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LEBANON

THE CONSTITUTIONAL EXPERIENCE UNDER THE PARTY LEADERS' SYSTEM

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Since October 17, 2019, Lebanon has been going through an unprecedented political crisis with severe economic repercussions and declining freedoms and social rights. This was coupled with a quasi-total paralysis within the State's institutions that have failed to find democratic solutions to exit the crisis through clear constitutional mechanisms; on the opposite, the constitution itself accentuated the deep political conflict within the ruling class.

The "national pact document" (or what is known as the Taif Agreement) upon which the constitution was amended in 1990, includes a number of provisions described as "reforms", knowing that this description is inaccurate as it masks the political ramifications of these amendments, adopted in the context of an internal war and an international and regional alignment that perpetrated a new political balance in constitutional texts. Therefore, it would be better to differentiate between two types of amendments introduced by the Taif Agreement:

- Actual legal amendments that aimed at promoting citizens' rights and protecting their basic freedoms through the establishment of institutions ensuring the respect of these rights and freedoms. One of the most important reforms in this context was the establishment of the Constitutional Council that introduced constitutional control over the laws for the first time. In addition, a preamble was added to the Constitution, explicitly stating the commitment of the Republic of Lebanon to the International Declaration of Human Rights, with an engagement to embody these principles in all cases without exception.

- Constitutional amendments that can only be understood from the lenses of the Lebanese sectarian political

system, as it was not adopted to activate the role of public institutions or guarantee citizens' freedoms and rights, but rather to redistribute the prerogatives of constitutional powers on a sectarian basis in order to promote the consensual nature of the Lebanese system and ensure the highest level of participation to the decision making process. Hence, removing the executive power from the hands of the Maronite President of the Republic to put it in the hands of a multi-sectarian Council of Minister can be placed in this context. The same goes for broadening the scope of the Sunnite Prime Minister's prerogatives and extending the mandate of the Shiite Speaker of the Parliament to equal the mandate of the Parliament while the Speaker was elected for a renewable one year term prior to 1990.

In light of the above, this research paper will not only focus on distorted constitutional texts, but also on how the political class exploited this distortion to preserve their interests through paralyzing constitutional institutions and transforming them into a mean to promote the power of "parties" exerting their hegemony over the State. For this reason, we will present in the first section the obstacles faced by the Constitutional Council that made hi, loose his monitoring role, while section two will be focusing on analyzing the reasons that made the Constitution fail to protect the proper and orderly work of public institutions, and how this benefited the political class/order.

Before dwelling into this topic, we shall clarify what we mean when we speak about the Lebanese political system. This research paper considers that understanding the actual nature of the Lebanese political system cannot be limited to studying the legal frameworks set by the Constitution. When reviewing the provisions of the Lebanese Constitution as adopted in 1926, it seems to the reader that this Constitution adopts the principles of the traditional parliamentary system based on a flexible separation of powers, which translates into the presence of a Government

politically responsible before the Parliament, while enjoying, under specific conditions, the right to abolish the Parliament. The Constitution theoretically preserved its Parliamentary aspect with the 1990 amendments, yet it promoted its consensual nature through consecrating the sectarian representation within the Parliament (article 24) and the transformation of the Executive Power into a collective assembly that is the Council of Ministers that can only meet in the event of a particular quorum (two third of the members) provided that it also takes its decisions by different types of majorities as stipulated in article 65 of the Constitution.

The actual political system in Lebanon, in other words the real way in which State institutions are administered and resources and services are allocated, is the party leaders' system based on clientelism and benefits sharing. The majority of these leaders have succeeded in reinforcing their power through the civil war (1975-1990) as militia lords that imposed themselves by the force of weapons and external affiliations, which allowed them to control the State's institutions within the context of a regional and international arrangement according to which a dictatorship (Hafez El Assad regime in Syria) was given the mission of restoring democratic life to Lebanon. Therefore, one cannot understand the development of constitutional life in Lebanon, namely after 2005, without analyzing the modus operandi of the leaders' system that put the constitutional logic in the service of authoritarian goals.

Section one: The Constitutional Council, victim of arbitrary political decisions.

The major reform introduced by the "National Pact" in the Constitution was the establishment of a Constitutional Council that oversees the constitutional procedure by which the Legislative Power may legislate. The Rule of Law is observed in a State where the hierarchy of legislations is respected, and where all powers respect national legal laws and regulations. Needless to say that the most important regulation is the Constitution that is the basis according to which the basic rights of citizens are determined,

public freedom is guaranteed, and the prerogatives of public authorities are set. Whereas the biggest threat to the Constitution is the Legislative Power, it is necessary to have mechanisms set by an independent body to supervise the adherence of the legislator to all these constitutional principles, which theoretically guarantees the permanent supremacy of the Constitution. The law does not express a public will unless it is in conformity with the constitutional provisions as announced in a famous decision rendered by the French Constitutional Council.[1]

The new article 19 of the Constitution stipulates the following: "A Constitutional Council is established to supervise the constitutionality of laws and to arbitrate conflicts that arise from parliamentary and presidential elections. The President of the Republic, the Speaker of Parliament, the Prime Minister along with any ten members of Parliament, have the right to refer to the Constitutional Council matters that relate to the constitutionality of laws. The officially recognized heads of religious communities have the right to refer to this Council laws relating to personal status, the freedom of belief and religious practice, and the freedom of religious education. The rules governing the organization, operation, composition of the Council and referral thereto shall be decided by a special law."

