

# Lebanon: The Nature of the Civil State and the Sectarian Personal Status Laws

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## ABSTRACT

It is not possible to understand the relationship between the Lebanese State and religious denominations, as it arose under the French mandate, except by going back to the Ottoman era, where the first legal attempts to regulate that relationship were registered. Therefore, this research paper will review the direct historical roots of the relationship between confessions and the State as it was established in the Ottoman era, and then explain the fundamental modifications introduced by the French Mandate, to determine what is meant by the civil nature of the Lebanese State despite any imperfection arising from post-independence laws.

Keywords: *Civil State, Personal Status Laws, sectarianism, Lebanon.*

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## INTRODUCTION

The relationship between the State and confessions has forever been a problematic topic in Lebanon. While some would consider the Lebanese State to be intrinsically sectarian – mainly concerned with preserving the “rights” of confessions – others would consider secularism to be the only solution to all the crises of the political system next to building a Civil State governed by the freedom and equality of its citizens.

Such discrepancy is mainly reflected in the sectarian personal status laws and the constant disagreement over the possibility of adopting civil personal status laws. For example, on February 18, 2019, the media office in Dar Al-Fatwa issued a statement stating that civil marriage “is a violation of Article 9 of the Lebanese Constitution which provides for the obligation to respect the personal status laws applicable before Lebanese religious courts. Therefore, it may only be enacted in Parliament with the consent of Dar Al-Fatwa and the relevant religious references in Lebanon”. Rejection didn’t only stem from religious authorities as it was echoed by parliamentarians and political figures who embraced the same position based on the assumption that a civil personal status regime necessitates a constitutional amendment, which suggests that the State is sectarian in nature, and that its legislative authority is balked by personal status laws that are entirely subject to sectarian whim.

On account of this contradiction, be it deliberate or spontaneous, the discussion became mainly political, and drifted from its sound human rights foundations. Hence, the need to study the nature of the relationship between the State and confessions in Lebanon only to point out that the State’s recognition of the confessions’ competence in managing their personal status does not contradict the civil nature of this state. The State’s recognition is in fact the criterion clarifying the constitutional premises on which the legal structure of the Lebanese State rests.

It is not possible to understand the relationship between the Lebanese State and religious denominations, as it arose under the French mandate, except by going back to the Ottoman era, where the first legal attempts to regulate that relationship were registered. Therefore, we will try in this research paper to first review the direct historical roots of the relationship between confessions and the State as it was established in the Ottoman era, and then explain the fundamental modifications introduced by the French Mandate, to determine what is meant by the civil nature of the Lebanese State despite any imperfection arising from post-independence laws.

Although the relationship between the State and religious denominations is not limited to personal status, but is reflected in what is known as political sectarianism, i.e. the need to secure a representation of confessions in key public constitutional and administrative institutions, this paper will only address sectarian personal status laws which will hold true to the nature of the Lebanese State.

The political representation of religious denominations has always been subject to amendments approved by key political figures, this representation has clearly evolved in line with the evolution of the constitutional life in Lebanon. Since the independence, the need to abolish political sectarianism took over the political discourse. However, abolishing sectarian personal status laws was not equally acclaimed which might imply that preserving the personal status of religious denominations is a fixed untouchable principle. This is precisely what this research paper will attempt to dissect yet prove inaccurate.

## THE OTTOMAN MILLET SYSTEM OR THE LEGAL ESTABLISHMENT OF RELIGIOUS DENOMINATIONS

During the second half of the XIX century, the Ottoman Empire launched a comprehensive modernization plan known as the Tanzimat, which mainly aimed at developing the Ottoman economy at various levels, and enacting a modern legal system that would protect the interests of foreign merchants and Western countries.

The European legislative model, especially the French, was the main source of inspiration for the Ottoman Empire. The main drive was that the Ottoman leadership felt that to save the State from disintegration and collapse reforms emulating the Western view of human rights and equality between individuals are a must. This was evident in the firman issued by Sultan Abd al-Majid I on February 18, 1856, known as the Humayun script, which guaranteed religious freedoms and equality between the various subjects of the State. It read as follows:

“Concrete measures are required to protect the followers of a given confession, regardless of their number, and to safeguard their freedom of belief. Shall be erased and permanently removed from the diwan papers, all expressions, words and discrepancies that suggest the inferiority of any non-Sunni sultanate subject on the grounds of sect, language or nationality. Subjects of the sultan or public officers shall not use any defamatory, disgraceful or improper designation or label. Every confession shall

exercise its religion freely in the Sultanate. Subjects of the Shahan kingdoms (ottomans lands) shall not be prevented from carrying out the duties of their religion nor would be caused injustice or harm, or forced to renounce to their religion or confession.<sup>1</sup>”

The firman declares equal acceptance of all Ottomans in public jobs without any difference or discrimination. The same shall apply to taxes, because “the taxes due by all subjects under my august authority are payable by all inconspicuously of class or religious denomination.<sup>2</sup>”

Not only did the firman declare equality, but rather affirmed the rights of confessions to manage their own affairs. It read as follows: “the spiritual privileges and welfare bestowed by my great-grandfathers or endowed in recent years upon Christians and non-Muslim followers living in our shahan velāyāt, shall be endorsed and maintained”<sup>3</sup>.

Firman 1856 reflects the tension that the Lebanese State will endure since 1920. On the one hand, the firman embedded the concept of citizenship in its western sense and the consequent necessity of establishing a legal system based on equality and individual freedom. And on the other hand, it declared its firm support to the privileges of religious denominations in terms of independent personal status laws and courts vis-à-vis the central state. Citizenship, according to the modern liberal understanding arising from the French Revolution, cannot in any way authorize special legislations to apply to different categories of citizens.

But the said reform-oriented firman will go beyond this general position that recognizes the rights of confessions to manage their internal affairs. Rather, it will impose, in line with the philosophy of the “tanzimat” that support the central authority of the state, the administrative organization of confessions within what has become known as the millet system. Thus, the Ottoman Sultan will, over the years, issue specific legislations for each confession, on how to elect its spiritual leader and designate his powers, or establish mixed councils consisting of clerics and laymen in order to ensure the interests of the confessions and represent it before public administrations. We can mention, for example, the Protestant regulation issued in 1850, that is, even before the firman of reforms, which made Protestants the first confession in the region in the modern sense of the word. This was followed by the special

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<sup>1</sup> Al-Dustour, translated from Turkish into Arabic by Nawfal Effendi Nematullah Nawfal, Volume I, Literary Press, Beirut, 1301 (1883), p. 7.

<sup>2</sup> Op. Cit, p.9.

<sup>3</sup> Op. Cit, p.5.

legislations for the Roman Patriarchate between 1860 and 1862, then the Armenian Orthodox in 1863 and the Jews in 1865<sup>4</sup>.

As a result of the foregoing, the Ottoman Empire's relationship with religious denominations during the Tanzimat period can be pictured as follows:

- Increased State intervention to enact positive legislations to recognize and organize religious denominations administratively.
- Recognition of non-Muslim denominations, namely Christians and Jews, since the Ottoman Empire, which is officially Hanafi Sunni, had refused to recognize the existence of non-Sunni Islamic denominations such as Shiites, Alawites and Ismailis.
- Recognition did not include all Christian denominations, as some were excluded from the millet system, namely the Maronites, who were always considered independent; the Maronite patriarch would never, upon his election, require a confirmation patent from the Ottoman Sultan.

Not recognizing the confessions' personal status did not prevent the Ottoman Empire from politically recognizing them and accepting their representation in certain administrative bodies. Mount Lebanon came to know the idea of officially representing confessions for the first time under the two *Qaemaqams* (1842-1858), which divided the mountain into a northern province administered by a Maronite *qaemaqam*, and a southern province administered by a Druze *kaymakam*. Each *qaemaqam* would be supported by a council composed of representatives of the following confessions: Maronite, Greek Orthodox, Roman Catholic, Sunni, Druze and Shiite. The political representation of the religious confessions was enshrined in the Mount Lebanon *Mutasarrifate*, especially in the Basic Law of 1864, which Article 2 provided for the establishment of a "Grand administrative council" consisting of 12 members distributed among the confessions (4 Maronites, 3 Druze, 2 Greek Orthodox, one Catholic, one Sunni and one Shiite).

The reforms peak is the Ottoman Constitution enacted in 1876 at the early days of the reign of Sultan Abdul Hamid II. The first articles thereof embodied the main contradictions of the modern Ottoman

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<sup>4</sup> On the legislations related to organizing the different religious denominations recognized in the Ottoman Sultanate, refer to: George Young, *Corps de Droit Ottoman*, Volume II, Oxford, 1905. Translation into Arabic of the rules applicable to the Roman Patriarch, the Armenian Patriarch and Judaism rules in volume II of the *Doustour* op.cit.

State. Article 8 defined the principle of citizenship as follows: “The title of Ottoman is endowed upon every Ottoman citizen, without any exception on the grounds of religion or denomination...”<sup>5</sup> Article 9 stipulates that “all Ottomans shall enjoy their personal freedom and shall not infringe upon the rights of others”<sup>6</sup>. In addition to these articles related to the rights of citizens, Article 11 of the Constitution protected the millet system: “Islam shall be the religion of the Ottoman State. All religions known in the Ottoman kingdoms may, on the grounds herein and without prejudice to common decency, freely exercise worship under the protection of the State, and maintain the privileges granted thereto.”<sup>7</sup>

Salim Baz explains the jurisdiction of courts or spiritual councils at that time saying that their powers would include “cases arising from purely doctrinal matters such as marriage, divorce or similar disputes that occur between non-Muslims as well as civil disputes arising from doctrinal issues, as determined in the relevant laws namely the regulations granted by the sultan’s grace to the Roman, Armenian and Jewish denominations. According to these regulations, spiritual councils shall examine cases arising from wills, endowments - the revenues, expenses or the mismanagement of the same - and the cases arising from dowry”<sup>8</sup>.

