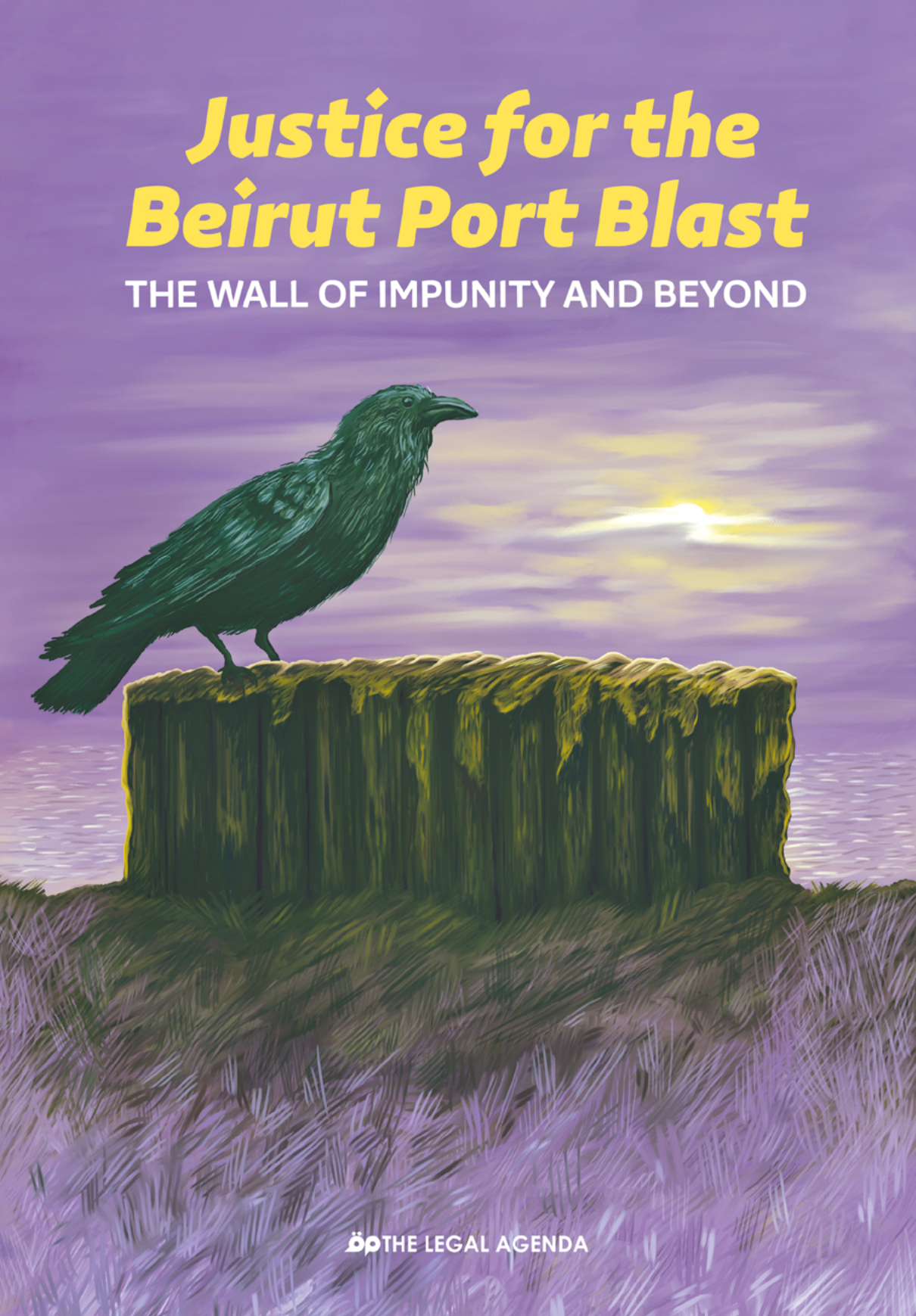
Justice for the Beirut Port Blast

THE WALL OF IMPUNITY AND BEYOND



THE LEGAL AGENDA

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The first moments of the port explosion
Photo by Ali Najdi

Introduction

Within months of the beginning of the investigation into the Beirut port blast, the issue of immunities emerged as an obstacle to prosecuting many of the suspects. While such a discourse had appeared before,[1] this was the first time it was associated specifically with an active judicial effort to disregard these immunities. The issue first emerged in the case following the 10 December 2020 decisions by the initial Judicial Council investigator, Fadi Sawan, to prosecute then caretaker prime minister Hassan Diab and several former ministers.[2] However, it returned more prominently – this time to stay – following decisions by current Judicial Council investigator Tarek Bitar on 2 July 2021.

Because of the seriousness of the port blast and widespread interest in it, these decisions and the extensive interplay surrounding them can provide extremely important lessons about the system of impunity and the factors underpinning and perpetuating it. This interplay culminated in public outrage over a petition that approximately thirty MPs signed to free Diab and four former ministers (hereinafter the "charged ministers") from the Judicial Council investigator's grasp and a mass protest in support of the blast victims and the course of the investigation on 4 August 2021. Thus, the Legal Agenda's stance[3] that the domestic judiciary should conduct the investigation into this crime because that is the most effective way to develop the justice system and build public support for it seemed to be bearing fruit.

However, the forces aggrieved by the investigation quickly sensed the limits of their strategy of defending the system of immunities. Hence, they gradually – but clearly and systematically – transitioned to attacking the Judicial Council investigator with the goal of ousting him. Their

1. An equally raucous discourse about immunities emerged in 1999 and 2000 when Émile Lahoud, at the beginning of his presidency, pursued a number of prosecutions for corruption.
2. Nizar Saghieh, "Wa-Infatahat Ma'rikat 'Hasanat al-Wuzara''... Khutwa Hamma Tuhaddiduha Siyasat 'al-Iflat min al-'Iqab'", The Legal Agenda, 13 December 2020.
3. Legal Agenda Statement on the Port Massacre: "Justice for the Victims Requires More Than Legal Accountability", The Legal Agenda, 7 August 2020.

offensive strategy began with manufacturing doubt in the investigator in public discourse. They then pursued various practical means to stay his hand, means that went beyond the courts to include various forms of pressure that reflect a desire to enforce their vision of justice (i.e. their own private justice). These efforts peaked with a government shutdown amidst the worst crisis to afflict Lebanon, which they continued until they had achieved their goal of suspending the investigation. Certain forces seemed to have declared an open, escalatory war on the Judicial Council investigator, using any means they deemed fit to remove him.

While these forces utterly failed to convince the public of their position on immunities, their offensive strategy, the political and media campaigns to discredit Bitar's performance, and the political reactions they evoked did largely manage to shift the focus from immunities and impunity to Judge Bitar's performance and legitimacy. The debate that the case sparked over the legitimacy of immunities and their negative impact on the entire legal system (an issue vital for overcoming the destructive system of impunity) careered down the alley of "Bitar's performance". Consequently, a vital, principled discussion about enabling the domestic judiciary to perform its role in major crimes (a precondition for establishing a justice system based on equality) transformed into a circumstantial discussion focusing on whether Bitar was intentionally or unintentionally serving factional agendas (especially against the "Resistance", Hezbollah, and its allies) and evoking political and sectarian partisanship (both for and against these parties). This transformation muddies the case such that it ends up in the quagmire of politicization and sectarianization, just like several other rights issues. When this occurs, forming a decisive public opinion on it in one direction or another becomes impossible. Thus, the case loses its ability to instigate any positive change in the justice system and risks becoming another opportunity for hostilities and bloodshed, as occurred in the Tayouneh incident.

These concerns are exacerbated by the fact that the effort to cast doubt over the judge's performance involved means that have often been used to obstruct accountability and consolidate the system of impunity. The gravest of these means include invoking the concept of inviolable dignitaries (maqamat, a concept that contradicts the principle

of equality), regularly claiming to be being targeted selectively in order to portray the judiciary as the assailant and the suspects as the victims, sectarianizing and evoking group partisanship, and pressuring the judge to recuse himself and anyone powerful to help disqualify him. If these means are accepted and considered legitimate, anyone with influence can use them to obstruct judicial work and guarantee their own impunity. In other words, irrespective of these forces' intentions or the validity of any of their criticisms of the Judicial Council investigator (about which we have our reservations), the means they employ deepen the problems affecting justice and render the judiciary (like they would any judiciary) incapable of fulfilling the responsibilities for which it was created in this case or any other. This analysis is corroborated by anti-Bitar forces' failure to present any vision of how to improve and protect judicial performance and, in practice, properly conduct the investigation in this case or any other given the entrenchment of such practices. Their discourse was devoid of any prospects, as was demonstrated by their indifference when the investigation was frozen entirely.

Under such a situation, documenting and analyzing these means is particularly important for restoring clarity to the port blast case and better understanding the system of impunity and its foundations. This understanding is necessary for a mature public debate free of the dimensions that have usually rendered it inert, negative, and even divisive, which is essential for truth and justice not only in this case but also in cases concerning the corruption that spanned the last three decades and caused a near-total economic, monetary, and financial collapse. This is what we intend to do in this study by documenting the three battles that emerged from the case: the battle over immunities in Chapter 1, the battle over evaluating Bitar's performance and impartiality (or rather to manufacture distrust of him) in Chapter 2, and the battle to remove Bitar one way or another in Chapter 3. These battles are interconnected not only because the forces opposed to the Judicial Council investigator and striving hard to remove him also all reject the lifting of immunity from any defendant in this case, but also because of the particular means used and ends sought, as previously explained.

Hence, we declare from the outset that this study aims to re-raise the core issue (impunity and the related crisis in the relationship between the judiciary and the politician or – more generally – between the judiciary and anyone with influence) without being dragged into a discussion of the faults in the Judicial Council investigator's decisions. Whether Bitar is poor or outstanding is irrelevant amidst the absence of any prospect of accountability and the prevalence of means that foil any judicial action irrespective of its appropriateness.

In other words, this study seeks to correct the course of the debate in this case in the hope that it rises above a discourse charged with group partisanship and gain-loss calculations and opens prospects for a desperately needed improvement in justice values and institutional performance.

