he or she can prove the truth of the libelous claims) (Article 387 of the Penal Code). In other words, the President is strictly beyond criticism, regardless of the truth value of the claims made against him, and whether the criticism is justified or not. In all libel cases included in the present study, defaming the President of the Republic consistently led to a conviction, with a fine being imposed on the guilty party. In one such case, for instance, former President Lahhoud was not mentioned directly by name when a writer accused him of being a “murderer” and a hypocrite (the author accused Lahhoud of having killed his victim and gone to the funeral) in a poem published by the pro-Hariri *Al-Mustakbal* newspaper. Yet, as the court reasoned, if it is easy to deduct that the President of the Republic was being addressed in the libelous speech, then libel has occurred (Appeals Court decision No. 7/2008 of 18 March 2008).

In all the above cases where presidents were libeled, the defendants were found guilty and fined.³⁷ Only in one case of these defamation cases did the court hand down a prison sentence as well. A few years ago, Jean Elias Asi posted on his twitter account the following:

In this country the eunuch becomes a president, the fool a minister of the interior, the ass-kisser a prime minister, the thief general director, the pimp a beik, the whore a judge, while the citizen is fucked...your excellency the pimp @sleimanMichel, don't you want to send a letter of complaint to the Nusra Front after they shelled the palace in the Bekaa and killed a person? Or such things do not happen among allies?

³⁷ Emile Lahhoud was president when the *Al-Mustaqbal* article, written by Zahi Wehbe, titled “your excellency the murderer”, was published. Lahhoud was at odds with the Future movement led by the Hariri family, who control the newspaper. Lahhoud was never named in the libelous poem, which simply spoke of “your excellency the murderer”. The equivalent of “excellency” in Arabic is “*fakhamat*”, a qualifier used exclusively when addressing the President of the Republic in Lebanon. This cultural/national understanding of this specific qualifier was instrumental in leading to the conviction of *Al-Mustaqbal* and the writer of the libelous poem.

As the court reasoned, this speech which, among others, defamed President of the Republic Michel Sleiman, “has gone beyond what is reasonable, acceptable, and allowed, and cannot in any way be protected by ‘freedom of the press’.” Asi was sentenced to 2 months in prison for libeling President Michel Sleiman.

Indeed, the prison sentences allowed by law in libel cases were very rarely meted out (only in two convictions out of a total of 39 guilty verdicts in libel cases), and in neither of the two cases was a *Lebanese journalist* sentenced to prison (the London based-journalist in *Al-Diblomasi* magazine was tried in absentia and Asi, the Lebanese citizen sentenced to prison, is not a journalist). The end result/message sent out by the Lebanese authorities, however, must be undeniably chilling to all.³⁸ as long as the prison sentence continues to be a penalty for speech-related offences and is actually meted out (even if very rarely), the chilling effect on free speech can be ever-present. However, a perusal of media content (mostly TV news and political shows) in all national private media outlets, and of the incendiary rhetoric being broadcast daily to a highly polarized audience seems to prove that the chilling effect may not be that chilling after all. The situation seems to be worse on social media.³⁹ Defamation (often bordering on insults) was also the order of the day during the week leading up to the parliamentary elections in 2009, despite a new law for elections (2008) and the introduction of institutional mechanisms for regulating the media performance during elections.⁴⁰

More recently, Ibrahim al-Amine from *Al-Akhbar* newspaper was charged for defaming former President Sleiman, based on an article he wrote in March 2014.⁴¹ In the article, published on March 3, 2014, he criticized the President’s political choices and decisions and accused him of

³⁸ In the case of the Arabic-language, UK-based magazine “*Al-Diblomasi*” (or “The diplomat”), the court convicted the defendant because, in its opinion, the article accused the Lebanese army of dealing brutally with demonstrators, and quoted a general saying that the problem lay in the divisions that exist within army ranks. The court considered “these words and expressions” in the article to be “false news” which “hurt public safety and the safety of the country through one of its institutions [i.e. the army] which is a major symbol of the unity of the country, its defense, and sovereignty”.