It shall be noted that this article did not determine the number of members of the Constitutional Council nor the **method** of appointing them nor the duration of their mandate, and this was left at the discretion of the Parliament, which gives the latter the freedom of controlling the work of the Council. Indeed, after a noticeable delay, law number 250 dated July 14, 1993 (Establishment of the Constitutional Council) was issued. The law defined the composition and mode of functioning of the Council, and stipulated that the Constitutional Council "is an independent constitutional entity with judicial status" that will be formed of ten members, five of them will be appointed by vote of the Parliament

1 Decision 85-197 DC - 23 August 1985

while the remaining five by the two third majority of votes of the Council of Ministers.

The specialized political authorities were late in appointing the members of the first Council's members as they did not start carrying out their duties before April 15, 1994, which means that all the laws issued before this date cannot be subject to appeal as article 19 of the Constitutional Council stipulates that questions shall be presented during a period of 15 days as of the law publishing in the official gazette.

It shall also be noted that the mandate of the Council's members are only appointed for six years, non-renewable, provided that the term of half of the first constitutional council body members chosen by lottery expires after three years. This law therefore adopts the principle of partial renewal of members, also implemented in France. The objective of this procedure is to prohibit the political authority holding the reign of power to have an absolute control over the Constitutional Council through appointing all members at once, which will lead to fundamental shifts in the Council's jurisprudence and changes in this jurisprudence with every political majority that has the opportunity of monopolizing the members' appointment.

Indeed, the Constitutional Council will face big challenges[2] especially in 2005 that will lead to questioning its autonomy and credibility. This will translate into a obstructing the work of the council for several reasons through controlling the nomination of its members or through adopting "constitutional positions" leading the council at the end of the day to lose its real role.

2 It shall be noted that the first constitutional council formed in Lebanon took a set of bold measures in terms of legal analysis confronting the political authority. The council abolished several unconstitutional laws violating citizens' rights and democracy principles, like the 1996 electoral law that violated the principle of equality and the 1997 law that extended the term of municipal councils as it violated the principle of periodical elections, in addition to the law on telecommunications interception in 1999 that violated the freedom of citizens as it allows for interception by virtue of an administrative decision.

First; premeditated obstruction of the Council

There is no doubt that the first big conflict that the constitutional council faced was in 2003 when the political authority refused to appoint five new members to replace the ones whose term ended. Although article 4 of law number 243 of August 7, 2000 (by-laws of the constitutional council) explicitly states that the members whose term ends continue to perform their duties until new members are appointed to replace them and swear oath, nevertheless the situation lead to undermining the position of the constitutional council whose decisions became easily questioned.

After the parliamentary elections of 2005 that lead to the formation of a new majority in the Parliament, a political campaign targeting the members of the constitutional council was led by the authority's parties questioning the neutrality of the judges and describing them as the remnants of the Syrian era and that the end of their term obliges them to stop exercising their functions, especially since this council should have examined the electoral requests against deputies who won the elections. In the absence of consensus among leaders, the Parliament, in its first legislative session, adopted a law freezing all proceedings before the council until the full number of its members is appointed (law number 679 on July 19, 2005). Ten deputies submitted a request to the same council asking of the abolishment of the latter law. On August 6, 2005, the constitutional council abolished law number 679 as "unconstitutional and violating constitutional principles" like the separation, the balance and the continuity of powers. As a result, the Constitutional Council was heavily criticized by political parties, which pushed the members whose term ended to step down and suspend their participation to the Council's meetings, so the latter became incapable of taking decisions, and entered in a long paralysis.

The absence of the constitutional council lasted from August 2005 until June 5, 2009 when political parties agreed to nominate the new members of the constitutional council in preparation for the

parliamentary elections that the political leaders decided to hold after the Doha agreement on May 21, 2008. As soon as appointed, the new members, pursuant to article 37 of the council's by-laws, started drafting reports about the appeals submitted to the council and that were not settled due to the expiry of the legal limits, and declared the following: "whereas there was no quorum in the constitutional council

The country remained without a Constitutional Council from August 2005 until June 5, 2009, when governing parties agreed to appoint a whole new one in preparation for the upcoming parliamentary elections which the leaders decided to hold following the Doha Agreement on May 21, 2008. Upon assuming their duties, the new council members organized, pursuant to the provisions of article 37 of the By-Laws, a report on outstanding appeals submitted to the Constitutional Council and which had not been addressed during the abstention period, as some due deadlines had been expired. The Council announced: "Whereas the Constitutional Council suffered a lack of quorum on the date when this review was filed, as five outgoing members stopped working on 08/08/2005, these members had to continue fulfilling their duties until their replacements were appointed and had taken the oath(...). And whereas the Council had been established and could have completed the work entrusted to it and examined the filed review within the projected and specified deadlines." (Record No. 4, dated 08/07/2009).