The central authority would not only interfere in the administrative organization of the confessions or the recognition of their spiritual courts. It would go as far as passing legislations that eventually led to an increased secularization of the Ottoman legal system. In the year 1879 a new law was issued to establish “regular courts” as a judicial authority meant to settle civil and criminal disputes in pursuance of the modern legislations adopted in the second half of the nineteenth century. As a result, the powers of traditional courts, which used to rule according to Hanafi jurisprudence was curtailed. All issues related to contracts, trade and penalties were no longer the jurisdiction of the Sharia courts, whose role was gradually restricted to the personal status of Muslims.

The centralized tendency peaked with the Union and Progress party, and its ultra-nationalist Turkish tendency, in 1909, following the toppling of Sultan Abdul Hamid. On October 25, 1917, Sultan Muhammad Rashad issued the Family Rights Law, a combined legislation for all Ottomans, with some exceptional provisions for Christians and Jews. Article 156 stipulated the following: “Shall be canceled

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<sup>5</sup> Basic Law, published by Al Ijtihad press owner, p.9, (not dated)

<sup>6</sup> Op. cit.

<sup>7</sup> Op. cit., pp. 7-8.

<sup>8</sup> Salim bin Rostom Baz, the Lebanese, Explanation of the Temporary Law of Human Rights Trials, Literary Press, Beirut, 1895, p. 110-111.

the judicial rights entrusted with spiritual leaders regarding the marriage contract, its annulment, and the maintenance of wives, dowry, and financial settlements arising therefrom.”

Thus, the Ottoman Empire, only a year before its final withdrawal from Lebanon and Syria, had, through the Family Rights Law, unified the judicial reference for all its citizens regardless of their confession, and subjected them to a single legislation regarding their personal status. However, with the defeat of the Ottomans by the Allies in September 1918, and the upcoming French mandate, Lebanon will be exposed to a new type of relationship between the State and confessions.

## THE FIRST STEPS TO THE RECOGNITION OF CONFESSIONS ON AN EQUAL FOOTING

The establishment of Greater Lebanon on September 1, 1920, under the French mandate, imposed a new type of relationship between the State and confessions. Lebanon, with its new, expanded borders, not only became a multi-confessional entity, but this diversity was demographically balanced, so that the proportion of Christians in the total population was almost similar to the proportion of Muslims<sup>9</sup>. Therefore, the French authorities had to find a formula that would respect this pluralism while preserving equality between confessions in their legal relationship with the Lebanese State.

From this point of view, we understand why the ruler of the State of Greater Lebanon “Trabaud” issued Decision No. 1003 on December 7, 1921, which abolished Article 156 of the Ottoman Family Rights Law. Article 2 would stipulate the following: “Every judgment issued by non-Muslim religious courts preceding the present decision and that used to be under its jurisdiction prior to the law dated October 25, 1333 (1917), shall be implemented in accordance with the provisions of the Procedures Law.”<sup>10</sup> This decision has not only restored spiritual courts, but also considered that all judgments issued thereby shall remain valid even if they were issued at a time where these courts were rescinded pursuant to Article 156 of the Family Rights Law.

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<sup>9</sup> According to the official census that took place in 1921, Christians constituted 55.12% of the total population, while Muslims constituted 44.87%. These percentages changed in the 1932 census, the last official census known to Lebanon, where the percentage of Christians became 50.73% and the percentage of Muslims became 49.26% of the total population. To see the detailed figures for the major confessions in the 1921 census and the 1932 census, cf: Meir Zamir, *The formation of modern Lebanon*, Cornell University Press, Ithaca and London, 1988, p. 98.

<sup>10</sup> Collection of Decisions for the State of Greater Lebanon, between September 1, 1920 and December 31, 1923, Al-Adab Press, Beirut, 1925, p. 99.

The restoration of the powers of the spiritual courts constituted a preemptive step for the principles proclaimed by the Mandate deed after it was approved by the Council of the League of Nations on July 24, 1922<sup>11</sup>. Article VI stipulated France's duties in this field as follows: "The Mandatory State in Syria and Lebanon shall establish a judicial system that fully safeguards the rights of foreigners and nationals, and also guarantees to residents, regardless of their confessions, the respect of their personal status and religious interests. The Mandatory State shall, in particular, monitor the management of endowments (waqf) in accordance with what is required by religious laws and the will of the endowment holders<sup>12</sup>. Thus, we note that respect for the sectarian personal status law was an imperative imposed, at the time, by international law on the Mandate authorities, not only in Lebanon but in all the countries that France had created in the Syrian regions<sup>13</sup>.

One of the first steps taken under the French Mandate was to expand the official recognition of Muslim denominations to include the Alawite and Shi'a. The French Governor of the State of the Alawites issued Decision No. 623 on September 19, 1922, enabling the implementation of religious Alawite legislations, while at the same time preventing the Sunni Sharia courts from examining matters that fall within the jurisdiction of the Alawi courts.

In Lebanon, the Jaafaris were also recognized by virtue of the decision issued by the Governor of the State of Greater Lebanon "Cayla" No. 3503<sup>14</sup> of January 17, 1926. Article 1 stipulated the following: "Shiite Muslims in Greater Lebanon constitute an independent religious denomination, their personal status matters shall be tried according to the provisions of the doctrine known as the Jaafari doctrine". The following articles determined the powers of Shiite judges in the governorates and the means of appeal before a special cassation court<sup>15</sup> composed of Shiite judges, having its headquarters in Beirut.

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<sup>11</sup> The Mandate deed officially entered into force on September 29, 1923.

<sup>12</sup> The full text of the Mandate Deed was published in the Official Gazette of the State of Greater Lebanon on October 19, 1923, No. 1706.

<sup>13</sup> The state of Damascus, the state of Aleppo, the state of Jabal al-Druze, and the state of the Alawites. Later, pursuant to Decision No. 2980 dated December 5, 1924, the state of Damascus and the state of Aleppo will be joined into one State known as the State of Syria.

<sup>14</sup> <http://www.legallaw.ul.edu.lb/LawView.aspx?opt=view&LawID=172922>

<sup>15</sup> The Representative Council had discussed during the January 25, 1926 session, the draft Decision recognizing the Jaafari doctrine before it was officially issued. It was amended during the discussion so that the word "Muslims" was added before "the Shiites" upon the request of MP Subhi Haidar. The deputy of the south, Habib Nassif, declared that the Shiites "do not have access to jobs equally to other denominations, so I ask the Council to establish a relevant Court of Cassation," while Representative Petro Trad rejected the position, saying that "the objection to a Shiite court of cassation is not an infringement upon the honorable Shiite community, but is a burden on the budget that can be

These Muslim confessions won for the first time the State recognition of their religious legislations after centuries during which these laws were implemented informally. The followers of these confessions used to resort to local religious scholars for arbitration instead of seeking remedy before the Ottoman Empire Sharia courts, which only recognized the Hanafi Sunni school.

It is worth mentioning here that this official recognition of the Shiite community in Lebanon was preceded by the political recognition of the same. The presence of representatives of the Shiite community was established in the administrative committee<sup>16</sup> appointed in 1920, as well as in the representative council<sup>17</sup> elected in 1922, when they were given five out of the thirty seats that were designated for confessions.

The recognition of the personal status of non-Sunni Muslim confessions was accompanied by a serious attempt from the Mandate authorities to reduce the powers of the various religious courts and to enhance the powers of the civil courts. On April 28, 1926, the French High Commissioner issued Decision No. 261, Article 1 of which stipulated the following: “In all mandated countries, ordinary courts shall examine the litigations that were the competence of personal status judges, with the sole exception of affairs that are expressly the jurisdiction of these judges pursuant to this decision”. Article 2 on the other hand, defines the exclusive jurisdiction of religious courts as follows: “Personal status judges shall have authority over the following issues related to the status of marriage: the marriage contract, the annulment of marriage, the dissolution of the marriage bond (separation, divorce), and alimony between the spouses.”

Not only did this decision limit the powers of religious courts, entrusting the issues of inheritance, custody and wills with ordinary courts, but also laid down in Article 4 of the same, the general principle that is still in force today namely: “In a marital status lawsuit, the competent personal status judge shall be the judge of the religious authority before which the marriage was contracted.” In other terms, one of the spouses embracing a different denomination shall have no effect on the other spouse, since the competent court remains the one that contracted the marriage.

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mitigated by adding a Shiite judge to the Sharia Court of Cassation.” For more details about the political background recognizing the Jaafari denomination and the debate arising on the matter, ref: Max Weiss, *In the Shadow of Sectarianism: Law, Shi'ism, and the Making of Modern Lebanon*, Harvard University Press, 2010, Chapter 3.

<sup>16</sup> Ref. Article 6 of the High Commissioner decision No 336 dated September 1, 1920

<sup>17</sup> Ref. Article 2 of the Governor of Great Lebanon decision No 1545 dated April 1, 1922.