³⁹ A perusal of some Facebook sites/profiles where some Lebanese youth write their opinion about ongoing political events can reveal the extent to which hate speech and defamatory statements circulate freely on the web.

⁴⁰ Dabbous, Dima (2014). “TV editorials and elections: a study in the role of implicitness, intertextuality and censorship in Lebanon”, in the *Middle East Journal of Culture and Communication*, Netherlands: Brill Publishers, Vol. 7, 2014, pp. 255–283.

⁴¹ “al-matbou’ at asallamt...”, *elnashra online*, 12 March 2014, available in Arabic at <http://www.elnashra.com/news/show/722996/9> المطبوعات تسلمت الادعاء على ابراهيم الامين وحددت, accessed on 5 July 2015.

“moral betrayal,” of lacking in honor, and of being openly biased towards one major political alliance in the country. He wrote: “Michel Sleiman is not fit to stay one more hour in the presidential palace. His presence there is a disgrace to all Lebanese, or at least those Lebanese with an ounce of patriotism left in them,” and concluded by ordering the President to step down.

Based on the cases considered in this paper, it seems that the Publications Court is unwilling to deal with libel cases in a way that favors freedom of expression and criticism. Its rulings do not challenge the idea enshrined in Lebanese law that the highest the position of a public servant, the harsher the punishment, in order to be more aligned in their jurisprudence with international standards of human rights courts. Judge Jad Maaluf’s decision last year to allow *Al-Akhbar* to continue publishing while it was being tried for libeling Gemayel, a Lebanese politician, was uncharacteristically supportive of free speech, despite the harshness of the criticism Gemayel faced. The court of urgent matters, in its decision, seems to have adopted the view (accepted by the European Court of Human Rights) that the margin of acceptable criticism should be wider when the target is a high-ranking public official. Whether or not the Publications Court, the appropriate national court qualified to deal with the *Al-Akhbar* case (against Gemayel), will also adopt this position, remains to be seen.

Disclosing the identity of arrested minors and individuals

In a few cases, the media were accused of committing two different crimes, such as libeling *and* disclosing the identity of minors/juveniles and individuals arrested in criminal investigations. According to these court cases, not only is the publication of the full names of delinquent minors strictly forbidden according to Article 48 of Juvenile Law 422 of 2002 and Article 12 of the Press Law (which protects the secrecy of ongoing investigations), but also disclosure of the names of these minors is defamatory and punishable by law.⁴² In one significant case, the Appeals Court increased the protection of delinquent minors by forbidding *indefinitely* the disclosure of their identity. The editor-in-chief of a magazine was found guilty of infringing the above two articles when she published in her magazine an old juvenile court decision against a 41 year old man (the plaintiff) that included his full name as a young offender. As the Appeals Court reasoned, “by publishing his full name in contravention to Article 48 of the Juvenile Law

⁴² Or Article 49 of Decree 119 of 83, when the period covered was before 2002, date of introducing the Juvenile Law No. 422 of 2002.

and Article 12 of the Press Law and bringing back to mind the case and crime that he committed as a minor and juvenile protected by law, [the editor-in-chief] reminded people of what they almost forgot and by doing so she hurt the plaintiff who is now almost 40. Therefore the defendant should be made responsible for any harm that befalls him [i.e. the plaintiff] and any attack on his reputation”. The editor was fined 1 million LL and asked to pay 3 million LL in damages.⁴³

In two *earlier* Publications Court opinions published during the period covered in the present study, the court dealt with the issue of media disclosing the identity of individuals upon being arrested by the police. In the first case the arrested was a minor, in the second, an adult.