As such, the 2005 parliamentary elections contests, and reviews filed against the laws issued during the suspension of the Constitutional Council, have not been settled. This indicates that the political ruling class was able to elude Constitutional Council oversight for four years, a flagrant violation of sound constitutional logic. It undermines the protection that the oversight of the Constitutional Council offers, in regard to citizens' fundamental rights and freedoms of citizens.

II. Undermining the Independence of the Constitutional Council

The Constitutional Council, whose members were appointed in 2009, experienced two serious incidents which raised questions around its credibility and the extent of its actual independence from the political system.

The first incident pertains to the Constitutional Council itself when it refused to implement the law governing it. Lebanon has adopted the principle of partial term renewal for Constitutional Council members when the membership of half of the new members is elapsed three years after they assume their duties. Following the vacuum in the Council between 2005 and 2009 and the expiration of all members' terms, it was necessary to reform the Council by appointing ten new members for a six-year term at once, provided that the term of five members, chosen randomly through a draw, exceptionally ends exceptionally after three years, in accordance with the newly promulgated Article Four[3] of Law no. 43, dated 09/06/2006.

The new members were indeed selected (by election or appointment) in line with article 4 of Law No. 43. A draw by lot was supposed to take place to determine the five members whose terms would end in May 2012, but the Constitutional Council did not honor this legal obligation, as the various parties in power are holding consultations to vote on a law that eliminates the need for a draw. The Constitutional Council deliberately refused to abide by article 4 of Law no. 43, choosing to wait for the law that was to be approved by the Parliament in the future. This gave way to criticism over the Council's behavior, as it practically causes members to become more dependent on the will of those who control the country's political decisions.

3 "The term of half the members of the Constitutional Council body appointed after the issuance of this law ends three years after the date all members of the Constitutional Council take the oath. The members are chosen by lot, and five members are appointed to replace them for six years by the authority that chose the members whose membership was lapsed by lot, according to the rules of appointment stipulated in the law."

As such, members of the Constitutional Council had to wait for an extended period and continued to violate Article 4 and refrained from conducting the draw, as the new law[4] replacing Law no. 43 did not see the light and was not published in the Official Gazette until October 25, 2012, five months after the legally binding draw date.

Canceling the draw is, in reality, a covert extension of the term of half the members, which contravenes the principle of non-renewal for the Constitutional Council members' terms in order to immunize them during their term and preserve their independence. The amended Article 4 of Law no. 250 (Establishment of the Constitutional Council) stipulates: "The members of the Constitutional Council shall be appointed for a non-renewable term of six years, and none of them shall have their term reduced." The clear objective of this article is to ensure the independence of the Constitutional Council, considering that reducing the term of a member is a form of punishment usually adopted by the political ruling class against the said member when their positions do not particularly appeal to them. The same applies to the extension of terms, as it may be considered a reward for a certain action, and a token of approval from the political ruling class of the decisions taken by the Constitutional Council.

The second incident which raised questions around the Constitutional Council's credibility and exposed it to the public was related to Law no. 246, issued on May 31, 2013, which extended the Parliament's mandate until November 20, 2014. Due to the political divide which prevailed at the time over the formation of a government involving the various political parties of the ruling class, the political ruling class was not willing to hold parliamentary elections within the constitutional deadlines. Thus, they decided to extend the Parliament's mandate, under the pretext of the exceptional circumstances that Lebanon was witnessing at the time.

4 Law No. 242, dated October 22, 2012.

However, then President of the Republic, Michel Suleiman, who ironically approved the law instead of sending it back to Parliament, filed a request for a review before the Constitutional Council to repeal the extension law. The Constitutional Council convened several times to discuss the decision that should be taken. But when news spread that the Council was going to accept the review and repeal the extension law, three members[5] who owed allegiance to the head of Amal Movement, Nabih Berri, and the head of the Progressive Socialist Party, Walid Jumblatt, were pressured into boycotting the meetings, which practically led to the loss of quorum[6] and to the suspension of the Council. As a result, the Constitutional Council failed to meet and take the appropriate decision within the legal deadlines[7] despite being called to convene by its president four times in a row. This led to the implementation of the extension law, proving that members of the Constitutional Council owed their allegiance to political leaders[8].