This decision will raise a wave of objection, the authorities refusing to jeopardize the powers of religious courts. This objection will recur before any attempt of the French mandate to curtail the authority of sectarian personal status references. On June 30, 1926, President Charles Debbas, issued issue Decree No. 102<sup>18</sup>, which stipulated in Article 1 the following: “The implementation of Decision 261 amending the jurisdiction of Sharia courts and spiritual councils dated April 28, 1926 shall be suspended for an indefinite period.” Edmond Rabat remarks in 1928 that Decision 261 did not get the attention it deserved “the irrational national circumstances and protests against a reform that tends towards a desirable secularization, and some objections of a technical nature, have resulted in a Decision that suspended its implementation, save for the Alawites state, where there was no resistance<sup>19</sup>.”

The Lebanese Constitution, approved on May 23, 1926, provides for equality among confessions and maintains the autonomy thereof. Article 9 of the Constitution stipulates: “Freedom of belief is absolute, and the State, by showing respect for God Almighty, shall respect all religions and confessions, and guarantee the freedom to perform religious rites under its protection, with due respect of public order. The State shall guarantee to its inhabitants, all categories combined, the respect of personal status and religious interests”.

On May 20, 1926, the Representative Council approved this article, the reporter of the committee that drafted the principles of the constitution, Chebel Dammous, answered an important point related to the nature of the Lebanese State. The minutes of the meeting, read as follows:

“Al-Khazen: What does it mean that it shall also guarantee to its inhabitants the respect of personal status ...?”

Damous: This is meant to support Article VI of the Mandate Deed. Since confessions for 600 years used to practice their personal status system, the League of Nations and this Constitution have reflected this freedom.

Munther: And what does it mean that “the State by showing respect for God Almighty”?

Dammus: A State is a group of religions, all of which are a minority, and it does not belong to any of them, but it is "not religious" and rather respects everyone.

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<sup>18</sup> <http://www.legallaw.ul.edu.lb/LawView.aspx?opt=view&LawID=173090>

<sup>19</sup> Edmond Rabat, *Syria's Political Development under the Mandate*, translated by Suleiman Riachi, Arab Center for Research and Policy Studies, Beirut, 2020, p. 230.

Equality between confessions means that the State does not adopt an official doctrine, and therefore does not aim to elevate one faith at the expense of other faiths, and does not grant any religion legal privileges that would make it superior to other religions. Thus, the difference is evident between the spirit of the Lebanese constitution and the Syrian constitution issued by the High Commissioner on May 14, 1930, as Article 3 stipulates the following: “Syria is a representative republic, the religion of its president shall be the religion of Islam, and its capital shall be the city of Damascus<sup>20</sup>.” Lebanon's balanced sectarian composition required not only the recognition of this pluralism, but also guaranteeing equality between all confessions in their legal relationship with the state.

Edmond Rabat explains this point, saying: “Regarding the State of Syria, which was established to include in its borders a Muslim (Sunni) majority, the State remained Muslim and practiced Islam (...), it is noticed at present that the two conditions inherent to the state’s religion - practice and spending - are fulfilled in the State of Syria<sup>21</sup> . Thus, Lebanon’s Constitution today, unlike Arab countries, has remained devoid of any reference to the official religion of the State or the religion of the head of the State, or to a text that considers the Islamic Sharia as a source of legislation which means that positive laws may not conflict with its provisions.

The subsequent important development related to personal status occurred when Emile Eddé became prime minister in 1929. Emile Eddé, when granted confidence before the House of Representatives, has asked to be given exceptional powers that entitle him to issue legislative decrees. This was the first time in Lebanon that Parliament delegates the government the authority to issue legislative decrees, as this was done in accordance with the law issued on December 26, 1929.

The ministerial statement read on November 22, 1929 included a paragraph on the government’s strategy on personal status: “The law that is particularly urgently needed is the law on reforming the personal status (...) amendment is mainly intended to no longer subjecting Christians to the jurisdiction of the Sharia courts. As for Muslim litigants their situation remains unchanged, and the personal status courts remain competent”.

Sharia courts, which rule according to the Hanafi jurisprudence - the common law prevailing since the Ottoman era - sometimes examined some cases related to Christians. Therefore, it was necessary that

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<sup>20</sup> The Constitution of the State of Syria was published in the Official Bulletin of the Administrative Work of the High Commissioner on June 15, 1930, No. 11

<sup>21</sup> Edmond Rabat; Op. Cit., p.251.

Sharia courts are no longer competent in these matters, in pursuance of the principle of equality between confessions. The Rapporteur of the Parliamentary Committee scrutinizing the ministerial statement of Emile Eddé's government explained this point during the December 16, 1929 session, saying: "The wording of the statement may be erroneous, as it reads "no longer subjecting Christians to the jurisdiction of the Sharia courts"... It is known that Sharia courts are not competent to examine the personal status of Christians. Sharia courts used to exclusively examine civil affairs related to minors, wills, inheritance, the division of inheritance, and custody, for Muslims and Christians alike. We believe that the government meant to say that these matters shall not longer be the competence of Sharia courts".

Indeed, Legislative Decree No. 6<sup>22</sup> on the judicial organization was issued on February 3, 1930. Article 33 included provisions related to the personal status of confessions: "The Court of First Instance shall be competent in all disputes that have so far been within the jurisdiction of Sharia or confessional courts, with the exception of disputes that are the competence of these courts in accordance with this legislative decree." That is, the topics that are not exclusively enumerated in this legislative decree are ipso facto outside the jurisdiction of the Shari'a courts and become the prerogatives of the ordinary courts for Christians. Article 34 enumerates the matters that fall within the jurisdiction of the Christian judge as follows: engagement, marriage, nullity or dissolution of marriage, filiation, custody, alimony, dowry and irrevocable divorce, appointment of a guardian and some points related to endowments.

Article 38 of this legislative decree sustained the Islamic courts, declaring that their powers would not be jeopardized: "Islamic and Druze personal status courts retain their current authority in view of Muslim and Druze litigants."<sup>23</sup>

This legislative decree triggered the objection of the Christian clergy, as it "benefited non-Christians, and caused prejudice to Christians who, being the majority, had barely nothing left of their doctrinal law articles, narrowing the power of the Christian confessional courts and expanding the competence of Muslim Doctrinal Courts"<sup>24</sup>. Peter Hobeika, principal of St. Peter's School in Baskinta, says that justice

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<sup>22</sup> <http://www.legallaw.ul.edu.lb/LawView.aspx?opt=view&LawID=176830>

<sup>23</sup> This article was amended by a law issued on December 9, 1930 as follows: "Sunni and Shiite personal status courts retain their present jurisdiction over litigants from the same religious denomination - and the Druze courts shall have the same jurisdiction over their followers." It is noted that this new text does not differ from a legal point of view from the old text, but merely deletes the word "Islamic" so that it no longer reads that the Druze are not considered Muslims.

<sup>24</sup> Archbishop Boutros Hobeika, *Personal Status in the Lebanese Republic, Doctrinal and Social Legal Research*, Catholic Press, Beirut, 1931, p. 19.

means equality between all confessions and that Christian courts are endowed the same powers entrusted with Muslim courts. “How can the good governance of the same French State, which was our protector before becoming our Mandator, narrow down the jurisdiction of our confessional courts?”<sup>25</sup>.

According to the same writer, the Roman Catholic Patriarch Cyril IX Al-Maghab sent a letter to the President of the Republic, Charles Debbas, asking him to amend Legislative Decree No. 6 “because it humiliates the Christian authority”<sup>26</sup>. Hobeika refers back to 1926, recalling the objection of Christian religious authorities to the High Commissioner’s Decision No. 261, saying these issues may not be tackled “without prior agreement with the spiritual authorities that are more knowledgeable of their legislation compared with civilian legislators”<sup>27</sup>. A recurring situation indeed, since, until today, the sectarian authorities claim that the State shall agree with them if it wants to amend the personal status legislations.

In any case, the opposition of Christian religious authorities did not put the political authority to its knees. Rather, the aforementioned legislative decree remained in force<sup>28</sup>, consecrating the state's right to determine the powers of confessions in the matters of personal status. But this confrontation between the State and the religious authorities will not be the last, but will rather become more severe and dangerous in the near future.

## DECISION 60 L.R. AND THE CONSOLIDATION OF THE PRINCIPLE OF THE SUPREMACY OF THE CIVIL STATE

Decision 60 L.R.<sup>29</sup> issued on March 13, 1936 by the French High Commissioner, Damien de Martel, is one of the most important decisions ever issued during the French Mandate. It still constitutes to this day the legal framework that fosters the relationship between the State and religious communities.

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<sup>25</sup> Op. Cit., p. 21.

<sup>26</sup> Op. Cit., p. 23.

<sup>27</sup> Archbishop Peter Hobeika, Personal Status in the Lebanese Republic, Part Two, in Response to Criticism, Catholic Press, Beirut, 1931, p. 16.

<sup>28</sup> For example, Decision No. 2 issued on January 21, 1931 by the Lebanese Court of Cassation, in which we can read regarding the distribution of inheritance among Christian heirs that the Sharia court, based on Legislative Decree No. 6, “shall no longer examine cases of discrimination because the litigants are non-Muslims.” Since the settlement of cases between Christians has become the jurisdiction of the regular courts (...) and since it has been stipulated in Article 38 of Legislative Decree No. 6 that the jurisdiction of Islamic courts has become limited to Muslim litigants.” To view the full decision: Judicial Journal, Year Thirteenth, May 1933, No. 5, p. 248.