Chapter 1

The Battle to Remove Immunities – Fortresses That Cracked Without Crumbling

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The Battle to Remove Immunities – Fortresses That Cracked Without Crumbling

One of the most important stages in the discourse about the port blast investigation is the efforts that several political actors made to justify ignoring or dismissing the requests to lift immunities. Before presenting the most significant of these efforts, we must mention that Judicial Council Investigator Bitar took a totally different approach to that of his predecessor. While Sawan decided to bypass all immunities on the basis that there are no red lines in the port blast case, Bitar – in his requests – stuck to addressing the authorities concerned, confronting them with their constitutional and legal responsibility to lift immunity from the suspects so that he could complete his investigation. While Bitar did so to avoid facing the same fate as Sawan, who was removed for disregarding these procedures,[1] he thereby forayed into the immunities maze, destined for a prolonged conflict with influential political forces.

Irrespective of the validity of the arguments presented for not complying with the requests to lift immunity, which we will discuss successively, note that the responses of the parties concerned generally took a legal form. These parties seemed to be trying to trump the authority of the judiciary with the authority of the law, portraying their insistence on immunity not as an attack on the judiciary or victims but as an application of the law and Constitution. In the wake of Bitar's decision, Parliament Speaker Nabih Berri commented, "We are 100% for applying

1. Nizar Saghieh, "Li-Hadha Ab'adat Mahkamat al-Tamyiz al-Qadi Alladhi Ta'atafa fa-Tajarra'a", The Legal Agenda, 24 February 2021.

the law".[2] It was followed by a statement by his deputy, Elie Ferzli, implying that to uphold immunity is to uphold the Constitution while to disregard it is to disregard the Constitution.[3] The NNA quoted him as saying, "The legislator put the issue of lifting immunity into constitutional texts and gave it significance on the level of the Constitution, which is the fundamental law regulating our life in Lebanese society. We cannot consider this a fleeting matter and say, 'No big deal, lift immunity' ... The path we are charting is the one that delivers rights to their owners. We absolutely cannot overstep the law". With this statement, Ferzli drew on his proud oratory skills to portray immunities as a social interest that must be protected and upheld, in the face of a public discourse calling for their removal as it had become increasingly clear that they are one of the mainstays of impunity. This emphasis on respecting the Constitution was remarkable coming from parliamentary leaders who had lived just fine with the chronic violation of many of its articles, especially those requiring the enactment of annual budgets. They seem to pick out the parts of the Constitution that preserve their power and spare them from any accountability while ignoring many of the obligations and checks it imposes on Parliament.

In this section, we will discuss each of the immunities that were thrown in the face of the Judicial Council investigator and the investigation in an effort to evade prosecution, namely the immunities and special prosecution procedures pertaining to presidents and ministers, MPs, public officials, judges, and lawyers. We will discuss the routes that the Judicial Council investigator took to overcome these immunities. We will also see the maneuvers certain political forces made to prevent the lifting of immunities, which would form a precedent that threatens the foundations of the post-Civil War political system, particularly general amnesty, immunities, and the guaranteed impunity of influential figures.

2. "Barriyy li'-l-Jumhuriyya' Hawla Ma Qarrarahu al-Qadi al-Bitar: Nahnu ma'a Tatbiq al-Qanun Mi'a fi al-Mi'a", Aljoumhouria, 3 July 2021.
3. S. M., "Barriyy Tara''sa Jalsa Mushtaraka li-Hay'at Maktab al-Majlis wa-Lajnat al-Idara, al-Farzali: Laysa min Salahiyyat Ijtima' al-Yawm Talab Raf' al-Hasana wa-l-Majlis Yata'ahhadu bi-Mutaba'at al-Milaff Wifqan li-l-Qanun", National News Agency, 9 July 2021.

Aborting the Examination of the Request to Lift MPs' Immunity

The first move in this regard was the response by Parliament's Joint Committee (comprising its Bureau and the Administration and Justice Committee) on 9 July 2021 to the requests to lift immunity from three MPs, namely Ali Hassan Khalil, Ghazi Zaiter, and Nohad Machnouk. The Judicial Council investigator had sent these requests to Parliament via the Cassation Public Prosecution and Ministry of Justice on July 2.

Before explaining the steps that the committee took in this regard, we must mention two points. Firstly, the requests to lift immunity were based on Article 40 of the Constitution, which prohibits the criminal prosecution or arrest of any MP while Parliament is in session without Parliament's permission, except in cases of flagrante delicto. Secondly, Parliament's Internal Statute regulates the means whereby requests for permission are examined. It requires that the Joint Committee present a report on the request within two weeks.[4] If no report is presented, Parliament's speaker must put the request to Parliament in the earliest session convened so that it can choose whether to grant the committee extra time or decide on the request immediately.[5]

The Joint Committee's response was to suspend the deadlines established by the Internal Statute by claiming that the request presented did not satisfy the formal requirements and that the judge needed to complete it before it could be examined.

To this end, the Joint Committee had no qualms about distorting Article 91 of Parliament's Internal Statute.[6] This article stipulates that a request to lift immunity need only include "a summary of the evidence

4. Article 92 of Parliament's Internal Statute:
"A request to lift immunity is presented to the parliament speaker, who shall call Parliament's Bureau and the Administration and Justice Committee to a joint session to study the request. This committee must present a report on it within two weeks".
5. Article 93 of Parliament's Internal Statute:
"If the Joint Committee does not present its report within the timeframe specified in the previous article, the Parliament Speaker's Office must notify Parliament in the first session it convenes, and Parliament may decide to grant the Joint Committee additional time as it deems sufficient or to take over the request and decide on it immediately".

that necessitates immediate proceedings". Though the judges' letters satisfied this requirement, the Joint Committee deemed that it could not assess the request until the judge had supplied it with "all documents and paperwork that proves the suspicions pertaining to each of the accused". In other words, the committee, including Berri and Ferzli, simply interpreted "a summary of the evidence" as synonymous with "all documents and paperwork that proves the suspicions pertaining to each of the accused". After most MPs on the Joint Committee[7] endorsed this distortion,[8] Ferzli and their spokespeople began confidently treating it as an established fact imposed by the law. They thereby returned the ball to the court of the judge, who would have to supply Parliament with what it demanded or else be held responsible for obstructing the justice he is supposed to administer. Ferzli again emphasized this point when he said that "Evidence and proof is an extremely important matter because it is stipulated in the text, and we are bound by that text".

This distortion seemed to be laying the groundwork for Parliament to supplant the judge in evaluating the liabilities of MPs, contrary to all the stances that current and former MPs had once declared in the context of lifting immunity from MPs Yehya Chamas[9] and Habib Hakim.[10] In the debate on lifting immunity from Chamas in 1994, Parliament Speaker Nabih Berri stated,

"Parliament ... does not examine whether or not you are guilty in this matter. That's between you and the judiciary and between you

6. Article 91 of Parliament's Internal Statute:
"A request for permission to prosecute is presented by the minister of justice enclosed with a memo from the public prosecutor in the Court of Cassation that includes the type of offense, the time and place of its perpetration, and a summary of the evidence that warrants urgent measures".
7. "All the MPs representing the political blocs agreed that 'the documentation in Parliament's possession cannot form the basis of a legal position', with the exception of the opinion of Lebanese Forces representatives Georges Adwan and George Okais". Mayssam Rizk, "al-Jawla al-Ula Bayna al-Muhaqqiq al-'Adliyy wa-Majlis al-Nuwwab: al-Mazid min 'al-Maghmagha'", Al Akhbar, 10 July 2021.
8. Nizar Saghieh and Fadi Ibrahim, "7 Mukhalafat li-l-Hay'a al-Niyabiyya al-Mushtaraka Didda Dahaya al-Majzara wa-Dhawihm", The Legal Agenda, 16 July 2021.
9. Parliament transcripts, 18th legislative cycle, 2nd ordinary session, 1994, transcript of the 3rd sitting convened on 24 November 1994.
10. Parliament transcripts, 19th legislative cycle, 2nd ordinary session, 1999, transcript of the 2nd sitting convened on 7 and 8 December 1999.

and God Almighty, and God Almighty represents the word of judgment in this matter. Parliament discerns whether the prosecution presented to it aims to prevent the MP from performing his duty as an MP, from performing his role as an MP, from speaking, from opposing or supporting [the government]. Parliament examines the seriousness of the matter only from this angle. Only the judiciary can absolve our colleague Yehya Chamas and say whether he is as clean as snow or, God forbid, as guilty as any other criminal. You put me under oath, and I am telling you honestly and clearly that this is my position, no more or no less."

More importantly, this encroachment by Parliament is a contravention of the principle of the separation of powers. This encroachment was further underscored by Ferzli's statement that Parliament will pursue the case rigorously to reveal the full truth, as well as his defiant and bullyish statement that it is Parliament, not "the Bitar [family] son", that will reach the truth.[11]

This textual distortion is especially egregious because it renders lifting immunity virtually impossible as investigation confidentiality prevents the judge from handing over these documents. It also endangers the investigation by compelling the judge to reveal the details of all evidence in his possession. Thus, the Joint Committee seems to have intentionally twisted the law to stall and perhaps preclude the lifting of immunity in a manner that makes the judge responsible and contradicts the general trend in democratic countries of reducing and constricting immunities. The judge promptly responded that he would not supply the committee with any further documentation as any additional information he could give would compromise investigation confidentiality.

Consequently, the requests to lift immunity from the MPs remained shelved. They were not sent to Parliament's General Assembly for it to decide whether to lift immunity, and the parliament speaker did not present them to the legislative sessions held after 9 July 2021, as required

11. Rita Nassour, "'Arida Niyabiyya Qariba wa-l-Farzali 'Abra 'Media Factory News': Nahnu Man sa-Yuzhiru al-Haqiqa wa-Mish Natirin Ibn al-Bitar!", Media Factory News, 13 July 2021.

by the Internal Statute. Bitar had to wait until 20 September 2021, when Najib Mikati's government won confidence and Parliament's extraordinary session consequently ended, to begin prosecuting the charged minister by summoning them to interrogations without Parliament's permission. When Khalil failed to attend the interrogation, of which he had been duly informed, Bitar promptly issued an arrest warrant for him. However, the two other charged MPs, namely Zaiter and Machnouk, filed cases that automatically stayed Bitar's hand, preventing their interrogations from occurring.