III. The Constitutional Council Relinquishes Its Role

The term of the Constitutional Council's members ended in 2014,

5 Ahmad Taqieddin, Suhail Abdel-Samad, and Mohammed Bassam Mortada.

6 The third paragraph of article 11 of the Law on the Establishment of the Constitutional Council stipulated that "the Council is not considered officially assembled unless a minimum of eight members is present."

7 The second paragraph of article 37 of Law No. 243, dated August 7, 2000 (the By-Law of the Constitutional Council) stipulated the following: "If the decision is not issued within the legal time limit, the text shall be considered valid, and a record of the facts shall be organized. The president of the Council shall inform the competent authorities that the Council has not reached a decision."

8 It should be noted that the Parliament revoted the law in November 2014 to extend its mandate again until June 20, 2017, under the pretext of a vacuum in the Presidency of the Republic and exceptional circumstances. The new extension law was challenged, but the Constitutional Council, although it considered that "the periodicity of elections is a constitutional principle that should never be violated," and that conditioning the holding of elections to a new electoral law is a violation of the Constitution and that even if exceptional circumstances justify postponing the elections for a limited period, this "does not justify the extension of the mandate of the Parliament for two years and seven months." However, in the end, the Council decided, "to reject the challenge in order to prevent a further vacuum in the constitutional institutions." (Resolution No. 7, dated November 28, 2014).

but the political ruling class did not appoint the new members until the end of 2019 after a round of deliberations to determine sectarian quotas[9] and to distribute members based on their allegiance to their leaders. The new Constitutional Council issued its first resolution on September 12, 2019 (No. 4/2019) regarding the appeal filed against the Budget Law. The resolution included an item that could be regarded as a full submission of the Council to the decision of the political class and relinquishment of its oversight role.

Article 80 of the Budget Law, regarding the preservation of the right of successful people to be appointed to appropriate jobs, has sparked widespread political controversy because some consider it "non-constitutional", as it does not respect parity between Christians and Muslims and undermines the sectarian balance. Astonishingly, the Constitutional Council announced that it had decided not to address the constitutionality of this article, meaning that it had deliberately refrained from revising it because the President had sent a letter to the Constitutional Council requesting the interpretation of Article 95 of the Constitution, which relates to sectarian representation in State functions. As such, the Constitutional Council abstained from issuing a resolution on Article 80 of the Budget Law because the Parliament "has taken the matter into its hands."

The position of the Constitutional Council is, without exaggeration, a full-fledged legal suicide, as it simply removes the Constitutional Council from every matter that the political class decides to refer to Parliament, under the pretext of "interpreting the Constitution." The repercussions of the Constitutional Council's resolution

9 A new concept that was gradually introduced after 2005 to justify distributing quotas between leaders in the name of "the pact". It means the necessity for each leader to choose representatives for the sect they claim to represent in the various state institutions under the pretext of respecting the national pact. This practice is nothing but sharing influence between leaders, as it makes political loyalty to the leader the most important criterion for employment, which means that it aims to legitimize clientelism and politicize the judiciary and administration to serve the interests of the leader under the pretext of sectarian balance.

are very serious because it had relinquished its powers of interpreting the Constitution, in the course of its oversight on the constitutionality of laws. According to a previous resolution, the Council explicitly stated that "it is up to the Council to interpret the Constitution in the course of its oversight over the constitutionality of a legislative text to determine the extent to which this text conforms to the provisions of the Constitution..." (Resolution no. 4, dated September 29, 2001).

This surprising position was undoubtedly consequential in transforming the Constitutional Council into an auxiliary institution that follows political decisions that can prevent it from exercising its jurisdiction whenever the Parliament decides to "handle" a given matter. In addition, this decision was also an implicit acknowledgment of the right of the Parliament to interpret the Constitution by a normal majority and a normal quorum, which threatens to completely bring down the principle of the Constitution's supremacy, as it subjects the latter to a political consensus that changes according to the interests of political leaders. This gives them the authority they have always wanted, especially the Speaker of Parliament, which is the ability of the Parliament to interpret the Constitution with complete impunity[10].

As such, the Constitutional Council relinquished all responsibility for any issue that the political ruling class decides to refer to the Parliament, acknowledging that it does not have the right to interpret the Constitution during its oversight of the constitutionality of laws, pending the decision of the Parliament. This contradicts the theoretical foundations laid by the great legal scholar "Hans Kelsen." Hans considered that, as soon as the law is

10 Among the manifestations of this arbitrary ability to interpret the constitutional text is the claim of the Speaker of Parliament and the parties in power that the trial of the Prime Minister and the ministers can only take place after they get accused by the Parliament in accordance with the provisions of article 70 of the Constitution. However, the judge investigating the Beirut port explosion had previously declared that the ordinary judiciary is authorized to try them, which means that the position of the Speaker of Parliament is a maneuver aimed at escaping from judicial accountability and is a flagrant violation of the principle of separation of powers.

approved in the Parliament, it becomes completely independent of the will of the legislator, and therefore it is not possible to get back to the legislator in order to compel the courts to a specific interpretation of the law. The interpretation of the Constitution in the Parliament takes place through a general debate between the representatives, which ends in agreement to give the disputed text one out of all the possible meanings. And thus, it remains without any binding legal value because the Constitution did not grant the Parliament the authority to interpret the Constitution and did not specify the mechanism by which this interpretation becomes binding for the various authorities in the State.