<sup>29</sup> <http://www.legallaw.ul.edu.lb/LawView.aspx?opt=view&LawID=183853>

In order to understand the spirit of this decision, it is necessary to return to the preparatory memorandum of Philip Genardi, Inspector General of Awqaf, on June 7, 1934, based on the directives of the High Commissioner whereby the nature of the civil state and its relation with confessions is obvious. If the goal of the decision is to secure equality between confessions and respect their internal independence, the civil authorities must also “reserve the right to examine and interfere in the legal recognition of these confessions and groupings, and in approving and implementing their internal organization.” As for the privileges of confessions, the memorandum stresses the need to “eliminate everything that obstructs public authority, especially in the political, administrative or fiscal fields.” Finally, this memorandum concludes that in defining the relationship between the State and confessions, “the sovereignty of the civil authority must be the basic rule, and shall therefore preclude any jeopardizing provision made by sectarian organizations<sup>30</sup>.”

The main principles embodied in this Decision can be summarized in the following points:

- Religious denominations that the decision defines as "historical confessions" cannot legally apply their personal status to their followers except after the State recognition of their rules, provided that this is done by a legislative instrument, namely a law approved by the House of Representatives. Appended to the decision is a list of the recognized historical confessions, that is subject to amendment<sup>31</sup>.
- The historical confessions must submit to the governmental authority the rules governing their teachings, courts, and personal status legislations and specifying how their spiritual leaders are appointed and the applicable hierarchy. These rules shall be approved by the law “provided they do not include a text contrary to public security, morals, the constitutions of countries and confessions or the provisions of the present Decision” (Article 5).
- Article 11 maintains the freedom of belief, as it states: “Anyone having attained the age of majority and having his full mental faculties may leave or embrace any confession that has a recognized personal system...”. The rights of confessions do not negate the rights of individuals who enjoy complete freedom in their relationship with those confessions.

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<sup>30</sup> The Arabic translation of this note is published in: Talal Al-Husseini, *Civil Marriage, Right and Contract on Lebanese Territory*, Dar Al-Saqi, Beirut, 2013, pp. 59-62.

<sup>31</sup> For example, Decision 146 dated November 18, 1938, amended this regulation and the Protestant denomination was added, only to become one of the recognized historical confessions, and it has the right, in turn, to apply its personal status laws to its followers.

- In addition to the historical confessions, the decision shall allow for the establishment of confessions affiliated with ordinary law, so that citizens may file before the government authority a request that includes their religious teachings, provided that they are also recognized by the law.
- The personal status of the denominations belonging to the ordinary law shall be subject to the civil law.
- The Decision recognizes the existence of Lebanese who do not belong to any confession, provided that their personal status is also subject to the civil law.

Decision 60 L.R. confirmed the State sovereignty in its relationship with the historical confessions that shall only exist by law upon the State's recognition thereof; and although they are free to determine their personal status, this does not become effective unless it is accompanied by a ratification from the legislator who makes sure that these rules do not contradict the State Constitution.

The decision also stems from a traditional liberal principle, whereby the individual takes precedence over the group to which he/she belongs. The individual exercises the freedom to move from one historical confession to another, and has the right to establish a new confession that is one of the confessions of ordinary Law, i.e., he/she can adopt a new set of religious beliefs and moral principles that are not upheld by the historical confessions. He/she has the right not to belong to any confession, knowing that this does not necessarily mean that an individual does not believe in any religion. Belonging to a particular religion is different from declaring one's affiliation, as an individual can embrace in his/her private life the principles of one of the religions, but at the same time refuse to openly declare this belief or regulate his/her relationship with the state through the confession of which he/she is a follower. For the State, sectarian affiliation is purely administrative, and does not concern an individual's belief or his moral premises, the correctness of his actions, and whether they are consistent with the teachings of his religion, which reflects one of the most important pillars of the civil state, i.e. the latter's neutrality and lack of preference for a particular belief at the expense of other beliefs.

The delegate of the High Commissioner "Laffond" sent an explanatory memorandum to President Emile Edde, on January 11, 1937, regarding confessions with common rights (i.e., the ordinary right). It read "the civil status records reflect, before government authorities, the confession to which a Syrian or

a Lebanese belongs as well as the applicable legal personal status”, meaning that sectarian affiliation with the State is only an administrative matter. The memorandum adds that the ordinary right confessions consist of the Lebanese "who have entered their names in the civil status records as members of the new confessions, and these records mean that they are subject in terms of their personal status to the civil legal system"<sup>32</sup>. This is an explicit text stating that those who decide to establish a confession affiliated with the ordinary law have the right to register at the Civil Status Departments as followers of this new confession.

Decision 60 L.R., upon its issuing, did not trigger any upheaval. Problems however started in Damascus in 1939, when the High Commissioner asked the Syrian government to implement it. The latter agreed “hoping that this progress would be a step forward towards modern development akin of modern States, and towards earning public trust which the previous government failed to achieve<sup>33</sup>. Some of the opponents of the Syrian government have exploited this issue in order to achieve political gains, "they provoked public opinion accusing the government of adopting a regime contrary to the true religion"<sup>34</sup>. People took to the streets in most of the Syrian cities and the Association of Scholars in Damascus ferociously contested the content of the decision. To remedy the situation, a higher committee was formed to study the new sectarian system, consisting of senior Islamic religious authorities. It concluded by adopting a number of points, most notably: “Muslims are the majority in the country, they may not be treated similarly to any minority. It is not permissible to give Muslims the freedom to leave their religion or embrace another religion otherwise he/she shall deserve to die. Islam authorizes the marriage of a Muslim man to a non-Muslim woman, but forbids the marriage of a Muslim woman to a non-Muslim man<sup>35</sup>.”

Thus, the Mandate authorities decided to step back. On March 30, 1939, the High Commissioner issued Decision No. 53/L.R. annulling the implementation of decision 60/L.R. on Muslims.

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<sup>32</sup> The memorandum was published in the Judicial Journal, Seventeenth Year, September and October 1937, Issue No 9-10, p. 567-570.

<sup>33</sup> Youssef Al-Hakim, *Syria under the French Mandate*, Dar Al-Nahar Publishing, Beirut, 1991, p. 287.

<sup>34</sup> Op. Cit.

<sup>35</sup> Op. Cit., p. 289.

## THE LEGAL REPERCUSSIONS OF DECISION 60 L.R.

What were the repercussions of suspending the enforcement of Decision 60 L.R. for Muslims? How is this reflected in the latter's legal relationship with the Lebanese State?

The first point is related to the individual freedom guaranteed by the aforementioned Decision, as it allows the Lebanese to change their religion by moving from one historical confession to another. Does excluding Muslims from the Decision mean depriving citizens who administratively belong to Islam from changing their sectarian affiliation?

In fact, Decision 60 L.R. was not the first legal text to address the changing of religion. It is true that this decision clearly enshrined this point and fell within a general legislation related to the sectarian system, but Article 45 of Decision No. 2851 dated 12/1/1924<sup>36</sup> of the Governor of the State of Greater Lebanon regarding the organization and registration of personal status documents dealt with the issue of changing religion, as he authorized it and considered it purely administrative. He only required that those who wish to change their religion should be alone with a cleric from the confession he/she wishes to leave. If he/she insists on the request, a request is sent to the Civil Status Office for registration amendment.

Thus, it becomes clear that changing the religion was applicable before Decision 60 LR. even if it was accidentally mentioned in a text related to the registration of personal status documents. Suspending the enforcement of the decision for Muslims does not affect Article 45 of Decision No. 2851. Even if we suppose that in the event of a conflict between two texts, the subsequent text shall prevail, we note that in 1951<sup>37</sup> a new law was issued regarding the registration of personal status documents. Article 41 thereof reads: "Every request to change one's confession or religion shall be sent to the Civil Status Registry for amendment. This request must be supported by a certificate from the head of the confession or religion to be espoused and shall carry the applicant's signature. The civil registrar shall contact the person and if the latter insists on the request, the presence of two witnesses shall be required. Once the change is confirmed, a comment is added on the request itself and the registration is corrected." Therefore, the 1951 law, which is a general and comprehensive law for all Lebanese, has re-established the freedom to change religion, making the legal process a merely administrative procedure

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<sup>36</sup> <http://www.legallaw.ul.edu.lb/LawView.aspx?opt=view&LawID=172133>

<sup>37</sup> <http://www.legallaw.ul.edu.lb/LawView.aspx?opt=view&LawID=197742>

so that the role of the state is limited to ensuring the freedom of religion of an individual who intends to change his/her religion and reflect the change in the official records.

Another problem arising from the suspension of Decision 60 L.R. is the civil marriage of a Lebanese abroad. Article 25 of the decision stipulates: "If a marriage is concluded in a foreign country between a Syrian and a Lebanese or between a Syrian or a Lebanese and a foreigner, it shall be considered valid if celebrated according to the practices applicable in that foreign country. If the personal status law of the spouse does not accept the marriage, nor its effects, as it results from the law of marriage, marriage shall be governed by the civil law in Syria and Lebanon". It is the text governing the civil marriage of a Lebanese contracted abroad.