Nevertheless, the question of parliamentary immunity was raised again by two issues:

The first was the execution of Khalil's arrest warrant, which political forces deemed an attack on them and rejected. In the Council of Ministers, outgoing minister of culture Mohammad Mortada accused Bitar of collaboration and declared that in the following days he would wander with Khalil in Corniche El Manara – a popular public leisure location – as a show of defiance. He then announced that the Amal-Hezbollah duo would boycott government sessions until Bitar was disqualified. When the autumn parliamentary session began days later (19 October) pursuant to Article 32 of the Constitution, the Internal Security Forces and Cassation Public Prosecution raised the possibility of executing the arrest warrant while Parliament was in session without seeking its permission. When the Cassation Public Prosecution asked Bitar, he insisted that the warrant must be executed as Article 97 of Parliament's Internal Statute stipulates that the prosecution of an MP while Parliament is not in session shall continue during subsequent sessions without any need for Parliament's permission. Consequently, he issued a second warrant on 10 December 2021 and called for its immediate execution. However, despite Bitar's clear decision in this regard, the Cassation Public Prosecution told the Internal Security Forces following both his first and second warrants that Khalil could not be arrested during the session. Subsequently, Parliament Speaker Berri pressured President Michel Aoun to open an extraordinary session in January 2022 in order to provide the necessary cover for not executing the arrest warrant.

The second issue was the results of the 2022 parliamentary elections. While Machnouk lost his parliamentary immunity because he did not run for reelection, the election of both Zaiter and Khalil to the two most important parliamentary committees (the Finance and Budget Committee and the Administration and Justice Committee)[12] by many MPs (94 votes) showed that the major blocs, including those that support the investigation into these two MPs, were in alignment with them. This raises questions about how the vote on lifting immunity from them would go if it were put to Parliament.

Prosecuting Ministers: The Battle Over the Interpretation of Article 70 of the Constitution

Bitar, like his predecessor Sawan, deemed that the special procedures for prosecuting ministers stipulated in Article 70 and Article 71 of the Constitution do not apply to the actions that several of the port case suspects are accused of taking or failing to take while they were ministers. Hence, although he sent requests to lift immunity from several MPs, lawyers, and public officials, he did not seek anyone's permission to summon caretaker prime minister Hassan Diab as he deemed that the latter enjoyed no immunity. As for lawyer and former minister of public works Youssef Fenianos, Bitar asked permission from the Tripoli Bar Association, to which Fenianos belongs, to prosecute him in accordance with the law regulating the law profession but did not make the prosecution contingent on any other procedure. The same goes for Zaiter, Khalil, and Machnouk: he sent requests to lift their immunity to Parliament, as well as the Beirut Bar Association in the case of Zaiter and Khalil, without taking any other measure.

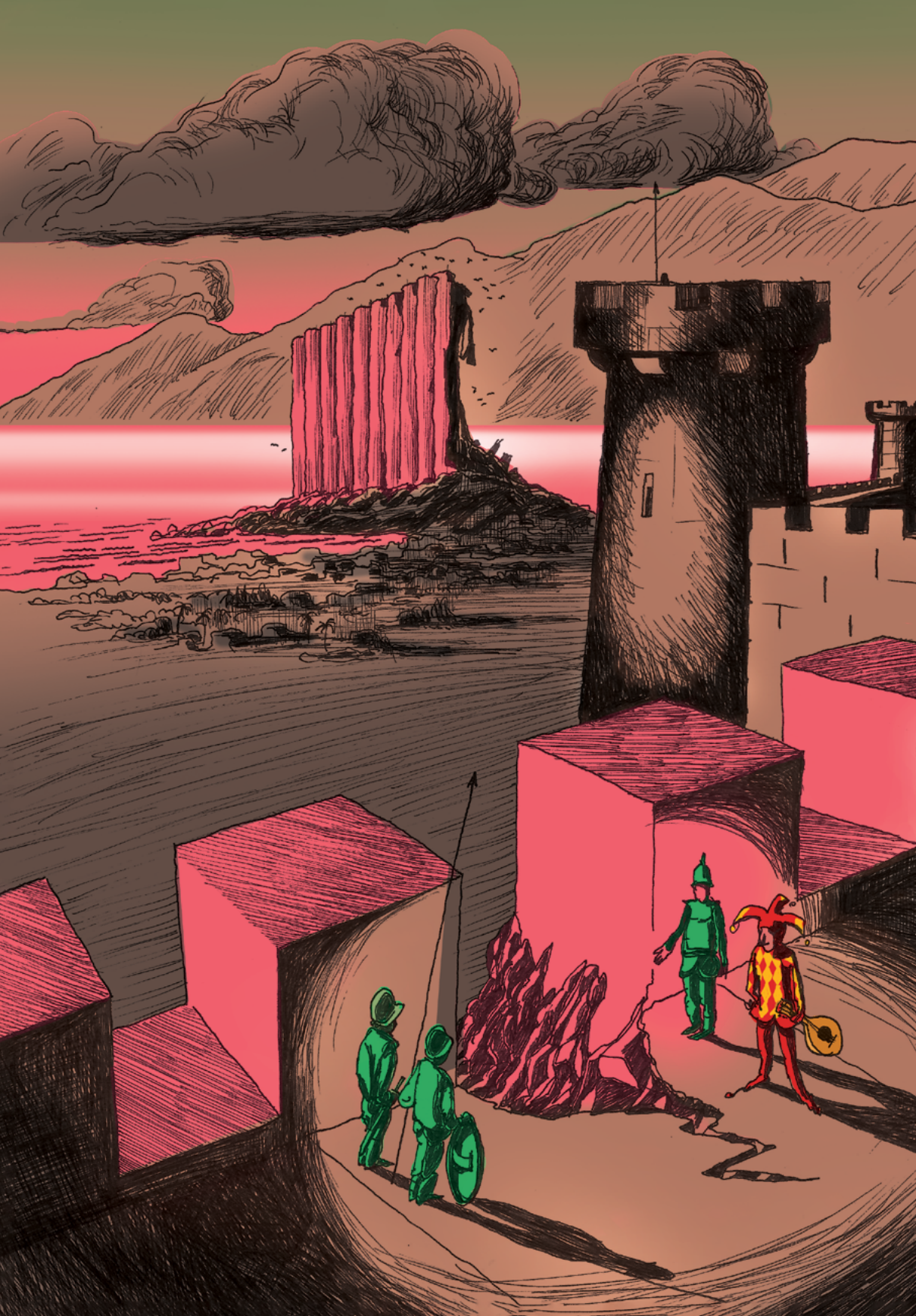
Subsequently, Diab and the four charged ministers refused to recognize the Judicial Council investigator's jurisdiction on the basis that the authority competent to try them is the Supreme Council for Trying Presidents and Ministers. They argued that the accusation leveled against them – namely failing to take measures concerning the ammonium nitrate even though they knew it was being stored at the port – constitutes

12. Elie Ferzli, "Qira'a fi Nata'ij Intikhabat al-Lijan al-Niyabiyya", The Legal Agenda, 9 June 2022.

occupational negligence that falls within the definition of the "breach of duties" that Article 70 stipulates be tried by the aforementioned council. The Cassation Public Prosecution supported this position in several of its communications, including the letter issued by Cassation Advocate General Ghassan Khoury to Parliament on 20 September 2021. Machnouk sought to bolster this view with a legal opinion from constitutional law expert Dominique Rousseau, which he presented in support of two cases he filed with the Court of Cassation to quash Bitar's decision to prosecute him on the basis that it constituted a serious error and to stay Bitar's hand on the basis of legitimate doubt in him.

• Faced with this interpretation of the article and its applicability, Bitar revealed his different interpretation in the text of his decision to dismiss the formal defenses presented by Fenianos. He deemed himself competent on two bases:

• Article 70 exhaustively lists the two offenses for which Parliament may impeach a prime minister or minister, namely high treason and breach of duties. These duties are purely job-related duties, i.e. those stemming from their ministerial work. This offense is explicitly stipulated in Article 373 of the Penal Code, which defines occupational negligence. Based on this definition, Bitar deemed that Parliament cannot exercise its power to impeach ministers or prime ministers for homicide, bodily harm, causing fires, or sabotage, whether intentional or unintentional, as these crimes are totally independent of the crime of breaching job duties intended in Article 70 of the Constitution, even if a breach of duty sometimes constitutes one element of the crime. Bitar argued that this conclusion is dictated by the rules of sound legal interpretation and the principle of equality stipulated in the Constitution as trial before the Supreme Council for Trying Presidents and Ministers is an exception.



Even if the crime did fall within the definition of occupational negligence, as the charged ministers claim, Parliament's abstention from exercising its powers via its failure to issue an impeachment decision leaves the door open for the criminal judiciary to prosecute.

The Lebanese Judges Association supported Bitar's interpretation of Article 70 in several of its statements, most notably those issued on 15 August 2020 and 23 July 2021.

The disagreement over the interpretation of Article 70 could have ended with the charged ministers filing a formal defense questioning the Judicial Council investigator's competence and the investigator ruling on it in one direction or the other, as occurs in other criminal cases. However, once again, things did not go according to expected procedure. Political and parliamentary campaigns opposed to the Judicial Council investigation launched to enforce their own interpretation of the article. For example, approximately 30 MPs signed a request to impeach the charged ministers, citing the law establishing the Supreme Council for Trying Presidents and Ministers and the evidence included in Sawan and Bitar's letters. Article 19 of this law stipulates that impeachment procedures begin with an impeachment request presented by at least 20% of MPs (a condition that was met). Then the General Assembly must be called to convene and hold an absolute majority vote to either dismiss the request or establish a three-member parliamentary committee to investigate it. In light of the investigation's results, the General Assembly then once again examines the impeachment request, which is only accepted if two thirds of MPs vote for it in a secret ballot.

Notably, the MPs who signed the impeachment request belong to the same blocs as the charged ministers or blocs allied with them. Most belonged to the Development and Liberation bloc, the Loyalty to the Resistance bloc, and the Future bloc. Conversely, the MPs of the blocs that did not sign maintained that Bitar has competence. This suggests that the request aimed to establish the competence of the Supreme Council for Trying Presidents and Ministers, to try the charged ministers based on their interpretation of Article 70 of the Constitution, and – in practice – to free them from the Judicial Council investigator's grasp rather than to actually impeach them.