1. Decision of May 15, 2000: revealing the identity of a juvenile delinquent during his

arrest: In this case, the court convicted a newspaper (*An-Nahar*) and a television station

(LBCI), who were found guilty of having published news that is forbidden according to Article 12 of the Press Law. On March 17, 1999, *An-Nahar* newspaper published the following:

“policemen in Tripoli arrested a gang of 5 members for stealing belongings from cars parked in Tripoli and its suburbs, and confiscated a number of recorders and other stolen objects. The arrested individuals are between 16 and 19 years old and they are ⁴⁴...M.T [name of the

defendant] ...”. The newspaper published a photo of the arrest with the news article. LBCI’s

evening news also covered the same news item, and showed video footage of the 5 arrested

individuals. In both cases, the defendants had received official correspondence (a communiqué in

the case of LBCI and a facsimile in the case of *An-Nahar* newspaper) from the public relations

office of the Internal Security Forces (ISF). In the case of *An-Nahar*, the managing director, who

received the news from the PR office of the ISF, was asked “as usual, to take photos of the gang

of thieves in order to show them to the citizens who were robbed so that they can identify the

culprits.” The LBCI managing director testified that he had received a phone call from a major in

the PR office of the ISF, asking him to film the arrest in the north of Lebanon, and informing

him that he will receive the facsimile with the details of the arrest the next day. He filmed the

arrest, received the facsimile, and broadcast the news item with the video footage during the

⁴³ Appeals Court Decision No. 19 of 2009, published on 29 December 2009.

⁴⁴ In Lebanon, the minimum legal age is 18. This means that all arrested individuals who are less than 18 are considered to be minors, and can benefit from the protection of their identity provided by the Juvenile Law.

news bulletin. As he explained: “what the television station did was in accordance with the procedure that was in place between the station and the official security forces.”⁴⁵

In the published court opinion, the court established first that the newspaper clearly knew about the age of the arrested individuals (and that some of them were under 18 years of age), because the published article said that the age of those arrested ranged between 16 and 19. This knowledge is also confirmed in the facsimile that the newspaper said it received from the PR office of the ISF. The court found the newspaper guilty of disclosing the identity of the minors, and rejected the defense that the newspaper did not know about the laws protecting them:

The legislators have dealt categorically with the issue of knowledge of the law by an individual when he/she breaks it, when they decided in Article 223 of the Penal Code that “no one can use the excuse that they were ignorant of the criminal law or that they interpreted it incorrectly since it is assumed that the person breaking the law knows about the law”...criminal intent is established by the mere publication or broadcasting by the newspaper and television station of the pictures of the minor and his name while being aware that he is a minor.⁴⁶

Citing Article 185 of the Penal Code, the court rejected the defense’s argument that since the publication and broadcasting were done based on an official request from the authorities (the ISF or police in this case), they cannot, therefore, be considered to be in infringement of the law. According to Article 185, an individual is not considered to be committing a criminal act if the act is done based on a legal text or command issued by the authorities (paragraph 1). According to the same article, if the issued order (or command) itself is illegal, the person who follows the command is not held criminally responsible if he/she can prove that the laws in force do not allow him/her to verify the legality of the given order (paragraph 2).

As the court reasoned, the defendants were under no obligation to follow orders by the authorities (the police or ISF in this case), especially when such orders are illegal: it is illegal to disclose the identity of juvenile delinquents per se, even if the order to disclose it comes from the police. Not only were the two media outlets obligated to question the legality of the police order, they had the right to refuse to execute the order, because it was illegal. The court added:

The legislators may have imposed some requirements on broadcast institutions but they never intended to free them completely from following laws and rules in force, or from restrictions that are mentioned in these laws, in the course of implementing these requirements. It was possible in the present case to publish

⁴⁵ Publications Court Decision of 15 May 2000.