If this text applies to Christians and to civil mixed marriages abroad and is recognized by the Lebanese State, it does not however apply to civil marriages concluded abroad between Muslims belonging to the same confession. Article 18 of the Law<sup>38</sup> regulating the Sunni and Jaafari Shari'a Law issued on 7/16/1962 enshrined this exception, stipulating that Shari'a courts shall be prohibited from "examining the said cases and contracts for non-Lebanese Muslims in the countries where personal status is governed by the civil law unless one of the spouses is Lebanese, in which case the aforementioned lawsuits, transactions, and endowment issues, remain subject to the jurisdiction of the Sharia courts". Article 79 of the new Code of Civil Procedure issued in 1983 reiterated this exception for Muslims, stipulating the following: "Lebanese civil courts shall have jurisdiction over disputes arising from a marriage concluded in a foreign country between Lebanese citizens or between a Lebanese and a foreigner in the civil manner prescribed in the law of the country, and the provisions of the Sharia and Druze courts shall apply if both spouses are Muhammadans and at least one of them is Lebanese.

However, the most prominent difference that will be established by suspending the entry into force of the decision is the different legal relationship between the State and the Christian and Muslim confessions. Since the Ottoman era, Sharia courts have been part of the central apparatus of the State, which used to appoint judges, define their powers, and pay their salaries from the State treasury. This was not limited to the Sharia courts, but included the religious authorities that supervised the fatwas and religious institutions that were also appointed directly by the Ottoman Sultan. This situation continued during the French Mandate, and even expanded to include other Muslim confessions, while the matter

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<sup>38</sup> <http://www.legallaw.ul.edu.lb/LawView.aspx?opt=view&LawID=244292>

completely differed with the Christian confessions that were completely independent from the central apparatus of the state, as the courts of the latter are not part of the judicial system of the Lebanese state, and the Christian religious authorities (patriarchs, metropolitans and the clergy) are subject to their own system that defines their hierarchy and powers, which are matters derived from their beliefs and religious traditions.

Decision 60 L.R. by asking all historical confessions to submit the rules governing their courts and religious authorities, wanted basically to separate the Muslim confessions from the State similarly to the Christian confessions. Suspending the decision means continuing to consider the Islamic courts as part of the legal structure of the State, and confirming that the latter's intervention is necessary for the establishment of the religious authorities of Muslim confession. This will be done in stages, most notably:

- Granting the Sunni Mufti of Beirut the title of Mufti of the Republic under Decree No. 291<sup>39</sup> dated July 9, 1932.
- Legislative Decree No. 241 of November 4, 1942, on organizing the Sunni and Jaafari Sharia courts.
- Regulating the personal status of the Druze community by virtue of a law<sup>40</sup> issued on February 24, 1948.
- Legislative Decree No. 18 of November 13, 1955<sup>41</sup>, on the organization of the Sunni community, the election of the Mufti of the Republic, and the powers of the Supreme Islamic Sharia Council.
- Organizing the Druze sectarian judiciary in accordance with the law enforced under Decree No. 3473<sup>42</sup> of March 5, 1960, and determining the method for electing the Sheikh Akl of the Druze community and his powers according to the law<sup>43</sup> issued on July 13, 1962.
- Law No. 72<sup>44</sup> dated December 19, 1967, related to organizing the affairs of the Shiite community in Lebanon, establishing the Supreme Shiite Islamic Council and defining its powers and the method of electing its members<sup>45</sup>.

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<sup>39</sup> <http://www.legallaw.ul.edu.lb/LawView.aspx?opt=view&LawID=179076>

<sup>40</sup> <http://www.legallaw.ul.edu.lb/LawView.aspx?opt=view&LawID=258196>

<sup>41</sup> <http://www.legallaw.ul.edu.lb/LawView.aspx?opt=view&LawID=244319>

<sup>42</sup> <http://www.legallaw.ul.edu.lb/LawView.aspx?opt=view&LawID=243879>

<sup>43</sup> <http://www.legallaw.ul.edu.lb/LawView.aspx?opt=view&LawID=180867>

- Organizing the affairs of the Alawite Islamic community in Lebanon according to Law<sup>46</sup> No. 449 dated August 17, 1995, and establishing and organizing the Alawite Ja`fari Courts according to Law<sup>47</sup> No. 450 also dated August 17, 1995.

The Islamic confessions, unlike the Christian ones, need the legislative intervention of the State in order to establish their courts and organize the bodies that supervise their interests. They are also administratively affiliated to the Presidency of the Council of Ministers, receive their financial allocations from the treasury, and have credits in the annual State budget<sup>48</sup>. It is noted here that this intervention happened over a long period of time and was subject to volatile political considerations, knowing that these texts were amended more than once.

It also turns out that recognizing an Islamic confession does not systemically result in the establishment of a relevant legal body. The Alawite confession was recognized by Decision 60 L.R. since 1936. However, it did not actually become independent and had its own courts until 1995, while the Ismaili sect, also recognized since 1936, remains, until today, without a legal framework that organizes its courts and runs its interests, due to the State's failure to approve the necessary legislation that guarantees its independence.

## EXPANDING THE POWERS OF SECTARIAN REFERENCES AFTER INDEPENDENCE

After Lebanon's independence in 1943, the political authority expanded the powers of sectarian authorities, whether by allowing Christian to enact their own regulations, or by removing the legislative character of the laws applicable to Muslims and allowing the latter to amend those laws without Parliament's review. This paragraph details the State legal mechanism that expands the powers given to confessions, while maintaining the right to restore or amend these powers.

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<sup>44</sup> <http://www.legallaw.ul.edu.lb/LawView.aspx?opt=view&LawID=166931>

<sup>45</sup> Michael Johnson is quoted saying that Imam Musa al-Sadr's establishment of the Supreme Shiite Council was encouraged by the Second Bureau (Army Intelligence) in order to limit the influence of the traditional Shiite leader Kamel al-Asaad, who is anti-Chahabi, and in order to prevent the increasing numbers of Shiites who migrated from the south to the suburbs of Beirut from engaging in the radical parties opposed to the Lebanese regime: Michael Johnson, *Class and Client in Beirut*, Ithaca Press, London and Atlantic Highlands, 1986, p. 149.

<sup>46</sup> <http://www.legallaw.ul.edu.lb/LawView.aspx?opt=view&LawID=185017>

<sup>47</sup> <http://www.legallaw.ul.edu.lb/LawView.aspx?opt=view&LawID=185015>

<sup>48</sup> It should also be noted that after the election of the Mufti of the Republic, the President of the Supreme Islamic Shiite Council and the President of the Supreme Council, the President of the Republic issues a decree validating the election.

Decision 60/L.R. imposed on the historical Christian confessions (because the decision was suspended in relation to the Islamic confessions) for recognition "to submit to the government, for revision, the rules drawn from the texts according to which the confessions shall be administered." Article 5 reads as follows: "The law governing the confessions shall be ratified by a legislative decision that makes it enforceable and includes recognition of the confession in accordance with the provisions of Article 1 herein, provided that it does not include a text contrary to public security, morals, constitutions, sectarian rules, or the provisions of the present Decision." The sectarian personal status systems do not become effective once they are approved by the religious authorities. Rather, they require legislative ratification, that is, their approval in the Chamber of deputies by virtue of a law.

As a result of the foregoing, it is evident that the legal power of the sectarian legislations stems from the approval of the Chamber of deputies, which formally retains exclusive legislative power. The Constitution in Lebanon established a single and central legislative authority, and did not grant the sectarian authorities the authority to enact personal status laws. Unlike the federal states where constitution explicitly distributes the legislative power between the federal authority and other members of the union, the Lebanese constitution does not specify the presence of an authority authorized to legislate in the name of each confession. In fact, the current constitution does not enumerate confessions in Lebanon, but rather leaves that to the legislative authority, which, as we have seen, recognized the historical confessions by virtue of the High Commissioner Decision 60 L.R., who under the French Mandate has legislative power. Any amendment of this decision shall now only be through the adoption of a law in the House of Representatives.

The exclusivity of the legislative power, which is enshrined in Article 16<sup>49</sup> of the Constitution, inevitably leads us to Article 9 of the Constitution, which declares that the State "also guarantees to the people of different confessions respect for the personal status system and religious interests". Is there a contradiction between Article 16 and Article 9 of the Lebanese Constitution? Did the Constitution, by recognizing sectarian personal statuses, establish auxiliary legislative powers alongside the House of Representatives?

Article 9 speaks only of respect for religious personal status, meaning that it does not speak of a specific authority, nor does it establish sectarian institutions that have legislative powers. The Constitution,

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<sup>49</sup> The legislative power shall be entrusted with one authority, Parliament.

when it enshrines the state's respect for sectarian personal status, is in fact addressing the Chamber of deputies and imposing thereon a clear constraint to ensure that its legislative authority does not lead to the abolition of the personal status of confessions. Article 9 of the Constitution refers to the content and not to the form of the legislation. In clearer terms, Article 9 does not grant sectarian authorities legislative powers, and it does not originally create those powers. Rather, it requires Parliament to respect the legislative content of sectarian personal status.

However, this constitutional exclusivity did not prevent the Chamber of deputies, for reasons unrelated to the law, from expanding the content of sectarian legislations and delegating its legislative powers to Christian and Islamic sectarian authorities. This was done following various methods that we must review for Christians and Jews first, and then for Muslims.