Evidently, the intent behind this request was to appoint a parliamentary investigation committee parallel to the Judicial Council investigation, a committee whose investigation would pave the way for the impeachment to be dismissed once put to a secret vote. Hence, the Legal Agenda went so far as to call the request a "petition of shame".[13] This label spread so quickly in the media and on social media that it compelled six MPs to announce their withdrawal from the petition. This would have brought the number of signatories (now 26) below the required 20% of MPs had other MPs from the aforementioned blocs not endeavored to add their signatures.[14]

Hence, instead of calling a session to examine the requests to lift immunity from the three MP suspects, Parliament Speaker Nabih Berri called a session on 12 August 2021 to examine the request to indict the five ministers after they sent their written pleadings to Parliament. However, the "session of shame", as the families of the blast victims called it in a statement issued on the eve of the session,[15] was also canceled after several blocs (such as Strong Lebanon, Strong Republic, and Democratic Meeting) and independent MPs announced a boycott. The Free Patriotic Movement's Media Committee argued that Parliament's examination of the request would "circumvent the work of the judicial judiciary" and lead to "the suspension of its investigation into the suspects, be they MPs or ministers". The Democratic Meeting bloc also renewed its demand to "lift immunities from all officials".[16] Thus, the anti-investigation forces failed to enforce their interpretation of Article 70 and free the charged ministers from Bitar's grasp. Note that the families of the victims who protested near Ain el-Tineh (Parliament Speaker Berri's office) against this session were violently attacked by suspected members of the Parliamentary Police or the Amal Movement.[17]

13. "La'ihat al-'Ar: Asma' al-Nuwwab al-Mutwarritin fi Tahrib Zumala'ihim min al-'Adala", The Legal Agenda, 21 July 2021.
14. "Tahdith 'La'ihat Nuwwab al-'Ar': Man Tabarra'a Minhum? Wa-Man Indamma Ilayhim?", The Legal Agenda, 11 August 2021.
15. "Bayan li-Ahali Dahaya wa-Jarha wa-Musabi Tafjir Marfa'a Bayrut: li-Muqata'at 'Jalsat al-'Ar' Ihtiraman li-Arwah Dahayana", The Legal Agenda, 10 August 2021.
16. "Lubnan.. 3 Kutal Niyabiyya Tu'linu Muqata'ataha Jalsa Barlamaniyya al-Khamis", Anadolu Agency, 11 August 2021.
17. Nabila Ghousein, "Ahali Dahaya Tafjir 4 Ab Yutayyiruna Jalsat al-'Ar", The Legal Agenda, 12 August 2021.

Despite the failure of Parliament's General Assembly to examine the impeachment request and, subsequently, to apply Article 70 of the Constitution, several correspondences from Parliament's administrative apparatus expressed that the Judicial Council investigator is not competent to investigate the charged ministers. For example, Parliament's general secretary Adnan Daher sent letters to the Cassation Public Prosecution informing it that Diab (27 August 2021) and Fenianos (15 September 2021) cannot be prosecuted. Parliament's Media Directorate had announced the same on 22 July 2021, citing the law establishing the Supreme Council for Trying Presidents and Ministers and stating that Parliament's first task now was to establish a parliamentary investigation committee,[18] i.e. the preliminary step for referring the ministers to the supreme council. In this regard, Parliament's two administrative apparatuses seemed to be operating outside their competence at the behest of the Parliament Speaker's Office and in service of its wishes. They are supposed to act in harmony with the will and decisions of Parliament's General Assembly, not independently of them.

Two things show the absurdity of calling for the ministers to be referred to the Supreme Council for Trying Presidents and Ministers:

Firstly, in November 2019, Financial Public Prosecutor Ali Ibrahim referred several former telecommunications ministers to this council, deeming it the body competent to prosecute them. To this day, Parliament has taken no measure to prosecute them. In fact, over the years, the council has never prosecuted any president or minister. Hence, when it comes to prosecuting presidents and ministers, the choice is clearly not between prosecution before the Supreme Council for Trying Presidents and Ministers and prosecution before the judicial judiciary but between prosecution and no prosecution at all.

Secondly, during the 17 October Uprising, MPs Hassan Fadlallah and Hani Kobeissy proposed a constitutional amendment that would grant the power to prosecute ministers in cases of squandering public wealth

18. Statement issued by Parliament's Media Directorate, 22 July 2022.

and financial corruption to the competent branch of the judiciary instead of the Supreme Council for Trying Presidents and Ministers, arguing that the latter is incapable of exercising it.[19] This reflects an inconsistency in the two ministers' stances, as well as a contradiction between their earlier stances and the stances of their bloc, which led the campaign to sign the shameful petition referring the ministers to this very council. Moreover, in a parliamentary session two months after the explosion, Fadlallah himself expressed his bloc's dismay that no minister had been held accountable for it, arguing that "accountability for any minister is being intentionally blocked".[20]

Immunity of Public Officials

The third immunity that emerged in the wake of Bitar's requests was that of public officials. This issue concerned the requests to lift immunity from General Director of General Security Abbas Ibrahim and General Director of State Security Tony Saliba.

Regarding Ibrahim, his immediate superior – i.e. the authority competent to grant permission to prosecute him – was obviously the minister of interior (Mohammed Fahmi at the time). Fahmi rejected the request on 6 July 2021. He argued, firstly, that "the function of General Security at the border ports is to secure the entry and exit of individuals, as well as to collect information and refer it to the relevant authorities". Secondly, the request did not give rise to "any suspicion that [Ibrahim] engaged in risk-taking by refraining from doing what was necessary to avert the danger, bearing in mind that the duties of the General Directorate of General Security do not include pursuing any case taken over by the judiciary". Remarkably, on the day the request was announced, Fahmi had confirmed his intent to accept it.[21]

19. Lara Maddah, "Mulahazat Hawla Qanun Raf' al-Hasana 'an al-Wuzara': Ta'dil al-Dustur bi-Qanun aw Luzum Ma La Yalzamu?", The Legal Agenda, 22 November 2019.
20. Maher El Khechen, "al-Majlis al-Niyabiyy Yutliqu al-Muhasaba Tamjidan li-l-Dhat: 'Fa-l-Narfa' al-Hasana bi-l-Tahara wa-l-Tuba'", The Legal Agenda, 1 October 2020.
21. "Fahmi li-l-LBC: 'La Yumkinuni Illa An 'Utiya Idhn al-Mulahaqa Ihtiraman li-l-Qanun", 2 July 2021.

The issue was more complicated when it came to Saliba as a debate arose over the identity of the immediate superior competent to give permission to prosecute him. According to the National Defense Law, the State Security agency is "subject to the authority" [khadi'a li-sultat] of the Supreme Defense Council and "subordinate" [tabi'a] to its president and vice-president (i.e. the president of the republic and the prime minister).[22] So is Saliba's immediate superior the authority to which his agency is subject or the authority to which it is subordinate (note that the State Security budget item appears in the budget chapter on the Prime Minister's Office)? Moreover, rather than facilitating the examination of the request on the basis that the measures for lifting immunity and obtaining permission to prosecute are an exception to the rule (subjection to accountability), the authorities concerned made matters as complicated as possible. The president of the republic and the prime minister refused to examine the request on the pretext that only the Supreme Defense Council has jurisdiction over it.[23] Yet the Supreme Defense Council also refused to examine it on the pretext that because it was sent to the prime minister, not the council, it was delivered improperly.

After re-sending the paperwork to the Supreme Defense Council, Bitar received a response on 11 August 2021 stating that because the request did not contain "anything showing grounds for prosecution" or "the attached file", the council decided to ask the Cassation Public Prosecution to "examine the issue of prosecuting Saliba".[24] In other words, the Supreme Defense Council repeated the argument that Parliament's Joint Committee had made, namely that it cannot examine the request unless it is shown the entire casefile (an illogical demand as it conflicts with investigation confidentiality and the separation of powers, as previously explained). However, the Supreme Defense Council's response here was distinguished by the fact that it passed the responsibility off to the Cassation Public Prosecution, which had previously declared, in relation to the request to lift Ibrahim's immunity, that it could not examine the

22. Article 7 of the National Defense Law issued on 16 September 1983 (Legislative Decree no. 102).
23. "Taqadhuf al-Mas'uliyyat bi-Khusus Manh Idh Mulahaqat Saliba: 'Ab'idu 'Anna Ka's al-Hasanat", The Legal Agenda, 17 July 2021.
24. Lara El Hachem, "al-LBCI Tahsulu 'ala Qarar al-Majlis al-'Ala li-l-Difa' Hawla Idhn Mulahaqat al-l-Liwa' Saliba", LBCI International, 13 August 2021.

matter of lifting immunity from officials in cases referred to the Judicial Council, as explained below. Hence, the president of the republic, the prime minister, and a group of ministers abdicated their responsibility in this area in order to hide behind the Cassation Public Prosecution, which had also abdicated responsibility on flimsy grounds that withstand no serious debate.

After the changeover to Najib Mikati's government in September 2021, Bitar repeated his two requests. Once again, he received explicit refusals from both the new minister of interior Bassam Mawlawi (10 October 2021) and the Supreme Defense Council (12 October 2021).

Bitar did not stop there. Each time his request was rejected, he referred the rejection to the cassation public prosecutor, who had to decide whether prosecution should be permitted within 15 days under Paragraph 4 of Article 61 of the Public Employees Statute. In this regard, Cassation Public Prosecutor Ghassan Oueidat's announcement that he was recusing himself from the port blast case because of a conflict of interest (Ghazi Zaiter, one of the charged MPs, is his brother-in-law) raised an extremely important legal question. Besides the fact that he delivered his recusal unilaterally and without presenting it to any authority for approval, the cassation public prosecutor's power to examine decisions to withhold permission to prosecute is an administrative power (distinct from his judicial powers) and cannot be delegated to another person in the absence of a legal text allowing such delegation. Thus, an unusual situation arose: On one hand, Oueidat could not sensibly make administrative decisions in the case, particularly concerning the withholding of permission to prosecute, because of his conflict of interest. On the other hand, no other person could make such a decision. Hence, the Legal Agenda called on the government to appoint a special cassation public prosecutor in the case as permitted under Article 354 of the Code of Criminal Procedure, [25] for only this measure allows the powers of the cassation public prosecutor, particularly his administrative powers, to be transferred. However, these legal considerations were implicitly disregarded with no debate or justification when two cassation advocates general appointed by Oueidat himself (namely Imad Kabalan

25. "Mughalatat 'Uwaydat fi Hadithihi ma'a Ahali Dahaya Tafjir al-Marfa'", The Legal Agenda, 2 September 2021.

and Ghassan Khoury) took over the examination of the case. Here too, the latter's responses were ambiguous. Regarding the request to lift Ibrahim's immunity, Khoury asked the Judicial Council investigator to "take the necessary measures to identify the suspicions and evidence" against him. Khoury also asked the investigator to "take [Ibrahim's] statement in detail, confront him with the witnesses, have him detail the General Security agency's functions and role in the issue of the ammonium nitrate at the port as the basis for further action, and then submit to us the documents and content of the statements so that the evidence and suspicions necessary to charge him can be evaluated".[26] Thus, Khoury seemed to turn the request to lift immunity sent to him into an opportunity to cast doubt over Bitar's performance and issue guidance to him, as though Bitar had to prove he took all measures the Public Prosecution deems available to him before even thinking about requesting that immunity be lifted.