⁴⁶ Publications Court Decision of 15 May 2000.

and broadcast news of arrest of suspects without publishing and broadcasting their pictures and names if they were minors, and thus not to infringe on Article 49 of the law for protecting delinquent minors.⁴⁷

While finding both media outlets guilty of having disclosed the identity of a minor during his arrest (infringing Article 49 of decree No. 119/83), the court acknowledged that they published/broadcast the news item “spurred by a noble motive and in order to meet the needs of two official bodies, one of them security-related, the other media-related, and they did this with good intentions and in order to contribute to fighting crime and support security agencies in their work”. As a result, the court gave the defendants a reduced fine (200,000 LBP instead of one million each).

The *An-Nahar* newspaper appealed the decision. In its decision No. 9 of 21 May 2003, the Appeals Court overturned the verdict, based on its interpretation of what exactly is protected by Article 49 of decree 119/83, with respect to juvenile delinquents. It justified its decision on the grounds that Article 49 of decree 119/83 protected the identity of juveniles by “forbidding the publication of their photo and the details of their trial.” This restriction, it added, should not be interpreted to include the period of arrest which precedes the trial (i.e. the time of arrest and photos about it that reveal the identity of the minor), “which is what the newspaper did, based on a request by the Internal Security Forces, which wanted to publicize the event.” In this Appeals Court decision, the court reached its verdict not by challenging the fact the media are responsible for checking their facts and making sure that what they publish is lawful. Rather, they *re-interpreted* Article 49, deciding that its restrictions on disclosure apply to the period of the trial and not to the moment of arrest of juvenile delinquents.

2. Decision 251 of June 3, 2000: revealing the identity of an adult during his arrest: During the same period, another decision came out also involving *An-Nahar* newspaper and dealing with a very similar issue, this time involving the arrest of an adult as part of a network for international drug trafficking. The newspaper covered the arrest and included the full name of the plaintiff who was also identified as an “international drug trafficker,” as the news wire it

⁴⁷ Publications Court Decision of 15 May 2000.

received mentioned. The newspaper was charged based on Article 12 (disclosing details of confidential criminal investigations), Article 3 (false news), and Article 20 (libel or defamation) of the Press Law. On the charge of false news, the court found *An-Nahar* guilty of negligence and of not having checked the (partially incorrect) information it received from official sources. According to the court, regardless of the source or origin of the news, the newspaper had the duty to “follow applicable procedures.” The defendant was falsely referred to in the article (based on the official information the newspaper received) as a “drug trafficker,” when in reality he was just a “drug user.”

The court decided not to convict *An-Nahar* for publishing false news because the writer could not possibly have had the time to investigate the (partially incorrect) news that was received through news agencies or security-related bodies (although he/she should have done so as part of his/her work). The court acknowledged that “it is customary for news media to relay security-related news exactly as they receive them [from the above mentioned agencies] due to the urgency of news work and based on the conviction that the news are correct based on the nature of their source.”⁴⁸

With respect to the charge related to disclosing the details of criminal investigations, the court maintained, “it is not allowed to publish the details of ongoing official investigations by specialized investigative bodies or the minutes of the investigations out of respect for the dignity, honor, and reputation of individuals.” However, it found that there was no breach of Article 12 (forbidding publishing the details of investigations). As it reasoned,

The legislators, by forbidding the publication of the details of criminal investigations (related to misdemeanors and felonies) before announcing the results in a public hearing, did not intend to forbid the publication of general information available about these crimes. Rather, they intended to forbid publishing the content of official, ongoing investigations conducted by specialized investigative bodies and the minutes of these investigations in order to preserve the secrecy of the investigation, its safety, and efficiency, and in order to protect people’s dignity, reputation, honor, and standing.

In the opinion of the court, Article 12 of the Press Law has to be interpreted based on the following: freedom of the press and publications is the rule, and laws for media and publications are the exception to this rule and form a framework for it. It argued, “the freedom to cover the details of daily life (or occurrences) in Lebanon and the world for the reader is the rule.” Moreover, it found that crimes committed against the general public and in which the public is

⁴⁸ Court Decision No. 251 of 3 June 2000 on revealing the identity of an adult during his arrest.

directly implicated “because these crimes affect its interest, basic concerns, and safety” are considered part of daily life (or occurrences). Therefore they should be covered freely.