#### 1. Strengthening the Powers of the Christian and Jewish Communities

The main change for Christians and Jews after 1943 was the Law<sup>50</sup> “Determining the Powers of Doctrinal References for Christian and Israeli Communities,” which was promulgated on April 2, 1951, and significantly extended the competencies of these confessions to grant them the same powers as Islamic courts. This is what was expressly stated in the evaluation report of the Administration and Justice Committee. It read: “This bill gives confessional courts the powers granted by Legislative Decree No. 241 issued on November 4, 1942 amended by the law of December 4, 1946 for the Sunni and Ja`fari Shari’a courts with regard to marriage, its validity, annulment, filiation, the legality of children, adoption, alimony, guardianship of a minor, and other matters of personal status”.

Therefore, this law adopted a trend opposite to Legislative Decree No. 6 issued by the government of Emile Edde in 1930, which curtailed the powers of spiritual courts. The Beirut Bar Association strongly objected to this law, calling for its abolition, limiting the powers of the various confessional courts, and expanding the power of civil courts. The BBA escalated its protest, declaring an open strike, while the Christian and Jewish religious authorities insisted in a meeting held in Bkerke on January 24, 1952, on maintaining this law as a consecration of historical rights and century-old traditions. Prime Minister Sami Solh announced in a session of Parliament on February 21, 1952 that the government sought “to address this issue by finding a solution that satisfies everyone. Both Muslims and Christians are attached to the applicable laws and to the powers granted to confessional courts. Lawyers should not have

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<sup>50</sup> <http://www.legallaw.ul.edu.lb/LawView.aspx?opt=view&LawID=258197>

hurried to strike and we hope that they will end the strike, because we cannot remain silent, and we hope that the government will not be forced to take measures to put an end to this strike.”

The Bar Association's strike lasted for nearly three months, without the House of Representatives reversing its position. The opposition MP Abdullah Al-Hajj had alluded to the political goal that led President Bechara El-Khoury to agree to this law. He said in a session discussing the ministerial statement of the new government on February 19, 1952: “You undoubtedly know the power that clergy men have on the State. The lawyer’s strike is against the clergy men who benefited from corruption, exerted pressure on the rules and produced the Law of April 2, thirteen days only before the April 15 elections. This law is said to be contrary to parliamentary procedures and was manned by clerics’ power”. This is a clear reference to the general parliamentary elections that took place in 1951 on April 15, when the goal of the political authority was to win the religious authorities prior to the elections.

The Chamber of deputies voted this single article law, without much discussion. By reviewing the report of the Administration and Justice Committee, it was found that the religious authorities had expressed their opinion on the articles of this law before it was approved. For example, the report mentions that “upon the request of the representative of the Evangelical community, it was decided to replace the phrase “the Protestant community” with the phrase “the Evangelical community” because this label applies to all Protestant denominations in Lebanon.

The expansion of the powers of the spiritual courts was accompanied by an important development introduced by the Law of April 2, 1951 regarding the relationship between confessions and the State. Article 33 read the following: “The confessions covered by this law must submit to the government their personal status law and the law of procedures of their spiritual courts within a period of one year from the date of enforcement of the present law, to be recognized within six months, provided they are consistent with the general law and the basic laws of the State and confessions. The application of the present law on religious denominations that fail to abide by the provisions of the present Article shall be suspended.” In other words, the law has delegated to non-Muslims the powers to set their own legislation, granting them almost complete legal independence from the State.

However, Article 33 did not explicitly specify, in contrast with Decision 60/LR, how the government will recognize the rules that confessions will submit, that is, whether this must be done under a law approved by the Chamber of deputies or by a decree or decision issued by the government. But in any case, and despite the 1951 law granting wide powers to the Christian and Jewish confessions, namely

legislating in areas related to various aspects of personal status, it has nevertheless required, for these rules to apply, the approval of the government.

Indeed, the confessions included in the 1951 Law submitted their regulations to the government, but their recognition was not official, which prompted the Court of Cassation to issue a significant decision in 1965, reading: “Since personal status laws submitted within the designated timeframe, though not officially recognized yet, are not considered positive laws; the Court jurisprudence may consider them a set of internal rulings observed by confessions, which the courts can adopt as long as they do not violate the applicable positive laws and the principles of public order and as long as the official authorities have not taken any action to reverse them”<sup>51</sup>. There is no doubt that the decision to say that these regulations are considered valid "as long as the official authorities did not take any action to reverse them" is an explicit confirmation that they may be abolished by the State. The State Council also resolved this point in its decision, as it considered that it concluded from the laws “that the Lebanese legislator has authorized the recognized confessions to legislate in some of the areas of concern.” But he insisted that sectarian regulations need legislative ratification in order to become effective. He added explicitly that “the contested regulations were not approved by the legislator, and therefore are still not valid<sup>52</sup>.”

Thus, it becomes clear that the Laws that the Christians and Jews implement today have not been officially recognized by the State and are therefore either not approved as per the decision of the Shura Council, or are provisional pending a State official decision to recognize them.

## 2. Granting the Islamic sectarian authorities the powers to amend laws approved by the House of Representatives

After suspending the application of Decision 60/L.R. Muslims, alike Christians could no longer submit their rules to the State for recognition. Rather, the State had to regulate these denominations directly by issuing legislations that grant Muslims their institutions, courts, and administrative bodies. This is what happened gradually, with all Islamic denominations, save with the Ismailis, who remain without a legal framework regulating their internal affairs.

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<sup>51</sup> Civil Court of Cassation Decision No 6, dated April 2, 1965.

<http://www.legallaw.ul.edu.lb/RulingFile.aspx?RulID=61019&type=list>

<sup>52</sup> Decision No 426 dated 5/3/2014.

<http://www.legallaw.ul.edu.lb/RulingFile.aspx?RulID=83121&type=list>

The first Islamic denomination to be regulated was the Sunni confession according to Legislative Decree No. 18 dated 13/1/1955, which is considered the basic text specifying the administrative apparatus by which Sunnis manage their affairs. The first article of this legislative decree stipulates the following: “Sunni Muslims are completely independent in their religious affairs and charitable endowments. They enact their legislations and rules in due respect of the noble Sharia, the laws and regulations derived therefrom, through competent representatives in the ways set forth in the following articles.”

This legislative decree sparked widespread controversy in the Chamber of deputies, which formed a committee headed by Abdullah Al Yafi to study all the legislative decrees approved by the government. On May 13, 1955, the committee replied in the context of Legislative Decree No. 18, saying that “the government has exceeded its authority, or more correctly, it was not given the authority to legislate on this subject at all.” Therefore, the committee recommended that this decree is not ratified “and considered null the provisions and measures taken on the basis thereof.”<sup>53</sup> Prime Minister Sami Solh responded to the committee, saying that the government did not exceed the mandate entrusted thereby by the House of Representatives, saying, “The overwhelming majority in the Islamic community was happy with this legislative decree, implemented its provisions, and acclaimed the government for issuing it.”

But no one expected the State Council’s to abolish Legislative Decree No. 18, as it included provisions related to the organization of fatwas and endowments “without the legislative authority’s approval, which is invalid and a trespassing of jurisdiction as it is issued by a non-mandated person”<sup>54</sup> .

This decision triggered the condemnation of a large number of Sunni deputies, as it cancels all measures that had previously been taken pursuant to the aforementioned legislative decree that has been implemented since the moment of its issuance. In order to remedy the matter, the House of Representatives, upon the request of the new Prime Minister, Abdullah al-Yafi<sup>55</sup>, passed a single article law on May 28, 1956 which reads: “The Supreme Sharia Islamic Council may reconsider all the provisions of the legislative decree and introduce the amendments it deems necessary. Its decisions, fatwas, organizational decrees related to the religious community and the management of its endowments shall be self-executing, provided that they do not conflict with the provisions of laws

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<sup>53</sup> The report of the Committee was read before Parliament on May 26, 1955.

<sup>54</sup> Decision No 522 dated 9/11/1955

<http://www.legallaw.ul.edu.lb/RulingFile.aspx?RuliID=65956&type=list>

<sup>55</sup> <http://www.legallaw.ul.edu.lb/LawView.aspx?opt=view&LawID=175951>

related to public order. In other words, this law revived Legislative Decree No. 18, ratifying all the measures that were taken based on it, and it also granted Sunni authorities the power to amend the legislative decree without referring to the Chamber of deputies, which granted it a legislative mandate.

The Prime Minister added, "Muslims, led by the Supreme Islamic Council, and in agreement with PM Sami al-Solh approved the article. And if we agree to this article, then I think that the honorable council shall have no objection thereto as it puts an end to the current confusion."<sup>56</sup>

MP Hamid Franjeh protested saying that Parliament is hereby relinquishing its legislative powers. Sami al-Solh responded by saying: "The authority we ask for the Islamic Council shall be limited to fatwas and endowments. The other confessions have powers that organize their internal affairs and enable them to make the necessary amendments. Therefore, Muslims must have the same rights, this is all we ask for. We ask that the Supreme Sharia Islamic Council has privileges equally with other confessions; the matter has been thoroughly examined."

MP Maroun Kanaan ended the discussion by saying: "A simple question, does this law give the Supreme Islamic Council more powers than the powers given to other confessions? If not, and if the stakeholders agree, then discussion end here and the voting must be finalized." Discussion ended and the law was voted unanimously.