Section Two: Constitutional Provisions Serving the Ruling Class

Ever since the end of the era of Syrian hegemony in 2005, the constitutional experience in Lebanon has proved that there is a major flaw in ensuring the regular work of state institutions. This was reflected in the frequent vacancy in the Presidency of the Republic, and the period that the process of forming governments takes, and what this means with regards to the presence of outgoing, caretaker governments. This leads to the undermining of the State and citizens' interests while waiting for an agreement between leaders on new power-sharing.

There is no doubt that the approach that considers that the cause of this flaw is the constitutional provisions only is insufficient in terms of determining the root of the problem of the Lebanese political system. It is true that Lebanon's Constitution in its current form, which was the result of the 1990 amendments, includes provisions that obstruct the work of institutions, but what exacerbates the crises is the presence of political authority that takes advantage of the flaw in the constitutional text to use the latter to serve its authoritarian interests.

Renowned French thinker "Benjamin Constant" had explained the difference between a bad text that cannot be modified and

a bad ruler. He explained that a bad constitution is much more dangerous than a bad ruler because the damage caused by a bad ruler is only temporary. To avoid the harm that a bad ruler may cause, it would be enough to remove or inform said ruler. On the other hand, any harm resulting from a bad constitution is permanent, and in order to avoid this harm, it is necessary to breach the constitution, i.e., to do harm that exceeds in terms of its seriousness the harm resulting from the text itself[11].

Amending constitutions should usually aim to enhance the rights of citizens or adopt mechanisms that make said constitutions more effective and facilitate the decision-making process. However, the amendments of the Taif Agreement, which aimed to adopt a new process for the distribution of powers among the constitutional institutions, were counterproductive, as the current Lebanese Constitution has no clear mechanism whatsoever for finding a solution to constitutional crises and potential political conflicts. Not only does the Constitution lack any mechanism that guarantees the resolution of political disputes in an institutional manner that guarantees respect for the principles of the rule of law, but even the clear constitutional provisions were deliberately and persistently violated by the components of the political system in the absence of any actual accountability against them, whether political, before the Parliament, or judicial. Therefore, we found it necessary to present these points respectively.

11 A defective constitution, when unchanged, is much more harmful because its deficiencies are permanent, always recurring, and cannot be rectified through experience neither gradually nor implicitly. In order to temporarily remove the shortcomings of an imperfect government, it is enough to simply remove or inform a few people. However, to address the shortcomings of a flawed constitution, it is necessary to breach this constitution, i.e., to do harm much greater in its future consequences than the present good that one wishes to achieve." (Benjamin Constant, Principles of Politics, Hachette Littératures, 1997, p. 108).

First: Absence of Constitutional Mechanisms to Resolve Conflict between Institutions

With the increase in the population's participation in elections and the increasing need for an authority that can make quick decisions in order to keep pace with the economic and social reality in modern countries, the parliamentary system has changed from a system that is based on the separation of legislative and executive authorities to a system that still respects this separation theoretically, but in reality, leads to concentration of power in the hands of one political party that has control over the parliamentary majority and the government at the same time.

Political responsibility should entail a government that has the necessary powers to achieve its electoral promises. Therefore, when the existing government collapses and the majority fails to form a new government within a reasonable time, the Parliament is dissolved, but not in order to punish the legislative authority or to strengthen the executive authority. Rather, it is dissolved in order to hold new parliamentary elections, through which a clear majority emerges allowing the formation of an effective and responsible government again.

The dissolution of the Parliament is no longer just a constitutional measure aimed at securing a balance between the legislative and executive authorities. Rather, it has essentially become a democratic means for resolving political conflict by returning to the sovereign people. The dissolution of the Parliament is the acknowledgment of the political system that the people are the actual sovereign who must have the final say in major national crises.

If the dissolution of the Parliament were constitutionally possible before 1990 since it only required that the President of the Republic issues a substantiated decree after the approval of the Council of Ministers, it has now become almost impossible after the amendments of the Taif Agreement. This is due to the fact that

the requirements for dissolution set out therein are exceedingly difficult and almost impossible to be met. The Parliament can no longer be dissolved except in the following cases:

- If the Parliament, for no compelling reason, refuses to meet throughout an ordinary session or for two consecutive special sessions lasting no less than one month (article 65).