However, *An-Nahar* was found guilty of having disclosed the identity of the arrested suspect, in contravention of Article 20 on libel in the Press Law. In the opinion of the court, the news of the arrest, which was of public interest and had to be disclosed, did not only include information about the arrest of members of the network. It also included the triple full name of the plaintiff (i.e. first name, father’s name, family name), which revealed his identity. Since “there was no necessity or need to disclose the name in order to perform the journalistic duty, and to complete the security-related information,” and “since publishing by the newspaper of security-related information it receives does not absolve it from following the laws in force, even if such information is received from security sources and even if it [the newspaper] published them at the request of the latter,” the court concluded that the newspaper was guilty of infringing Article 20 of the Press Law. As it reasoned, the newspaper should have published information about the arrest without having to infringe on existing laws and hurting the dignity of others.

Moreover according to the court, “clear damage was incurred by the plaintiff as a result of publishing news of his arrest as part of an international network for smuggling and dealing with drugs,” and this damage is experienced through “people’s condemnation of his acts and forming a distorted and dishonorable view of him and his morals, including his disregard for norms and laws applied in his society.” This condemnation, it added, “will affect negatively all aspects of his life.”⁴⁹

As the court added, “the court takes into consideration that honor and dignity are among the values that are above material considerations, cannot be evaluated on a material basis, or be compensated for with money, regardless of the amount of the financial compensation”.

The court found the newspaper guilty of libeling the plaintiff, gave it a reduced fine of 500,000 LL, and asked it to pay him 5 million LL in damages.

⁴⁹ Court Decision No. 251 of 3 June 2000 on revealing the identity of an adult during his arrest.

CONCLUDING COMMENTS

The present study sought to document and identify a jurisprudence-based, working definition of “freedom of expression” and “freedom of the media” that is derived from Lebanese case law. It did so by analyzing a large corpus of court opinions and decisions by the Lebanese Publications Court and Appeals Court that were published between 1999 and 2014, following trials where media institutions and individuals were prosecuted for infringing national laws on libel. Such an understanding of the meaning and limits to freedom of expression, particularly in cases of libel, is needed in order to provide a jurisprudential background for the STL contempt of court case against *Al-Jadeed TV* and the national controversy it generated.

A number of observations can be made with respect to the meaning of freedom of expression and the weight given to it when it competes with another basic right in a Lebanese court of law. To start with, the review of these cases and their analysis showed that a handful of media outlets (television channels and newspapers) were frequently charged, prosecuted, and convicted for libel. The TV station most charged and convicted for breaking libel laws between 1999 and 2014 was *Al-Jadeed TV*, the defendant in the recent STL contempt trial, followed by *Future TV*, the pro-Hariri channel. The 3 newspapers charged and convicted the most were: *Al-Mustakbal*, *Al-Diyar*, and *Al-Akhbar* newspapers.⁵⁰ The variety of the above convicted outlets, which support different parties and positions on the political spectrum, make it difficult to conclude that the court decisions are politically motivated, targeting specific outlets at the exclusion of others. The findings indeed provide evidence that any media outlet that breaks the law on libel can be (and is indeed) prosecuted and convicted in Lebanon. Interestingly, the two Lebanese media outlets that faced contempt of court charges at the STL (i.e. *Al-Jadeed TV* and *Al-Akhbar* newspaper) are among the media outlets that have been charged and convicted the most in Lebanese courts for defaming the judiciary.