The Supreme Islamic Sharia Council will over the years, pursuant to this law<sup>57</sup>, amend Legislative Decree No. 18 more than once through decisions issued and published in the Official Gazette. The State<sup>58</sup> Council considered that these amendments stand as legislative texts and cannot be appealed. Irrespective the prohibition to appeal - the State Council considered that the legislative decrees issued by the government upon the mandate of the Chamber of deputies remain, prior to their ratification, administrative acts subject to appeal<sup>59</sup>, which was also supposed to apply to the decisions of the Supreme Islamic Sharia Council - we note that the authority of the Supreme Islamic Sharia Council

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<sup>56</sup> Parliament session dated April 17, 1956

<sup>57</sup> The State Council retracted its decision to annul the legislative decree after the promulgation of the Law on May 28, 1956, saying that the law "has approved the validity of Legislative Decree No. 18 which is now considered an enforceable law" (Decision No. 339 dated June 18, 1956).

<sup>58</sup> Decision No. 16 of 12/10/2006:

<http://www.legallaw.ul.edu.lb/RulingFile.aspx?RulID=74988&type=list>

<sup>59</sup> Decision No. 522 of November 9, 1955:

<http://www.legallaw.ul.edu.lb/RulingFile.aspx?RulID=53450&type=list>

stems from the law, which means that the Chamber of deputies has the right to amend it and withdraw this mandate if it decides to do so.

Regulating Muslims' affairs is not limited to the establishment of their own institutions and courts, but goes as far as defining the content applied by the relevant courts. Former Article 242 on Sunni and Jaafari Sharia courts issued under the Law dated 7/16/1962 stipulated the following: "The Sunni judge rulings shall be aligned with the Abu Hanifa school of thought, except in the cases stipulated in the Family Rights Law issued on Muharram 8, 1336 and October 25, 1933, so the Sunni judge applies the provisions of that law, and the Jaafari judge issues his ruling in accordance with the Jaafari school of thought in line with the provisions of the applicable family law. Therefore, the State, through its legislative authority, determines the nature of the texts applied by Islamic religious courts, though in general terms.

In 2011, the powers of the Supreme Islamic Sharia Council were expanded by amending Article 242 as follows: "The Sunni judge decisions shall be aligned with the provisions of the Supreme Islamic Sharia Council in the personal status of Sunni Muslims and the organization of religious community affairs (...) In the absence of any text, the Sunni judge shall refer to the Ottoman Family Rights Law issued on October 25, 1917, otherwise he shall rule according to the school of Imam Abu Hanifa and the relevant provisions of the family law".

This article is of paramount importance as it reveals the nature of the relationship between the State and confessions. This amendment granted the Supreme Islamic Sharia Council the power to legislate texts that a judge must implement. The Supreme Islamic Sharia Council was not able to amend Article 242, as it is not part of Legislative Decree No. 18, which the Council has the right to amend on its own, as previously explained. Rather, it is an article in a different law issued in 1962, and therefore the Chamber of deputies had to intervene and grant the Islamic Council the power to pass judgments that courts will apply, while this did not fall within its jurisdiction before 2011, which once again confirms that the legislative mandate of confessions finds its source in the law and not in the constitution.

The same legal solution was adopted with the Shiite community. Article 31 of the law relating to the organization of the Shiite community issued in 1967 stipulated the following: "With the exception of the first, second, third, fourth and fifth articles of this law and with due regard to the provisions of Article twenty-six of the same, the legal and executive bodies shall collectively have the right to reconsider the provisions and change what they deem necessary. Their decision in this regard and in everything related

to the religious community and the management of its endowments shall be enforceable by itself, provided that it is approved by the General Assembly and that it does not conflict with the provisions of laws related to public order”. It is noted that the legislative mandate granted here is not absolute, as was the case with the Sunnis, as it includes only the possibility of amending some articles of this law, not all of them.

If the Chamber of deputies decided to grant the Sunni and Shiite religious authorities an explicit legislative mandate, this did not prevent it however from withholding this authority from the Druze. The laws on the organization of the confession, old and new, were devoid of such a mandate, while Article 31 of the law relating to the organization of Alawis (1995) stipulated on such authorization, though in an ambiguous and indirect manner: “The Sharia and Executive Boards have the right together to reconsider the articles related to the proper conduct of work in order to achieve the main purpose of this law. Their decision in this regard and everything related to the Alawite Religious affairs and the management of its endowments shall be self-effective provided it has the approval of the General Assembly and does not conflict with the rules of public order.

## THE CIVIL NATURE OF THE LEBANESE STATE

By studying the legal structure of the Lebanese State that was established during the time of the French Mandate through the various amendments that were made in the post-independence phase, it becomes clear that Lebanon is now a civil state and this does not contradict the legal provisions that govern the sectarian civil status laws, nor ensure the participation of confessions in public institutions. Confessions, as it became clear to us, do not exist except through the State's recognition, which happened in stages, the most prominent of which was the High Commissioner's Decision No. 60/L.R. dated March 13, 1936, which recognized the so-called “historical confessions” as public right official institutions entrusted by the law with exclusive powers of personal status, and therefore, although they historically precede the Lebanese State, they are legally subsequent in their existence, i.e. they derive their authority from the state's recognition. This is evident in the legal structure of the Lebanese State, which recognizes the existence of Lebanese who do not belong to historical sects, and also recognizes the right of citizens to change their religion or even establish a new religion that falls within the so-called confessions of public right. The rights of confessions do not negate the rights of individuals who enjoy complete freedom in their relationship with those confessions.

Moreover, it is up to the Parliament to amend the list of recognized confessions, as happened with Law<sup>60</sup> No. 553 issued on July 24, 1996, which added the Coptic Orthodox Church to the list of recognized confessions under Decision No. 60/LR. Confessions, regardless of their religious beliefs, are social groups that arose in specific historical circumstances, which means that they are subject to historical factors; the number of their followers would increase or decline, or the existing relations between their members would develop as a result of certain circumstances and become more cohesive, or on the contrary completely dissolve to the extent of a social decay. Therefore, it is up to the State to adjust its relationship with the confessions according to the evolution of society, and this explains the Lebanese legal system's recognition of the State's right to recognize confessions and regulate their affairs, meaning that the state is civil in nature because it does not adopt the beliefs of this or that confession, and it does not aim to impose religious morals that this or that group preaches since religious beliefs and morals find their source in divine legislation, while the State in Lebanon considers confessions to be merely historical social entities, and does not care at all about the teachings of these confessions in terms of their take on existence, the nature of God, reward and punishment, as well as the various religious beliefs

The state's supremacy over the confessions is also evident in Article 5 of Decision 60 LR., stipulating that the sectarian systems should not conflict with public security and the State constitution. The Lebanese State accepts the existence of confessions as a social reality that must be dealt with, because the goal of any State is to find a legal framework that guarantees for individuals the right to exercise their basic rights, whether that is by perpetuating the sectarian affiliation of citizens or by acknowledging the existence of individuals who do not belong to historical confessions but prefer a personal and free decision, don't declare their religious beliefs and regulate their relationship with the State directly without going through the sectarian channel.

The Lebanese Constitution enshrined the nature of the civil state by declaring in Paragraph "d" of its Preamble that the people are sovereign and the source of authority, meaning that the State derives its legitimacy from the people and not from any metaphysical doctrine, which means that the authorities in

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<sup>60</sup> <http://www.legallaw.ul.edu.lb/LawView.aspx?opt=view&LawID=184505>

The preamble of the Law reads the following: "The said religious denomination has also presented its rules to the government in accordance with the provisions of Article 4 of Decision 60, and these rules are compatible with Article 5 of Decision 60/1936." However, this text does not explain how the government acknowledged the aforementioned sectarian denomination.

Lebanon are temporal and their legislations positive. The Lebanese legal system recognizes Parliament as the sole legislative authority. The existence of sectarian personal statuses does not contradict the civil state, because sectarian legislations do not impose themselves on the basis of transcendent religious legitimacy, they are only enforceable because so is authorized by the State Constitution and the laws. Indeed, as we mentioned previously, the Chamber of deputies has more than once amended the personal status regulations of the confessions, which confirms the permanent supremacy of the State over confessions.

The sovereignty of the people is also evident in Article 9 of the Constitution, which states that freedom of belief is absolute, meaning that a citizen in Lebanon is free to belong to any confession or to reject this affiliation regardless of the truth of his faith. Freedom of belief also includes the freedom to declare or not one's faith, or affiliation with a social historical group, the freedom to exercise one's faith in his/her private life.

These legal facts prove that the state in Lebanon, like any modern state, is civil, and the sectarian constitutional provisions do not contradict civility. However, this civil status remains incomplete in the absence of a civil personal status law that is applicable to those willing to follow it. Some have argued that such a law is a breach of Article 9 of the Constitution, which guarantees the respect for the personal status of confessions, and that any approval of a civil law needs a constitutional amendment.

Undoubtedly, this article is considered a cornerstone in the religious personal status system, as it explicitly recognizes the right of confessions to organize their affairs first, and to have their personal status recognized second. But the question is irrelevant in this case, since no one disputes this fact. Rather, the problem lies in knowing whether this recognition constitutes an absolute right for confessions that encompasses all the Lebanese and limits the authority of the State so that the latter loses its legislative powers. In other words, does the constitution's adoption of a sectarian personal status system exclude this field from the State's legislative authority?

