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Summary of the seminar from 28th April 2022

Control and transparency in Lebanon
Restoration of the administrative standard
**Antoine Messarra*

The seminar organised by the *Lebanese Foundation for Permanent Civil Peace*, the *Arab Institute for Parliamentary Training and Legislative Studies* and the *Konrad Adenauer Stiftung* on 28th April 2022 in the conference hall of the Lebanese Parliament on the topic: "Strengthening Parliamentary Control and Transparency" dealt with almost all its related problems. Due to the lack of control, in Lebanon, we are almost every day experiencing an anarchic-like situation. The seminar was attended by more than 60 ministers, MPs, judges, lawyers and civilians.

The contributions made and the lively discussion allowed for an analysis of the current situation and its causes. In the end priorities for the future were set in order to achieve progress.

1

**Diagnosis of the current situation and its causes:
Neither control nor accountability!**

The seminar gave a diagnosis of the current situation, identified its causes and worked out effective remedies. Lebanon's situation can be well summarized in the words of a young participant: "State censorship wounds Lebanese reality!"

1. *The essence of effective oversight is not a legal problem, but procedural management and governance:* Many contributions highlighted that oversight, accountability and transparency are primarily administrative, procedural and executive problems, related to the quality of civil servants, civilians and the prevailing culture in

a society. "The necessary instruments to implement laws do not exist. The parliament fulfils its role. The blockage lies in the enforcement of the law by the executive. The most prominent examples are public procurement law and illegal employment! More than 75 laws that were amended are not implemented accordingly! Six billion US dollars have been misappropriated in the telecommunications sector. A decision on 95 million dollars depends on the signature of a single minister! The dilemma is no longer parliamentary control but lies in the lack of an intact public administration and the prevailing mentality. Disregarding the law has become the norm! Illegal services dominate." (*Former minister and MP Yassin Jaber*).

2. *No possibility of controlling the mini-parliamentary government:* The principle of separation of powers is universal and every democratic system's fundament, otherwise a state of parliamentary hegemony emerges where privilege and profit are shared between the elite. Thus the role of parliament is completely paralysed. Consequently, it is a question of restoring the balance. In practice, there should be no collusion between the parliament and the control bodies or between the parliament and the Court of Accounts. There are three forms of control: effective control, control without significant impact and no control or impact! The dilemma lies in the fact that Lebanon, as a free democratic state, has committed to breaking the law." (*Fayez al-Shawabkeh, Secretary-General of the Arab Inter-Parliamentary Union*). "The composition of Arab parliaments is arbitrary and their structure is weak" (*Adnan Daher, Secretary-General of Parliament*).

3. *Populism and accountability on television!* In a situation of mistrust between citizens and power and widespread lack of control, "populist campaigns and accountability are only fought out in the streets" (*Dr Nasser Yassin, Minister of Environment*). We also observe that "the media only spreads negative information, although we would also need it for general reporting. When the ministry appealed to the generator operators specifically through the media, many things changed for the better, laws were respected again and court rulings were implemented." (*Lawyer Me Amine Salam, Minister of Economy and Trade*).

2

What has to be done? Direction in the constitution and administration and control culture of public funds

It is clear from the research and discussions that the conditions for control, transparency and accountability need to be re-established. These conditions are not dependent on legal provisions or legal inflation.

1. *Distinction between the de facto system of government and the Lebanese constitution:* There were comments on the "constitutional structure" and on "sectarianism." Is Lebanon today at the pinnacle of the rule of law, where every politician always carries Lebanese laws and the *Dalloz* anthologies with him and would never take any action, not one, without referencing the law? Inexperienced intellectuals give politicians their blessing according to the motto: This is the "confessional" system! Do we hold the law and the constitution accountable or the civil servants? The Lebanese Constitution must be read by its wording, especially Article 12 on the requirement of "merit and competence"; Article 95 prohibiting the assignment of an office to a community; the whole of Chapter IV defining the executive as the "executive" power; the whole of the Preamble to the Constitution describing the

Lebanese constitutional system as parliamentary with the precept of separation of powers. The idea of consensus was propagated to the neglect of democracy! Any democracy is deliberative by its very nature, but not lawless. Elementary principles are violated under the excuse of sectarianism. There is no link between the "constitutional order" and communal pluralism.

2. *"Executive" governments*: No oversight, transparency or accountability; forming governments in Lebanon is tantamount to forming mini-parliaments: "The basis for oversight lies in the principle of separation of powers, which regulates the relationship between the legislative and executive branches in a free democratic state" (*Fayez al-Shawabkeh, Secretary-General of the Arab Inter-Parliamentary Union*). Emphasis was also placed on the separation of the public prosecutor's office and the ministry (*Iman Tabbara*) and the need for full compliance with the principle of separation and that it cannot be that "there are de facto six ministers who govern the country and supervise each other and so any discussion takes place outside the institutions" (*Lawyer Amin Salam, Minister of Economy and Trade*).

3. *Government appointments*: Why was the establishment of an autonomous national school of administration under the supervision of the Civil Service Council sabotaged and subordinated to it? And why have many efforts in favour of appointment mechanisms failed? If the will of those in power allows "an oligarchic system to exist, controlled by leaders who barricade themselves behind institutions, regulatory mechanisms are blocked" (*Ghassan Moukheiber*). Accountability will not become effective by passing new laws. During the seminar, cases were presented showing the positive effect of ministerial intentions in the context of an opinion by the Ministry of Environment on licences and by the Ministry of Economy and Trade on judgements against generator owners.

4. *Parliamentary rules of procedure*: these rules of procedure need a fundamental revision, based in particular on the proposal of former MP Ghassan Moukheiber to "strengthen parliamentary scrutiny in its three manifestations - information, enquiry, scrutiny - and so that the parliament starts to meet more often in plenary sessions" (*Ghassan Moukheiber*).

5. *Parliamentary elections in May 2022*: When asked about the continuity of the presidency, the reply is: "The holder of this office was elected by the voters and re-elected by the National Assembly" (*Former Minister and MP Yassin Jaber*). So if citizens behave like subjects and not as free voters, nothing will change! Change comes from the ballot box; democracy is not "ready to take" or "delivery" (*Georges Okais*). The fundamental dilemma lies in popular legitimacy (*Philipp Bremer, KAS*).

6. *Combating legislative inflation and legal fraud*: Much of the corruption results from legislative inflation, which is then not implemented creating an illusion of change, and the instrumental abuse of the law. In many countries, a new law comes into force only after the old law has been repealed (*Mahmond Sabra, expert on legistics*). The headline of an article on circumventing laws in public procurement stated: "What happens behind the scenes to obstruct the implementation of laws through public procurement" (*Salwa Baalbaki, an-Nahar, 22/4/2022*). Behind the scenes, obstruct? Is this the rule of law?

7. *A culture of control by municipalities and intermediate bodies*: There are 1055 municipalities in Lebanon. What are the practices of the control culture regarding public funds? What is the function of social intermediary bodies such as trade unions and professional associations in terms of pooling interests and mediating between citizens and power?

Following the legacy of the *Lebanese Foundation for Permanent Civil Peace* and the goals of the *Konrad Adenauer Stiftung* to establish more rule of law (*Philipp Bremer, KAS*) as well as the de facto non-existence of effective administration and monitoring, there is a need for empowerment programmes, especially since 2016, not only at the national but also at the local level, based on the principle: think globally and act locally.