Second, the present study has documented the fact that the media in Lebanon, despite their relative freedom, are generally not free to criticize public authorities (regardless of the value or

⁵⁰ *Al-Akhbar* newspaper was also slated to stand trial at The Hague in 2015, on charges similar to those of *Al-Jadeed*. Unlike the case with *Al-Jadeed TV*, the managing editor of the newspaper has refused so far to appear in court, rejecting its legitimacy and jurisdiction, with the backing of Hizbollah.

merit of their criticism). Rather, they are routinely prosecuted for criticizing politicians and public servants (president, army, judges, etc.) and found guilty in the overwhelming majority of cases. Even though truth is accepted as a defense in specific cases (when the libeled person is a public servant and criticized while exercising his/her functions), and criticism of politicians and judges (and the judicial body) is allowed to some extent, the rule seems to be that public institutions and politicians should be respected and can be strongly protected from libelous statements when their case reaches the courts. The fines and financial compensation for moral damage that were imposed on plaintiffs in libel cases also reflected a hierarchical approach to ‘who cannot be libeled:’ the higher the position of the defamed person, the more this person’s dignity was worth defending and the harsher the resulting sentence. In all libel cases involving one of the presidents of the Republic, the president was protected from any negative opinion and libelous statements, regardless of their truth value or any public interest consideration. In that respect, Lebanese laws and jurisprudence can be said to be restrictive of freedom of expression and are clearly not in line with international best practice and jurisprudence.

Only a recent (and very exceptional) rule in 2013 by the judge of urgent matters, Judge Jad Maaluf, tried to (temporarily) reverse that formula, in accordance with international jurisprudence that considers the strength of a democracy by the ability of individuals and the media to criticize politicians, and by the courts being more tolerant of harsh criticism when the individuals being criticized occupy high-level public positions.⁵¹

Third, the court’s ruling in libel cases and the punishment meted out did not always reflect the nature or harshness of the libelous statements made, and there was some inconsistency in the severity of the punishment meted out (mostly with respect to the amount of the fine imposed on the convicted party). Some published statements and opinion critical of the performance and role of some politicians, the army or the judiciary, could have easily been protected by freedom of the press clauses, as this type of expression is at the core of the press role as the 4th estate and as a watchdog of government. However, the media were convicted and harshly punished for these critical statements and opinions. By contrast, there were clearly several libel cases where

⁵¹ According to the European Court of Human Rights, for instance, “the limits of acceptable criticism are wider as regards a politician than as regards a private individual”. See *Freedom of Expression: Essays in Honour of Nicolas Bratza*, J. Casadevall, E. Myjer, M. O’Boyle, and A. Austin (eds), The Netherlands: Wolf Legal Publishers, 2012, p. 74.

statements by some journalists were incendiary, accused individuals or politicians of serious crimes (murder, treason, etc.) while using insulting language that does not further discussion or dialogue -- the cornerstone of democratic practice. Court decisions relating to these cases where the speech was libelous, however, did not include harsh punishment (except in the case of the twitter user, discussed earlier). It is difficult to determine at this stage the reason for such inconsistencies and lack of proportionality in the punishments meted out by the courts.

Fourth, the Publications Court, which found defendants in libel cases guilty in the overwhelming majority of cases, seems to have avoided the prison sentence reserved by law to guilty parties in a number of press-related offenses. In only two cases were the defendants given a prison sentence: one was given, in absentia, to the director of a political magazine based in London (2 years prison sentence for libeling the Lebanese army), while the twitter user was sentenced to 2 months in prison for posting insulting remarks about President Sleiman. These remarks, as already shown, did not consist of arguments: they were mostly provocative (vulgar) swear words, and not “speech” protected by any of the national laws or international conventions of human rights. It is worth noting that no Lebanese journalist operating in Lebanon was given a prison sentence between 1999 and 2014, even when the national applicable laws reserved prison sentences to parties found guilty of libel.