Although Khoury seemed to be awaiting more information about the suspicions surrounding Ibrahim before making his decision, later in the same letter he bizarrely denied the Cassation Public Prosecution's power to make any such a decision. This he did via a clear distortion of Article 61 of the Public Employees Statute, which governs the mechanism for prosecuting officials. He deemed that because the Cassation Public Prosecution is the prosecuting body in cases referred to the Judicial Council, it is a party to the case and therefore cannot decide on the request to lift immunity that it received. He thereby made three grave errors:

Firstly, like Oueidat, he abdicated an exclusive responsibility that the law explicitly vests in the Cassation Public Prosecution, namely the responsibility to examine the refusal of an administration to lift immunity from one of its officials. This abdication gives this administration virtually absolute power to allow or disallow the prosecution of any one of its officials, expanding officials' immunity (which is an exception to the rule of accountability) instead of constraining it.

26. Yusuf Diyab, "al-Niyaba al-Tamyiziyya Tastamhilu I'ta' al-Idhn li-Mulahaqat al-l-Liwa' Ibrahim fi Qadiyyat al-Marfa'", Al-Anba, 25 July 2021.

Secondly, like Oueidat, he conflated the Cassation Public Prosecution's judicial power (prosecuting) and the administrative power (granting permission to prosecute) that the law grants it, deeming that its exercise of the former prevents it from exercising the latter.

Thirdly, he contravened the principle of the unity of the Public Prosecution by differentiating between instances in which the Cassation Public Prosecution represents public right directly and instances in which another Public Prosecution office (such as the Appellate Public Prosecution) performs this function. These Public Prosecution offices constitute one indivisible whole, especially as they are all subject to the cassation public prosecutor's instructions.

Khoury then took the same stance on the issue of permission to prosecute Saliba even though the Supreme Defense Council had explicitly left it up to him to examine lifting immunity, as previously explained.

Likewise, on 21 October 2021, Cassation Advocate General Imad Kabalan (who began representing the Cassation Public Prosecution in this case after the Beirut Bar Association filed a request to disqualify Khoury), approved the decisions by Minister of Interior Mawlawi and the Supreme Defense Council to withhold of permission to prosecute Ibrahim and Saliba under the new government. Hence, besides Minister Fahmi, who issued an explicit decision to withhold permission to prosecute Ibrahim, the other authorities (the president of the republic, the prime minister, the Supreme Defense Council, and the Cassation Public Prosecution) seemed to be vying to abdicate the responsibility of examining whether to grant permission to prosecute, tossing it one another's direction. Evidently, these authorities want to uphold these immunities or are at least apprehensive about compromising them, yet their attempt to hide behind formal grounds to shirk their responsibility shows that they are just as apprehensive about the consequences of explicitly declaring their refusal to compromise immunity. Thus, they ended up doing the same thing that Parliament's leaders, represented by its Joint Committee, did in relation to MPs' immunity, as previously explained. It is for this reason that we say that these immunities cracked but have not yet crumbled.

Finally, we must point out two things:

Firstly, the families of the blast victims conducted several actions in front of the Ministry of Interior and Cassation Public Prosecution to protest the rejection of the requests or warn about the consequences of such a rejection. The most notable protest occurred in front of the home of the minister of interior on 13 July 2021, with the families carrying wooden caskets.[27] They also included a protest in front of the courthouse on 16 September 2021, in which the families addressed the cassation public prosecutor directly.[28]

Secondly, in 2020, the political forces represented in Parliament had amended Article 61 of the Public Employees Statute based on a bill presented by Loyalty to the Resistance bloc MP Hassan Fadlallah. While the original version of this bill completely abolished this immunity, Parliament ultimately re-enshrined it, merely establishing a time limit for the authorities concerned to make a decision, after which their silence would be considered permission to prosecute. The ruling authority thereby publicized its attachment to this immunity, which the French Mandate introduced to Lebanon to protect Mandate officials even though it had been completely abolished in France in 1861.

Lawyers' Immunity

Unlike the previous immunities, lifting lawyers' immunity did not face serious issues. This is because lawyers' immunity is contingent on practicing the profession and the acts attributed to the charged lawyers occurred while they were ministers and therefore automatically prohibited from practicing. Nevertheless, Fenianos appealed, before the Tripoli Court of Appeal on 26 August 2021, the Tripoli Bar Association's decision granting permission to prosecute him and asked the Judicial Council investigator to halt his prosecution until the appeal was adjudicated.

27. Nabila Ghousein and Zeinab Hammoud, "Tawabit Amam Manzil Fahmi.. wa-Haras al-Wazir wa-'l-Mukafaha' Ya'taduna 'ala al-Ahali", The Legal Agenda, 14 July 2021.
28. Zeinab Hammoud, "Ahali Dahaya al-Tafjir li-'Uwaydat: 'La Nuriduka'", The Legal Agenda, 17 September 2021.

Notably, then-president of the Tripoli Bar Association Mohamed Murad affirmed this position in the letter he sent to Bitar excusing himself from attending Fenianos' interrogation, contrary to established jurisprudence holding that appealing does not suspend decisions granting permission to prosecute. Fenianos also attached opinions signed by several previous bar association presidents in North Lebanon to the request to transfer the case based on legitimate doubt in Bitar.

Proceeding with the pretext that appealing stays execution is especially egregious because the Court of Appeal to this day has not examined this request. The entire case is still pending, and none of its parties have undertaken any procedures in it.

Prosecuting Judges

Judges also benefit from special procedures governing their prosecution for criminal offenses, procedures stipulated in the Code of Criminal Procedure. The most important are that only the cassation public prosecutor can prosecute them and only the Full Bench of the Court of Cassation can try them. The Judicial Council investigator complied with these procedures by referring three judges one after another to the Cassation Public Prosecution for investigation. As Oueidat had recused himself from the case and after the Beirut Bar Association filed a request to disqualify Khoury, Cassation Advocate General Imad Kabalan took charge of investigating the three referred judges. Ultimately, he dismissed the case concerning Khoury on 5 October 2021, deeming the alleged offense not to be an offense at all. He reached this decision after deeming that the Public Prosecution has no preventative role in averting crimes or preserving public safety: "The Public Prosecution's role begins after the crime occurs, i.e. after the explosion". This logic is easily refuted by the fact that the mere acts of introducing and storing dangerous materials like nitrate in the port are crimes that require the Public Prosecution to intervene without waiting for their consequences. Remarkably, following the explosion, Cassation Public Prosecutor Ghassan Oueidat had charged some of the detainees for introducing and storing the nitrate. In other

29. "Ibqa' Hasanat al-Muwazaffin Mujammalatan, The Legal Agenda, 11 November 2019.

words, he deemed that the offense began before the explosion occurred. Hence, Kabalan adopted a position in conflict with Oueidat's position and therefore in violation of the principle of the unity of the Public Prosecution. From another angle, the Cassation Public Prosecution has made no decision on the other two judges (Jad Maalouf and Carla Chweh) even though the investigations into them have been completed.

The anti-investigation forces handled this immunity in a different manner than before. They faulted Bitar for a double standard because he complied with the procedures specific to judges but did not comply with those specific to ministers. However, the texts and procedures in this regard reveal issues that are deeper than the question of Bitar's performance (issues we will detail in Chapter 2) and that the discourse opposed to the Judicial Council investigator ignored. The most notable are the following:

Firstly, the most significant obstacle is the cassation public prosecutor's immunity under Article 354 of the Code of Criminal Procedure, which prohibits the prosecution of this figure unless the government pre-appoints a special cassation public prosecutor in the case concerned. The choice to ignore this issue is particularly fragrant because of the established fact that the cassation public prosecutor was informed of the storage of explosive materials at the port weeks before the explosion and failed to take appropriate measures. The Cassation Public Prosecution even issued the order to weld the holes in the warehouse, which some police reports deemed to be the main cause of the explosion. This immunity is the most important not only because it applies to the head of the Public Prosecution offices, who bears the primary responsibility for prosecuting crimes, but also because it constitutes an obstacle to the Judicial Council investigator that neither he nor any other judicial authority can overcome unless the government takes the initiative to appoint a special cassation public prosecutor in the case under Article 354. Given the government's failure to appoint this special prosecutor, it bears the primary responsibility for any failure to prosecute the judges.

Secondly, the Cassation Public Prosecution is the body responsible for not taking measures against any judge, whether or not the judge in question was referred to it by the Judicial Council investigator. Here too,

the biggest deficiency lies in the government's failure to appoint a special cassation public prosecutor in this case, which would prevent a conflict of interest and make achieving justice more probable.

Finally, the cassation public prosecutor's immunity, as well as the special procedures governing the prosecution of judges, stems not from the Constitution but from the law. Hence, Parliament can amend them whenever it pleases as long as it establishes alternative procedures that prevent arbitrary prosecutions aimed at intimidating judges or undermining their independence. As these two political authorities neglected to perform their roles, they – and the forces they comprise – bear full responsibility for allowing the judges go unprosecuted, and neither can point the finger at Bitar in this regard.

Lifting Immunities Awaits Amendment to the Constitution and Law

Besides the efforts to circumvent the requests to lift immunities and ultimately prevent them from being compromised, other efforts ostensibly aimed at completely removing immunities but actually leading to the same ends, namely consolidating them (at least in the port blast case), also emerged.