- If the Parliament entirely refuses the budget in a bid to paralyze the Government (Article 65).

- If the Parliament insists on amending the Constitution by a majority of three-quarters of its total members despite the government's refusal (article 77).

Hence, it is extremely unlikely for these conditions to occur, as the Parliament can convene only once and fail to meet throughout an ordinary or special session, or it can send back the entire budget except for a single article. This would prevent the government from deciding to dissolve it. The mechanism specified in article 77 is also overly complex and time-consuming and has not been used since 1926.

The absence of a specified time limit for the formation of the government also reflects the disruptive nature of the Lebanese Constitution. Since the Syrian custodianship over Lebanon - which used to arbitrate between "leaders" when feuding over the State's wealth and capabilities - ended in 2005, the Council of Ministers has become the main place in which the political balance between the components of the regime is reflected, as each one of them fights for control over the largest possible number of state administrations and facilities. Thus, the process of forming a government now takes months because of the need to ensure consensus among leaders on the distribution of cabinet seats. On the other hand, there is no constitutional mechanism that would provide a way out of the state of paralysis in the executive authority

caused by the presence of a resigned, caretaker government.

Usually, constitutions in these cases provide for the need to dissolve the parliament and hold new parliamentary elections in order to get out of the crisis and form a new government. However, not only is this dissolution impossible in Lebanon, but also the Constitution does not provide for any other mechanism that would help find institutional solutions to the issue of forming the new government. The fourth paragraph of article 53 of the Constitution states that the President of the Republic "issues, in agreement with the Prime Minister, a decree to form the government," which means that the government cannot come into being without the approval of both the President of the Republic and the Prime Minister. This reflects the apparent contradiction in the Lebanese Constitution, as it obligates the president of the republic to conduct binding parliamentary consultations to nominate the designated prime minister, meaning that it forces the president to nominate whomever the parliamentary majority chooses, even if the said president does not approve of them. On the other hand, the constitution also provides for the need for consensus between the president of the republic and the designated prime minister to form a government, without specifying any mechanism for settling any dispute that may arise between them. The only solution available today is the designated prime minister's apology for not performing their task, which opens the door for new parliamentary consultations that lead to assigning another person to form the government. It should be noted, however, that the same person that apologized can be renamed.

The Parliament acknowledged this deep-seated constitutional ineptitude when it voted on May 22, 2021, in a response to a letter issued by President Michel Aoun, who stated that there was a problem regarding the formation of the government and obstacles in reaching an agreement with Prime Minister-designate Saad al-Din al-Hariri. In its response, the Parliament indicated the following: "According to the constitutional text

on the principles of designating a Prime Minister to form the government and the method of formation in accordance with article 53 of the Constitution, and whereas no other constitutional text is available about the course of the designation and the appropriate measure regarding it (...), and whereas any measure regarding this designation and its limits requires a constitutional amendment, which is currently out of question...." This means that the Parliament explicitly recognizes that it cannot constitutionally provide any constitutional solution to disagreements that may arise between the President of the Republic and the designated Prime Minister.

Some believe that this dysfunction is caused by a constitutional loophole that can be fixed by setting a deadline during which the designated prime minister must complete the formation of the government, or their designation will be withdrawn after the deadline passes. However, this is inaccurate because the constitutional loophole, if any, is unintended and is only discoverable through practice, while the absence of a deadline to form a government in Lebanon is a deliberate decision that cannot in any way be considered just an innocent loophole in the constitutional text. During the deliberations of the Taif Agreement, the idea of granting the designated prime minister a month to form a government was mentioned, but the idea was dropped for considerations related to sectarian balance since the deadline would allow the Maronite president of the republic to control the prime minister-designate, who may lose their position if they do not acquiesce to the wishes of the president during the one-month time limit. President Saeb Salam considered that "setting a deadline for the designated president to form their cabinet would be an injustice for the Sunni sect[12]," which is why the constitutional provision on this matter remained unchanged.

Thus, it is obvious that the absence of a deadline or any constitutional mechanism that helps find an institutional solution

12 Bechara Menassa, The Lebanese Constitution, Provisions, and Interpretations, 1998, p.363.

for forming a government is a deliberate political decision and not an unintentional loophole. The only available solution is to ensure consensus among the political leaders[13], a consensus that is in their interest and that enhances their political power, as neither the Lebanese people can interfere through new parliamentary elections in order to resolve the conflict, nor is there a constitutional text that would put an end to the prolonged paralysis of the executive authority. Only consensus among the political leaders can lead to the desired magic solution.

Second: Consensus between Political Leaders Stronger than Constitutional Provisions

The Constitution has seemingly contributed to strengthening the disruptive capacity of political leaders who made their consensus the true Constitution of the Lebanese political system. However, the will of the leaders proved to be stronger than the "legal constitution" itself, even when the provisions of the latter are clear and do not require any interpretation.