By protecting the dignity of plaintiffs (or at least most of them), while avoiding the prison sentence as a rule and sticking to fines, the Court was found to be playing a dual, contradictory role. On the one hand, the Court seems to be de facto imposing its own progressive views with respect to freedom of expression, views according to which press offences are civil offences and should not be treated as criminal offences punishable with prison terms. On the other hand, by convicting the accused media in the overwhelming majority of the cases, it seems to be contributing to the creation and maintenance of a “chilling effect,” while trying to avoid the negative social and political/public relations high cost of sending a Lebanese journalist to jail in a country that prides itself on being the freest in the region. Paradoxically, the power or full extent of this chilling effect is debatable: libel charges issued just within a few months between October 1, 2013 and July 15, 2014 seem to suggest that the Lebanese media is not really worried about speaking out its mind and offending others, even if this leads to prosecution in court. One

reason may be the relatively low financial cost of doing so, with fines and compensation for moral damage being quite low, and often consisting of a few thousand dollars.

Finally, in cases where the media were tried for having disclosed information related to ongoing criminal investigations that could negatively affect the reputation of the plaintiffs (e.g. disclosing the identity of juvenile delinquents or the identity of individuals arrested by the police), the court seemed unanimous in its opinion that the onus falls on the media outlets to observe laws, rules, and procedures regarding publishing or broadcasting such sensitive content. Although the present paper did not deal with all the cases related to the media disclosing the identity of suspects and minors involved in criminal investigations, it included the important case of the *An-Nahar* newspaper and LBCI TV channel. Both published and broadcast (respectively) the identity of suspects upon their arrest and thus broke the law, even though this was done at the request of the police. The court ruling in favor of the plaintiffs (the arrested suspects) in this case is a clear indication that in Lebanese court jurisprudence, more weight is given to protecting the identity of individuals and their reputation than to the importance of informing the public about arrest cases. The courts did not exonerate these media even when they were proven to be acting based on instructions and information provided by the police. The onus, the court reasoned, was on these media to know the law and to apply it, even if this meant defying police orders (orders which were illegal to start with).

On several occasions during her trial (concluded in March 2016), accused Al-Jadeed head of news Karma Khayat attacked the STL for being incompetent, for wasting resources on a futile endeavor, for stifling free expression, and for imposing undue restrictions on Lebanese media outlets that otherwise enjoy freedom of expression in their home country. When pressed with justifying the disclosure of the names of witnesses, she asserted that Al-Jadeed had a duty to reveal that the STL was unable to protect its own witnesses,⁵² and that the TV station was broadcasting what is already public knowledge (i.e. that the leaks were there before the Al-Jadeed decided to broadcast reports on the STL witnesses).

A number of the legal issues involved in the STL case against Al-Jadeed and mentioned by Khayat (above) were covered in the present jurisprudential study. According to the findings, libel

⁵² At the time of writing, there is no evidence yet that the list of leaked names came from inside the STL.

(including the libeling of judges) was found to be the most frequently punished press offence in Lebanon. In other words, freedom of expression is a highly qualified right: not only is it highly circumscribed by national laws, but also it is almost always sacrificed in court when in competition with the right to protect one's dignity and reputation. Moreover, Lebanese courts have strongly been on the side of suspects (adults or juvenile) when their reputation was threatened because their identities were disclosed by the media during ongoing criminal investigations. The fact that the police asked the media to disclose the identity of suspects did not help exonerate the defendants in a court of law.

In light of the above, and without delving into the details of the Al-Jadeed trial or questioning the merits of the STL case against it, it is hard to find it convincing when Khayat and her supporters assert that in Lebanon freedom of expression is guaranteed or when they accuse the STL of muzzling freedoms. Khayat is not convincing either when she puts the blame entirely on the STL for allowing the leaking of the names of its witnesses (this claim has yet to be proven) in order to exonerate Al-Jadeed for having broadcast reports about the (alleged) secret witnesses. Khayat may be understandably attempting to defend herself and attacking the STL court that put her on trial (she was eventually acquitted by the STL Appeals Court), but her passionate arguments about freedom of expression and the public interest do not seem to have much legal backing in a country where the very Lebanese jurisprudence and regulatory environment that she mentions in her defense tell a different story-- one that can easily serve the prosecution.