These efforts include, in particular, the proposal for legislative steps to remove all immunities and special procedures pertaining to all of the categories concerned. This proposal was announced by then-prime minister-designate Saad Hariri on 27 July 2021. He justified the proposal on the basis that, firstly, it removes all immunities and therefore obstacles preventing the Judicial Council investigator from prosecuting any person without any discrimination. Secondly, he said that it prevents a situation wherein multiple courts (the Judicial Council, the Court of Cassation in relation to the judges, and the Supreme Council for Trying Presidents and Ministers in relation to presidents and ministers) have jurisdiction over the case.

Irrespective of the validity of the arguments about overcoming the obstacles to completing the Judicial Council investigation, the proposal

was actually more of an additional obstacle than a means of overcoming these obstacles for two reasons in particular:

Firstly, it suggested that the response to the requests to lift impunity should not be an immediate decision by the authorities concerned to lift the immunities or grant prosecution permission but a likely prolonged project of constitutional and legislative amendments, despite the urgency of the investigation. A constitutional amendment, in particular, would require a proposal while Parliament is in regular session, approval by two thirds of MPs, and approval by two thirds of the members of an active government (not a caretaker government, as existed at the time). The government would have four months to approve the proposal, whereupon it would be re-voted on by Parliament via a two-thirds majority vote. In other words, Hariri's proposal would have taken many months, at least, before bearing fruit. While the proposal called for removing the special procedures benefiting judges and public officials, it coupled these amendments with the constitutional amendments, placing them all in a single package as though they are indivisible. Thus, a simple law amendment would face the same challenges facing a constitutional amendment addressing extremely partisan issues, such as the immunity of the president of the republic.

Secondly, the proposal seemed fraught with political snares that could drown the issue of lifting immunities in partisan conflict. While the Sunnis take offense at any treatment of the Prime Minister's Office as inferior to the President's Office, the proposal – if it proceeded – would enflame Christian sentiment rejecting anything compromise to the president's immunity as another derogation from Christians' rights.

With this proposal, Hariri seemed to be aiming to underscore his intention to remove immunities – a response to the widespread criticisms of his bloc after many of its MPs signed the shameful indictment petition – without actually compromising them. This he could do by transforming removing immunities from a legal issue concerning justice for the victims and accountability for the perpetrators into a partisan constitutional and political issue. In practice, he was transforming the mechanism for lifting immunities from one exercised immediately by one authority or another into an extremely complicated one. Hence, the Legal Agenda labeled

his proposal a deceptive maneuver.[30] This was confirmed when Hariri neglected his proposal days after making it. He never officially presented it to Parliament, even though his bloc made visits to the other blocs to market it (visits that, like the talk about the proposal itself, made for quite a show).

From another angle, we must mention that on 17 August 2021, Strong Republic bloc MPs Georges Adwan and Fadi Saad presented an expedited bill to remove the immunity of public officials in the port blast case. The bill suspends Article 61 of the Public Employees Statute exclusively in relation to this crime. This is the article that requires that permission be obtained from an official's administrative superior in order to duly prosecute him or her. In other words, if the bill were passed in Parliament, the Judicial Council investigator would be able to prosecute Abbas Ibrahim and Tony Saliba without waiting for permission from their superiors. While the port blast investigation has shown the ill effects of immunity on justice and the judicial system, this bill can be faulted for limiting the lifting of immunity to just this crime.

30. Fadi Ibrahim, "al-Hariri Taqtarihu Ta'dil al-Dustur li-Raf' al-Hasanat: Munawara Ihtiyaliyya Thalitha li-'Arqalat al-Tahqiq fi Majzarat al-Marfa'", The Legal Agenda, 28 July 2021.

Chapter 2

Manufacturing "Legitimate Doubt" in the Judge and the Whole Judiciary

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Manufacturing "Legitimate Doubt" in the Judge and the Whole Judiciary

Unlike the summonses issued by the previous Judicial Council investigator Fadi Sawan, which came under harsh attack the moment they were announced, Judge Bitar's decisions seemed to shock the political forces concerned, which needed considerable time to determine their stances and how to respond. The best evidence of this is the disengagement – at least during the weeks following the announcement of Bitar's decisions in July 2021 – of many authorities that had taken loud and stern stances on Sawan's summonses in December 2020. Some remained completely silent, as in the case of caretaker prime minister Hassan Diab, the Former Prime Ministers' Club, and the Sunni Supreme Sharia Council. Others were hesitant to express their perspective, merely insinuating that Bitar may be engaging in political targeting, as in the case of Hezbollah Secretary General Hassan Nasrallah (his speech on 5 July 2021) and Parliament's Joint Committee (9 July 2021). Hence, these bodies and forces apparently deemed it in their interest to handle Bitar's requests in a different (at least in form) way to the way they handled Sawan's requests.

This could be explained by a set of factors. Bitar had expanded the charges to include ministers and figures close to several political forces, making accusing him of following political agendas more difficult. He also complied with the procedures for prosecuting MPs and lawyers in an apparent confirmation that he abides by the law – the shared language of judges and lawyers – and an (embarrassing) invitation to the charged figures and the forces backing them to exercise their right of defense within the rules of law and respect and not via the rhetorical means they

had used to attack his predecessor. This factor was evident in Speaker Berri's statement in the wake of the decisions that the response to them would be 100% legal, as previously explained. Besides these two factors explaining the political forces' difficulty and hesitation in responding to Bitar, another factor should not be underestimated: apprehensiveness about appearing like a skeptic hostile to the entire judiciary, or at least the port blast investigation, rather than a specific judge, for they had previously demanded and succeeded in staying his predecessor's hand.

However, the embarrassment caused by these factors lasted only for the brief period that seemed necessary to prime the public to question Bitar's performance, then his integrity and connections, and then the entire judiciary. This priming of public opinion to accuse Bitar of being politicized came from media (such as Asas Media, which is close to Nohad Machnouk)[1] and politicians, particularly Deputy Parliament Speaker Elie Ferzli, who said on 13 July 2021 that "[Bitar] has nothing to offer. He doesn't want to cooperate with us. He is free... We are the ones who will reveal the truth, and we're not waiting for the Bitar [family's] son".[2] This discourse was then adopted by leaders such as Suleiman Frangieh (in a statement after he visited Patriarch Bechara Boutros al-Rahi on 21 July 2021) and Saad Hariri (in his press conference on 27 July 2021). Finally, Hassan Nasrallah delivered it as though it was indisputable (his speech on 7 September 2021).

Accusations against Bitar were not limited to a single aspect. Rather, they went in several contradictory directions, as though the intent was to tarnish his image and show that he is not qualified to conduct this investigation irrespective of what he did or did not do. However, the predominant accusations involved portraying him as serving a certain political project and ultimately suggesting that he is part of the American axis or takes orders from Armed Forces Commander Joseph Aoun or US Ambassador to Lebanon Dorothy Shea. The political forces opposed to the Judicial Council investigator used any western statement supporting the investigation (a routine stance by states funding Lebanon, like support for election integrity) to bolster their aforementioned accusations. Hence, a

1. Malak Akil, "6 Mulahazat 'ala Qarar al-Qadi Bitar", Asas Media, 4 July 2021.
2. Razi Ayoub, "Min al-Munawarat al-Qanuniyya ila al-Hujum al-Mubashir: al-Siyasiyy wa-l-Qadi fi Qadiyyat Tafjir al-Marfa'", The Legal Agenda, 19 August 2021.

statement by two US congressmen was portrayed as an official stance from the US Congress. The Legal Agenda learned from reliable sources that the minister of culture in Najib Mikati's government Mohammad Mortada described Bitar in Council of Ministers discussions as a "collaborator" and asked the government to take proceedings to stay his hand from the investigation. Material published in the media and on social media went in the same vein.

Categorizing Bitar thusly seemed to be a prerequisite for escalating the attack on him, justifying Nasrallah's vilification of Bitar in multiple speeches and mobilization of the pro-Resistance or pro-Iranian axis milieu against him in a manner reminiscent of the discourse against the Special Tribunal for Lebanon for trying Rafic Hariri's murderers. That way, the assault on Bitar, which reached unprecedented levels, would seem less like an ignoble attack by excessively powerful political forces on an individual judge and more like a heroic attack by one axis on another. More importantly, by virtue of this politicized-judge narrative, the issues of judicial independence, impunity, removing immunities, and other rights-related factors become overshadowed by the single issue of Bitar's "deviations", especially his supposed affiliation with a regional political axis. Hence, the question determining any observer's stance becomes, "To which axis do you belong?", ensuring that politics encompasses everything and eclipses all other considerations.

In general, two kinds of political ends were attributed to Bitar. While some political forces asked why a certain person close to them was being prosecuted and accused him of targeting them politically, some asked – to the contrary - why their political adversaries were not being prosecuted and accused him of selectivity. Because of the presence of written evidence embroiling most of the charged figures in the blast, the accusation that Bitar was being vexatious seemed flimsy, so they or the forces supporting them had to focus on his disregard of the legal procedures for prosecuting them (such as immunity). On the other hand, the anti-investigation forces could more easily argue that their adversaries should be prosecuted as they could promote their theses based on deductions and circumstantial evidence without needing any definitive evidence. Hence, faulting the judge for his inactions quickly prevailed over faulting him for his actions.

The anti-investigation forces did not stop there; rather, they employed many of the most commonly used means of delegitimizing the judiciary, from accusing the investigation process of being populist, sectarianized, or naive to casting doubt over the judiciary in its entirety.

This is what we shall detail in this section.

The Accusation of Political Targeting: "Why Are You Prosecuting Our Allies?"

As previously explained, while several political forces rushed to accuse Sawan of political targeting as soon as he issued his decisions, things happened more gradually with Bitar. Immediately following his decisions, the accusations were limited to a few statements and insinuations, before becoming a fixture of the discourse against him. Even the few authorities that spoke about political targeting were only able to do so after broad campaigns pertaining more to the charged figures' attributes than the evidence brought against them.

1. Glorifying and Extolling the Suspects

The first evidence of this trend is the exceptional display that occurred in response to the request for permission to prosecute Major General Abbas Ibrahim. Hundreds (perhaps thousands) of pictures and signs supporting him were hung in several areas, particularly Dahieh and South Lebanon, elevating him to the status of the sublime maqamat and icons any attack on which constitutes an attack on the entire nation. The statement issued by the legal unit established to defend Ibrahim also lavishly praised him: he has "a clear honorable record" and "devoted himself as a messenger of salvation, peace, and love, from Azaz to the nuns of the Maaloula convent to every humane cause that could end an injustice or prevent civil strife [fitna], and before that many silent efforts, like charity given in secret, whose number may or may not be revealed with time". He is also "a man of the state and institutions who broke with the sectarianism and nepotism, connecting the State Security institution and Lebanon to all the world, well deserving of the label 'the humane policeman'". The glorification culminated in the portrayal of Ibrahim as

the nation's only hope for recovery: besides being one of "the men of institutions who alone can raise the state from the ashes", he is also "a ray of light and genuine will" for saving Lebanon from "a pit that neither resembles nor befits it".