To answer this question, it must be emphasized that sectarian autonomy as emphasized in the constitution must be respected and is by no means comprehensive and exclusive to prevent the existence of other civil legislation besides sectarian ones. Religious personal status is an option that is authorized in the constitution, as the failure to establish the independent personal status of confessions in a constitutional text would have inevitably led to all religious legislations being considered in violation of the constitutionally enshrined principle of equality because they are exceptional texts, and therefore it

was necessary to give this exception its constitutional value. Since the Constitution allows for this exception, this automatically means that the State is civil and that the legislative power of the latter cannot be touched or limited. This is clearly confirmed in the Constitution preface and in Article 95 which stipulates that the abolition of political sectarianism is a national goal. The abolition of political sectarianism is a principle of constitutional value meant to consolidate the civil state and ensure political equality between the Lebanese before Parliament and the Council of Ministers, regardless of their sectarian affiliation. The same applies to civil personal statuses. Once enacted, these statuses will establish the civil state and ensure equality between the Lebanese, in terms of their political representation before Parliament and the Cabinet, regardless of their confessional belonging. The same applies to enacting civil personal status laws which will enshrine the state civil status prior to its generalization on different levels. This matter does not need a constitutional amendment since civil legislation is the rule and the exception is the sectarian personal status.

The Chamber of deputies entrusted the recognized historical confessions with legislative powers in matters related to personal status and internal affairs. However, Article 5 of Decision 60 LR. requires that the personal status laws and trial procedures, to become effective, be accompanied by a law ratified by the House of Representatives. Therefore, respecting the right of the confessions to the application of their personal status does not violate the principle of the legislative supremacy of the state. This was explicitly confirmed by the Constitutional Council when it declared that Article 9 of the Constitution, although it gives “confessions autonomy in managing their religious affairs and interests, does not obscure the state’s right to enact legislations that regulate the affairs of these confessions in accordance with the provisions of the Constitution.” The State’s right to legislate is one of the rights of sovereignty that derives its source from the people and is exercised by the State through its constitutional institutions (...) and the authority of legislation is an authentic and absolute authority, and the Constitution has limited it to one body which is the House of Representatives”.<sup>61</sup>

If this decision allows the State, through the Chamber of deputies, to organize the historical confessions “without violating sectarian independence to manage their own affairs or stand in lieu of the State,”<sup>62</sup> then it is logical to recognize the obvious right of the legislative authority to regulate this field which has nothing to do with confessions in the first place, i.e. the civil personal status of the Lebanese who do

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<sup>61</sup> Decision No. 2 dated 8/6/2000: <https://www.cc.gov.lb/node/2579>

<sup>62</sup> Decision No. 2 dated 8/6/2000.

not belong to a confession, as recognized by Decision 60 L.R, or even the Lebanese who choose to voluntarily submit to civil legislation. Preventing the State from legislating in this field is a derogation from its sovereignty emanating from the people, meaning that the source of sovereignty is purely temporal, and therefore the State cannot deny its civil nature, and make the exceptional sectarian legislation the overriding principle that precedes it ontologically and that it must protect.

Moreover, the Constitutional Council considered that Article 9 of the Constitution, which recognizes sectarian autonomy, "includes the state's neutral stance on religions.<sup>63</sup>" Therefore, based on this neutrality, which justifies the role of the state, the Constitutional Council considered that the Chamber of deputies shall have full authority to legislate and "enact laws that regulate sectarian affaires, and the power to amend them, provided that their independence in managing their affairs is not compromised<sup>64</sup>." In the same decision, the Constitutional Council went on to differentiate between the sectarian administrative affairs and religious affairs. In other terms, administrative affairs are an organizational issue subject to the discretion of the House of Representatives, "which has the original and absolute authority to legislate everything related to the self-administration of confessions in application of Articles 9 and 10 of the Constitution provided the exercise of religious freedoms and rites is guaranteed".

## CONCLUSION

As a result of the foregoing, and based on everything mentioned in this study, we can emphasize the civil nature of the State in Lebanon, which is reflected in the following points:

- Sovereignty in Lebanon belongs to the Lebanese people, and the State's legislations are positive, as Parliament does not need to obtain the approval of religious authorities in order to exercise its legislative authority.
- Neutrality, which is reflected in the State not adopting any official religion, and its recognition of confessions is a legal procedure aimed at regulating the administrative relationship between citizens and the State while recognizing the religious freedom of individuals and giving them the

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<sup>63</sup> Decision No. 1 dated 23/11/1999: <https://www.cc.gov.lb/node/2576>

<sup>64</sup> Decision No. 22 of August 19, 2019.

option to change their religion or establish a confession that embodies their view of existence and life, or even rejection of any confession or faith<sup>65</sup>.

- The State has the right to organize the affairs of confessions and to supervise the institutions of the latter, but also to amend personal status laws<sup>66</sup> in accordance with the principle of the supremacy of the civil authority. The General Authority of the Court of Cassation considered that “the authority to settle cases between individuals is essentially the authority of the judiciary. The authority granted by the legislator under the Law of April 2, 1952 to the confessions is tantamount to a waiver by the State of some of its powers. This waiver must be understood exclusively and narrowly”.<sup>67</sup> This is not evidenced by Article 95 of the Civil Procedure Code which gave the General Authority of the Court of Cassation, the authority to decide on requests to appoint a reference when there is a difference in jurisdiction between the judicial courts and the different sectarian courts, or between the sectarian courts themselves. It is the authority of the Court of Cassation to settle an opposition to a decision issued by a sectarian court “for violating fundamental formulas related to public order.”

At the end of this legal historical review on the development of the personal status system in Lebanon, it becomes clear to us that limiting or expanding the scope of the personal statuses of confessions was mainly subject to volatile political considerations dictated by the interests of the authority. The strengthening of the powers of sectarian references that took place after independence was not for legal requirements because of the nature of the “sectarian state,” but rather a policy pursued by the Lebanese regime, a policy that can be reversed and modified in accordance with the state’s legislative sovereignty and the superiority of the civil authority in its relationship with the confessions.

We saw that the personal status system is not the same for all confessions. The Christian denominations are completely independent of the central State apparatus, as they approve their own legislation and

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<sup>65</sup> The Legislation and Consultations Commission considered that “depriving any person of his/her right and freedom of not having his/her religion specified in the personal status records for any reason - namely the absence of a unified personal status law for all Lebanese, regardless of their religious affiliation - and thus rejecting the request to cancel the sectarian registration constitutes a violation of the Constitution and the Universal Declaration of Human Rights, bearing in mind that the consequences of a strike off are borne solely by the person concerned.” (Consultation No. 276 dated 5/7/2007).

<sup>66</sup> For example, the law issued in 2017, amending the personal status law of the Druze issued in 1948, raising the age of custody from seven and nine years for boys and girls to 12 and 14 years, respectively.

<sup>67</sup> Decision No. 8 of January 23, 1998:

<http://www.legallaw.ul.edu.lb/RulingFile.aspx?RuliID=66257&type=list>

organize their courts, while the Islamic ones need laws approved by the House of Representatives in order to establish their administrative institutions and courts. Thus, we note how the standards were reversed between the Ottoman era and today, as the Christian denominations were the ones subject to the system of millet that imposed the legislative intervention of the Ottoman State in order to organize their affairs, while today the Islamic denominations in Lebanon are the closest to the Ottoman millet system because they legally need the State to exist.

The difference also in the personal status system is not only related to how the relationship between the Christians and Muslims is organized in the state, but it also applies to its content. The personal status of Muslims is broader, as it includes issues of inheritance, while issues of inheritance and wills were removed from the jurisdiction of the Christian courts<sup>68</sup>, pursuant to the Law of Inheritance for Non-Mohammedans issued on June 23, 1959, which subjected these issues to the jurisdiction of the civil courts<sup>69</sup>. The same applies to endowments, as the powers of Islamic courts are broader including endowments, both charity (religious) and family, while the powers of Christian courts are limited to charity endowments, family endowments falling within the jurisdiction of a special civil court as stipulated in Article 45 of the Family Endowments Law<sup>70</sup> dated March 10, 1947.

Thus, it becomes clear to us that the absence of a civil law for personal status is not caused by the nature of the State that prevents it for legal considerations, but is rather the result of a deliberate political decision that does not want to weaken the interests of sectarian references in order to achieve certain gains. The most prominent example of this is the position of Prime Minister Rafic Hariri, who in contravention of the constitution, refused to sign the decree referring to Parliament the draft civil personal status law proposed by President Elias Hrawi and approved by the Council of Ministers on March 18, 1998. The Mufti of the Republic had launched a violent campaign against the draft, considering that it violated the Qur'an and the Sunnah, and that no Muslim shall approve it as it leads to apostasy. Soon, the Christian religious authorities joined forces with the Mufti by refusing to approve the aforementioned law.

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<sup>68</sup> <http://www.legallaw.ul.edu.lb/LawView.aspx?opt=view&LawID=244354>

<sup>69</sup> The wills for non-Muslims was previously subject to the Law dated March 7, 1929 on wills for non-Muhammadans. Article 7 of the 1959 Law stipulated that the wills for Muslim Lebanese shall remain subject to the Islamic law and to their traditions.

<sup>70</sup> <http://www.legallaw.ul.edu.lb/LawView.aspx?opt=view&LawID=167358>

In summary, the State in Lebanon is civil in its nature and legal system and is based on the respect for freedom of belief and guarantees the personal status of the confessions, provided that this does not conflict with its constitution and public order. The barrier that prevents the State from enhancing the freedom of citizens by adopting an optional civil personal status law, or even by reforming sectarian personal statuses to promote equality between women and men, is primarily a political obstacle arising from the goals of the ruling cast in Lebanon.