Therefore, we will underline in this part the most significant constitutional violations committed by the political ruling class since 2005.

One of the most important constitutional violations to become a frequent practice in recent years is the failure to approve the general budget as provided for in article 83 of the Constitution. The budget law is one of the most important laws ever enacted by parliaments. This is reflected in the adopted special rules, as most of the world's constitutions specify more detailed requirements for approving the budget law compared to ordinary laws.

One of the basic principles enshrined in article 83 is the principle

13 The system of leaders has created what is known as the negotiating table, which is an auxiliary body that includes politicians who have appointed themselves as representatives of their sects, where various issues are discussed in accordance with the logic of consensus, quotas, and power-sharing outside the official constitutional institutions authorized to discuss such matters.

of annual budgeting, which means that expenditure and collection require annual approval and that the budget should be drawn up for only one year to ensure periodic oversight by the Parliament on government activities. This article has been repeatedly breached, as the Parliament did not approve an annual budget from 2006 until 2017. This led to the spending of public funds with no actual oversight or any valid constitutional basis. In addition, there was a lack of transparency in public accounts and a serious disruption of State finances.

Even worse yet, the annual budgets that were belatedly approved as of 2017, were approved without putting the Law on Closing Accounts stipulated in article 87 of the Constitution to vote. The Parliament cannot control the government effectively if it does not know how the previous budget was implemented, what the revenues generated by the Treasury were, and what actual appropriations were spent. Therefore, it is not possible to approve the new year's budget before approving the Law on Closing Accounts for the previous year, as it is considered a fundamental tool for controlling the executive authority's use of public funds. The Constitutional Council considered that not closing accounts "leads to a lack of transparency in the collection and spending of public funds, questions the credibility of the general budget and its implementation, and encourages corruption." (Resolution No. 2, dated 14/05/2018).

Thus, we notice that the political ruling class in various public institutions has neglected one of their most crucial constitutional duties. Parliamentary regimes were mainly established to enable the people, through their representatives, to approve taxation and the spending of public funds. Nevertheless, Lebanon's political ruling class succeeded in suspending these constitutional articles without any actual accountability. The Parliament did not organize a no-confidence motion in the government for not sending the draft budget within the constitutional time limits, nor did it accuse the President of the Republic of violating the Constitution in accordance with the provisions of article 60 of the Constitution.

It also did not accuse the Prime Minister nor the ministers of breaching their duties pursuant to article 70 of the Constitution.

Another clear violation of the Constitution occurred when the Commander of the Lebanese Armed Forces, Michel Suleiman, was elected President of the Republic on May 25, 2008, in a direct and explicit violation of the last paragraph of article 49 of the Constitution, which prohibits the election of first-class employees and their equivalents "during their term of office or within two years following the date of their resignation and their effective cessation of service, or following retirement."

The election of Suleiman came in implementation of the Doha Agreement (May 21, 2008) after armed confrontations between the militias affiliated with the leaders. In its first paragraph, this Agreement stipulated the following: "The parties have agreed on having the Lebanese Parliament Speaker, based on the rules in effect, invite the parliament to convene within 24 hours to elect consensus candidate General Michel Sleiman, knowing that this is the best constitutional method to elect the president under these exceptional circumstances." As such, consensus between leaders became more powerful than the Constitution itself, and their common will has become enough to suspend a given article of the Constitution under the pretext of exceptional circumstances.

One final persistent violation is related to article 41 of the Constitution, which requires that by-elections for a successor be held within two months should a parliamentary seat become vacant. However, the political ruling class refused more than once to abide by this constitutional obligation. The Secretary-General of the Council of Ministers addressed a letter to the Ministry of Interior on September 10, 2020, informing it that the President of the Republic, in agreement with the Prime Minister, exceptionally approved the postponement of the by-elections that were supposed to take place following the vacancy in parliamentary seats after the resignation of eight deputies following the Beirut port explosion, which was considered effective on August 13, 2020.

This violation was also justified by the exceptional circumstances the country was going through and the state of emergency in the city of Beirut following the port explosion.

But the gravity of postponing the by-elections is not only related to the arbitrary aspect of the exceptional circumstances excuse. It is also related to the principle of the periodicity of elections. Calling upon voters to vote periodically and within a reasonable period is a principle enshrined in the jurisprudence of the Constitutional Council, which considered that "determining the date of elections, whether parliamentary or municipal, falls within the ambit of the law, and the legislator shall not allow the governing authority to set this date as it sees fit and without reliance on a certain standard, in order for the elections to remain objective and be free from abuse of power." (Resolution No. 1, dated 12/09/1997).