In responding to the accusations against the major general, the unit merely glorified him thusly, implying that mere suspicion of him is a threat to the nation's prospects of resurrection. This was clearly apparent in the section of the statement that read, "The greatest crime against the martyrs and their families is wild accusations to accomplish political goals and oust men of the institutions ... We are forming a legal unit to monitor the investigation in order to ensure the rights of the martyrs' families and prevent it from being used as a political pretext to discredit a man of the state and institutions". This sentence suggests that mere suspicion of the major general (which the lawyers decided could only be a vexatious attempt to discredit him) is a crime greater than the port massacre, which shed the blood of thousands of people and destroyed large swaths of the capital, as it prevents the state from rising from the ashes. It is a crime so dangerous that it calls for institutionalizing cooperation among the unit's members to monitor the port investigation so that a "man of the state and institutions" is not discredited. The unit did not neglect to link such suspicion to a larger conspiracy to spread rumors against Ibrahim in order to "strain the southern climate in connection with the Parliamentary elections" and prepare "dangerous scenarios stemming from personal grudges and illusionary dreams".

Later, the glorification of Ibrahim continued through the accentuation of his role in the signing of a contract to import fuel from Iraq on 24 July 2021 (less than three weeks after he came under suspicion) in order to show the public the connection between rejecting this suspicion and keeping the lights on. That this negotiation was used as a means to construct a discourse critical of the suspicion against him is clear from the fact that concluding such contracts has nothing to do with the functions of the Directorate of General Security. Likewise, journalist Salem Zahran, who is close to Ibrahim, brought up the latter's role in negotiations over the maritime border, wherein he "spoke for all the Lebanese political forces" (Nharkom Said, 18 June 2022). The disqualification request that Khalil

and Zaiter filed with the Court of Cassation on 11 October 2021 went in the same vein: they had no qualms about glorifying themselves in an effort to prove Bitar's animosity toward anyone with status or immunity. Their request stated that "Unfortunately, the Judicial Council investigator considers himself above all positions and maqamat". They added that the judge had preconceived the measures that he would apply to "people of status and national magnanimity". The duo went even further by contrasting so-called "ordinary people", who may be prosecuted, with "people with immunities and statuses mandated by their capacities".

Several other political stances extolling certain suspects and portraying arresting or charging them as an injustice were taken. Most notably, Free Patriotic Movement President MP Gebran Bassil systematically defended General Director of Customs Badri Daher, usually in conjunction with media or social-media campaigns demanding his release. For example, during the Free Patriotic Movement's Youth Sector General Assembly on 4 March 2022, he said that "They tried to make us scared to defend the innocent, and a man who did his job like Badri Daher is now in prison while those who defy the judiciary are free". In an interview with SBI on 14 April 2022, he argued that "The people affiliated with us went into custody – wrong, wrong, wrong. Badri Daher is paying the price of truth". President Michel Aoun's statement on 30 April 2022 accorded with Bassil's position: "There is a cruel and legally unacceptable wrong when justice is disengaged, fettered, piecemeal, or selective".

MP Bilal Abdallah went in the same vein when defending a detainee from his region on 3 April 2022. He spoke about the "persistence in wronging the innocent and keeping them imprisoned on unconvincing grounds – foremost among them Supreme [Customs] Council member Hani Hajj Shehadeh, whose clean hands, integrity, and merit-based success are well known".

2. The Duty to Deflect Suspicion from the Resistance to Prevent It from Being Targeted

This demand emerged in the many statements by Hezbollah's secretary general Hassan Nasrallah in which he discussed the Judicial

Council investigator. From 5 July 2021, he expressed his concern about potential political targeting. On 3 August 2021, Hezbollah issued a statement characterizing the charges against the defendant ministers as a political attack. While Nasrallah's statements mentioned paid campaigns against Hezbollah intent on implicating it in the port case, he then demanded that Bitar – as he had done with Sawan – publish the technical investigation prepared by the security and military forces in order to prove that Hezbollah and its armed force had nothing to do with the blast.

Then, on 7 August 2021 in his harshest speech, Nasrallah questioned why the judge had not revealed the result of the investigation, explicitly stating that the truth is known but being covered up. He concluded that "There is collusion before and after the fact". To support his view, he argued that if such a report were now issued, "insurance companies would pay 1.2 to 1.6 billion dollars to people who had paid to insure their lives and property". Then he addressed Bitar directly: "Why the delay? Why? What are you waiting for?" Note that this technical report was produced by security agencies (the Internal Security Forces' Scientific Studies Department) before Bitar took over the case and leaked to several media outlets and found that the blast was probably caused by sparks from the welding of a gap in the wall of Warehouse 12. Hence, the report effectively rules out the hypothesis that the blast was intentional and, implicitly, the hypothesis circulated in the media that it was an Israeli reprisal against Hezbollah.

Via this demand, Nasrallah seemed to be arguing that because of the importance of protecting the Resistance's dignity and high standing and keeping it free of any suspicion, the Judicial Council investigator has a duty to promptly deflect any suspicions that could be raised against it, even if doing so involves blatantly contravening several legal principles and procedures.

The mere demand that the judge publicize a technical report or else be regarded as colluding with insurance companies or against the Resistance puts pressure on him to accept its content and, by extension, the security services' hypotheses and denies him any room to scrutinize them or compare them to other evidence, particularly the simulation of the

welding process conducted in August 2021, as though the judge should be subordinate to the security agencies and the truth they establish. In principle, the opposite is true – the security agencies are subordinate to the judge, who alone may establish the judicial truth.[3] From this angle, the incessant demands are a blatant encroachment on judicial independence. The fact that the report had previously been leaked (and later detailed by Al Mayadeen as part of its investigation entitled "Telling the Truth") clearly shows that the demand that the judge publish it aimed not to make the information available but to extract a commitment from him to it. Note that Al Mayadeen also cited a report by the United States' FBI and a French report.

Moreover, this demand infringes the principle of investigation confidentiality during the investigation period. Article 53 of the Code of Criminal Procedure punishes anyone who violates this confidentiality with up to a full year of imprisonment, in addition to fines. While it is true that the investigating judge can weigh confidentiality against the public's right to know in public interest cases, he may not lift confidentiality if he has any doubt in the hypothesis put forward. The aim of this trade-off is to enlighten the public, not mislead it or inundate it with unproven hypotheses.

In this sense, calling on the judge to disclose the technical report constitutes illegitimate interference in his work with the aim of compelling him to violate the law. Hence, doubt in the Judicial Council investigator would arise if he acquiesced to this demand, not the other way around.

Finally, Nasrallah's argument concerning insurance companies is also invalid as established doctrine and jurisprudence holds that it is events caused directly and exclusively by warfare that is outside the scope of coverage. In the case of the port blast, storing the nitrate, neglecting to address the storage process, and the amount present were main and direct causes of the explosion, irrespective of whether the material was ignited by an act of war or aggression, a mere welding fire, or some other

3. "Ayna Akhta'a Nasrallah fi Hujumihi 'ala Bitar?", The Legal Agenda, 12 August 2021.

cause. Hence, if we assume for the sake of argument that an act of war precipitated the explosion, its effects and the spread of the destruction to broad sections of Beirut stemmed not from this act but the other acts that directly and inevitably contributed to the damage, namely the negligence, imprudence, and violation of the law in storing the nitrate at the port (risks not excluded from an insurance company's obligations). The multitude of causes of the event would make the act of war an indirect or non-exclusive cause. Therefore, the exception for acts of war would be inapplicable, and the insurance companies would be obliged to cover the event.[4]

While Nasrallah's effort to cast doubt over Judge Bitar and ultimately accuse him of politicization was a rallying cry for his supporters, he surprised everyone on 18 October 2021 by stating that the investigation contained nothing against Hezbollah and his objection to Bitar's decisions was based on his quest for truth, not any special consideration for the party. Thus, he seemed to himself refute the politicization theory that he had been promoting. While this talk meant, in practice, forfeiting any argument that the Resistance was being targeted, the rank and file of Resistance supporters remained hostile to Bitar out of commitment to the frequent accusation that Nasrallah had directed at him.

3. Exalting the Position

In parallel with the glorification of Ibrahim and prioritization of keeping the Resistance free of any suspicion, the charge against former prime minister Hassan Diab prompted a discourse elevating this maqam – the Prime Minister's Office – and the Sunni rights that it represents. The discourse was initiated by Diab himself. He commented that the charge (by the previous Judicial Council investigator, Fadi Sawan) is against not just him but also his position, and he would not allow the Prime Minister's Office to be targeted by any party. Former prime ministers promptly took stances in solidarity with Diab, transcending the rift between them and him that had existed since he assumed the position. The most important

4. Nadine Arafat, "Limadha Sharikat al-Ta'min Mulzama bi-Tasdid Ta'wid 'an Tafjir al-Marfa'?", The Legal Agenda, 7 May 2021.

came from then prime minister-designate Saad Hariri, who visited Diab for the first time at the Grand Serail as a show of solidarity. The same stance was expressed by former prime ministers Fouad Siniora and Tammam Salam, who rejected the attack on this position and refused to allow any party to treat it as a "punching bag". Najib Mikati – the first prime minister to face criminal proceedings for illicit enrichment (the home loans case), which were recently dropped due to prescription[5] – objected to prosecuting the Prime Minister's Office without prosecuting the President's Office. He deemed the action a double standard, ignoring the vast difference between the constitutional articles concerning the responsibility of these two authorities. Sunni Grand Mufti in Lebanon Sheikh Abdul Latif Derian's statement that the Prime Minister's Office is a red line gave clear religious cover to this discourse.[6]

The same discourse reappeared after Bitar became Judicial Council investigator. However, this time the response was delayed: the discourse emerged when an enforceable summons for Diab was issued on 26 August 2021, 55 days after Bitar re-summoned him. On that day, the Former Prime Ministers' Club argued that no prime minister had ever been issued an enforceable summons in Lebanese history and emphasized the national and constitutional gravity of this precedent. To impart a sectarian character to the summons, the statement repeatedly condemned the fact that Bitar did not interview the president of the republic or take any measures against him. The following day, Diab received another dose of support from Grand Mufti Abdul Latif Derian, who delivered a sermon in which he defended the "prime minister position", expressing his "condemnation" of the "targeting of Caretaker Prime Minister Hassan Diab, which is alien to the principles for dealing and communicating with the Prime Minister's Office".