And while the date of the general elections is predetermined in the electoral law, the date of the by-elections is determined by the Constitution itself, not only in order to ensure permanent parliamentary representation for all citizens out of respect for the principle of equality but also to prevent granting discretion to the authority who would arbitrarily choose the politically optimal timing in order to ensure its victory in the elections. General parliamentary elections were postponed several times between 2013 and 2018 because they would only be held under circumstances approved by political leaders. Similarly, different components of the political regime also agreed to disrupt democratic life and prevent citizens from exercising their electoral right, since these elections would have been held amid public discontent with the ruling class due to the State of total collapse that Lebanon was witnessing.

In light of the foregoing, it became clear to us that exceptional circumstances have always been the ideal excuse used by the leaders' system to suspend various articles of the Constitution. This excuse, however, is not legally sound because the exceptional circumstances that allow the government to take urgent and

necessary measures that violate the legal text are unexpected situations that are not caused by humans, which means that the theory of exceptional circumstances does not have any legal effects except during such exceptional circumstances. However, the exceptional circumstances that the political authority used as an excuse in order to justify its violation of the Constitution are direct results of its actions, as it was the leaders' system that was responsible for the vacancy in the presidency, it was the system that abstained from voting on an annual budget, and it was the system who caused the extremely serious economic and social crises in Lebanon. Therefore, the leaders cannot invoke an exceptional circumstance created by them in order to justify violations of the Constitution.

Conclusion

Lebanon's actual Constitution is all about consensus between the leaders who claim to represent the sects without regard to any constitutional and legal logic. It is Lebanon's political constitution, which was born in 1992 when an alliance of warlords and businessmen acceded to power and took control of State institutions through systemic quotas and clientelism.

Under normal circumstances, this political constitution coexists with the legal constitution, i.e., the text taught today in universities as the Constitution of Lebanon in accordance with the amendments of 1990. This is where the ideological function of the legal constitution lies, as it grants legal legitimacy to a de facto authority that arose during the civil war and imposed itself by force of arms and money, and its dependence on various external parties.

As such, we understand the importance of the existential crisis that Lebanon is going through today. Major political crises lead to the collapse of the ideological function of the legal constitution and the emergence of a completely stripped-down political constitution as a de-facto authority based on the actual political

balance in society. Controversial German thinker "Carl Schmitt" formulated the theory of "political constitution" during the deep political crisis in Germany in the 1930s when the Nazi party took control. Schmidt emphasized that the law is mere general provisions behind which a specific political decision is concealed. This decision is revealed in times of crisis as a de facto authority that does not need justification. Therefore, Schmidt wrote his famous definition of sovereignty, explaining that it is the ability to decide in exceptional circumstances, i.e., the ability to make decisions about the true nature of the political system in a state. Constituent power is the political will that is capable of making comprehensive decisions about the form and type of the state's political existence[14].

The leaders' system has established its "political constitution", which is usually masked by the "legal constitution" in normal circumstances. However, the political constitution emerges in exceptional circumstances to impose itself on the state and society as the main decision-making authority in the Lebanese political system. This political constitution is the delicate balance between the leaders who always threaten to plunge the country into civil war and armed violence if they feel that their authoritarian interests are at stake. And thus, consensus between them turns into the greatest virtue and the supreme goal to which the Constitution and all other laws must succumb.

Harnessing the Lebanese State's legal apparatus to serve the interests of the leaders under the pretext of sectarian balance and national unity is what led to the disruption of the Constitution and the violation of basic legal guarantees that preserve the appropriate and democratic functioning of political authorities. It is also what justifies the existence of armed militias that violate the

14 "A constituent power is a political will, whose power or authority is capable of making the concrete, comprehensive decision over the type and form of its political existence, or in other words, it determines the nature of the institutional arrangement of political unity." (Carl Schmitt, Constitutional Theory, PUF, 2008, Paris, p. 211-212).

principle of the state's monopoly on legitimate organized violence, and the transformation of the judiciary and public governance into positions of influence that owe allegiance to the leaders with no regard for the public interest. It also justifies the mutual disruption of constitutional institutions, by suspending the meetings of the Parliament or the Council of Ministers, as a way to exert political pressure or insist on quotas and clientelism in all state functions, in contradiction with Article 95 of the Constitution, which limits sectarian distribution to first-category positions.

In short, the hegemony of the political ruling class over state institutions has exacerbated existing flaws in the Lebanese Constitution, but also deliberately violated the clear constitutional articles amidst the complete disruption of the role of political and judicial oversight bodies, which in turn failed to put an end to this systematic destruction of State logic. Therefore, the solution does only not lie in proposing technical solutions that require the amendment of some Constitution articles or the adoption of new reform laws, since the problem in its essence is political par excellence. It is reflected in the expansion of the network of clientelism of leaders, not only in all state facilities but also in the Lebanese society, which has been fragmented and divided into groups that owe allegiance to the different leaders who claim to represent them, defend their interests and protect them from the greed of other leaders. Consequently, the solution to the huge crisis in Lebanon can only be political, through the liberation of the Constitution from the system of leaders.

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