The effect of this was to transform a personal liability (that of Diab) that should be investigated into a sectarian liability any investigation into which constitutes an attack on an entire sect that engenders potentially insurmountable obstacles, as well as to enable one of the suspects to play victim in order to escape any accountability.

5. Nizar Saghieh and Fadi Ibrahim, "al-Qadi Abu Samra Yadfinu Shubahat Ithra' Miqati: 'ala al-Mujtama' Nisyan Jara'im al-Fasad Allati Dammarathu", The Legal Agenda, 8 April 2022.
6. Nizar Saghieh, "wa-Infatahat Ma'rikat 'Hasanat al-Wuzara''... Khutwa Hamma Tuhaddiduha Siyasat 'al-Iflat min al-'Iqab'", The Legal Agenda, 13 December 2020.

Note that while the Sunni political authorities, in particular, were defending Diab when he was summoned for the first and second time on the basis of the sanctity of the Prime Minister's Office, other anti-investigation parties defended him on the basis that he was being picked on because he was vulnerable [istid'afuhu] – a defense also based the suspect's personal attributes and not his actions or inactions. This accusation was initially directed at Judge Sawan on the basis that Diab is not organically linked to an influential political force nor even supported by the influential forces within his sect, as well as the fact that he has not been embroiled in corruption scandals. This "vulnerability" discourse began with the argument that Sawan charged Diab but did not dare charge Hariri, Salam, or Mikati (even though their names had appeared in the list of suspects sent to Parliament on 24 November 2020). This notion appeared in several newspaper headlines (for example, Al Akhbar on 11 December 2020: "Sawan Picks On [Yatsad'ifu] Diab and Complicates Formation Negotiations: The Government Will Not Emerge Any Time Soon"). Most dangerously, this notion evokes pity and sympathy for Diab, turning the matter from one concerning immunity, the technical question of its limits, or even political attacks into an injustice that conflicts with the minimum notion of fairness and warrants compassion rather than condemnation. It culminated in a remarkable tweet by former minister Wiam Wahhab praising Saad Hariri's visit and solidarity with Diab as an act of gallantry and rising above grudges and disagreements in the face of an attack on the vulnerable. Media outlets widely republished the tweet as it contained praise rarely traded among political adversaries in Lebanon. Of course, this tweet was nothing but a distortion of the reality and purpose of the visit. Despite the catastrophic economic and post-blast situation, Hariri had seen no need to set aside any of his political disagreements with Diab, as though these disasters were not important challenges warranting joint work. He visited only because he perceived a danger to the immunity of prime ministers. This danger could affect him and all ministers, so he intervened to avert it, preserve immunity, and – in short – solidify officials' power vis-a-vis society in the absence of any accountability. From this angle, the visit seemed more like an attempt to preserve a particular group's power than an act of gallantry and solidarity with the vulnerable. Meanwhile, Hezbollah Secretary General Hassan Nasrallah argued the day after the enforceable summons against Diab was

issued that the Judicial Council investigator was "picking on [yastad'if] and belittling Prime Minister Diab and targeting the position, which is unacceptable and condemnable". In the party's name, he rejected "the Judicial Council investigator's stance concerning Prime Minister Hassan Diab".

The Discourse of Bitar's Selectivity: "Why Aren't You Charging Our Adversaries?"

As previously explained, facing Sawan and Bitar's decisions to charge the ministers, the political forces leveled the accusation of selectivity and double standards. One of the first such objections was the statement issued by Hezbollah on 11 December 2020 condemning Sawan's measures for lacking uniform standards and constituting "a political attack that wrongfully targeted some people and not others and unjustly placed suspicion of the crime on certain people while excluding others". Subsequently, selectivity became the most popular accusation leveled against Bitar in public discourse, even though its use in legal contexts, particularly the petitions that the charged ministers file to judicial authorities to stay Bitar's hand, remained limited.

The accusation of selectivity took three forms: selectivity in prosecuting people, selectivity in prosecuting acts, and selectivity in interpreting similar legal rules.

1. Selectivity in Charging People

Several parties faulted Bitar for selectively charging some people and not others supposedly surrounded by equally strong suspicions. While this issue was raised against Sawan's charges, Ferzli was the first to speak about Bitar's selectivity, which he did particularly during the period when he was leading efforts to abort the requests to lift immunity from the three MPs. In the wake of the Joint Committee session held for delivering an opinion on these requests (9 July 2021), he pointed out that the list of accusations Sawan had first sent to Parliament encompassed all ministers of justice and finance and leaders who had possessed the

report informing them of the presence of the nitrate and then asked, "Why this time were four chosen and not others, and why were specific names omitted?" The discourse about Bitar's selectivity quickly took a turn toward political goals, as is evident from the various arguments used and lists of suspects drawn up in line with these goals. Hence, it became a useful tool for many political figures and forces not only to discredit the judge or defend people close to them but also to thrust their adversaries' names into the list of those responsible for the blast. This discourse was also occasionally used to intimidate parties supporting Bitar or at least send them the message that they too could be accused. As we cannot include every instance in which this accusation was made because it became so popular, we will settle for a few examples most relevant to our topic, i.e. the mechanisms for aborting accountability efforts in the Lebanese system.

In this regard, one of the most revealing stances was that of MP Gebran Bassil. In his defense of General Director of State Security Tony Saliba and General Director of Customs Badri Daher, who are close to him, he focused on the responsibility of Armed Forces Commander Joseph Aoun (an adversary particularly since the October 17 uprising), albeit via insinuation. In his press conference on 2 August 2021, he stated, "There are officials who are not directly responsible and performed their duties – they wrote, alerted, warned – yet have been imprisoned for a year. Other officials who are responsible and did not perform their duties have not been held accountable to this day. Moreover … there is responsibility on the part of officials and on the part of non-officials – this is no secret … to this day, those people have not been questioned, been brought to interrogation, or faced serious prosecution. The port matter is a distinctly security-force-related matter, not just a matter of occupational negligence". Suleiman Frangieh, in a press conference on 21 July 2021, based his accusation of selectivity against Bitar on the summoning of the former – rather than the current – armed forces commander: "The nitrate remained in the port for two years under [Jean Kahwaji], whereas it remained there for three years under [Joseph Aoun]. So why is Kahwaji being summoned and not Aoun?"

On the other hand, the parties opposed to the president targeted him in particular. For example, on Al Jadeed on 22 July 2021, Ahmad El Hariri asked why the president was not being prosecuted even though he had admitted that he knew the materials were being stored at the port. Figures who generally support Bitar, such as Samy Gemayel, participated in this discourse, showing that the allure of associating political adversaries with the blast was hard to resist. In an LBC interview on 8 August 2021, he stated that "What applies to the prime minister applies to the president of the republic when it comes to the port explosion, and nobody should be exempted".

While Hezbollah appeared to be the most eager to draft a long list of people who should have been charged or at least interviewed in order to inflate the accusation against Bitar, its discourse varied depending on the period and occasion. In his speech on October 11, Nasrallah went as far as to ask Bitar why he had not interviewed current president Michel Aoun or former president Michel Suleiman (who had left office before the ship was unloaded), thereby indicating Hezbollah's displeasure with the Strong Lebanon bloc's part in blocking the formation of a parliamentary committee to investigate the ministers in the blast case. Many of Hezbollah's MPs and media outlets also addressed the suspected sale of a quantity of ammonium nitrate by people close to the Lebanese Forces in order to implicate the party in the case. For example, on 26 September 2021, MP Hassan Fadlallah issued a statement questioning whether that nitrate (seized in Bekaa) was connected to the nitrate at the port.

On that basis, and irrespective of the veracity of these accusations (which there is no point in exploring before the judge has finished his investigation and explained the grounds for his charges), this discourse reveals much about the way the ruling political forces approach the judiciary, its role, and the idea of accountability in general. The most important conclusions we can draw include the following:

- Joining the chorus of criticism of "Bitar's selectivity" seemed to be extremely easy, given the acceptance of this discourse within the Hezbollah-Amal duo's broad orbit. It became possible to level this accusation whenever any person who had occupied a certain

office during this era was excluded. There was no need to refer to documents, proof, or the powers vested in the figure, all of which are decisive in the decision of whether to charge. The best evidence of the flimsiness of the selectivity accusation is that the signatories to the impeachment request (generally MPs of the Amal, Hezbollah, and Future Movement blocs) limited their request to the same ministers charged by Bitar, making no additions. Likewise, none of the MPs presented a request to impeach the president of the republic despite the popularity of the discourse contending that he must be prosecuted, which – under Article 60 of the Constitution – only the MPs themselves could do.

• This discourse once again reflects the political forces' attitude of superiority and their approach to the principle of equality before the law. The selectivity they sought to highlight was the failure to adopt uniform standards when charging prime ministers, presidents, MPs, security service leaders, and senior officials. On the other hand, these forces showed flagrant indifference toward the dozens of other people charged, as though these standards do not concern them. With this logic, these forces were able to couple condemnation of a double standard discriminating among ministers with insistence on immunity, which constitutes a double standard perpetually discriminating against all other citizens.

• This discourse seemed like an attempt to expand the crosshair to include the broadest segment of political forces possible, with the goal of embarrassing the forces not opposed to Bitar or increasing the forces opposed to him. Bitar was seemingly being asked to charge all prime ministers, presidents, ministers, and security service leaders who had successively taken office – irrespective of the evidence against them – immediately and without any leeway to pursue prosecutions gradually or else be deemed "selective" (and perhaps politicized and embroiled in domestic and foreign agendas). This discourse was encapsulated by the slogan "Full Justice or No Justice",[7] which – because of insufficient judicial safeguards and

7. This slogan was first used in Al Akhbar on 24 July 2021.

> political will for accountability – usually ends up tipping the balance in favor of no justice and therefore constitutes an attack on victims and all citizens. From this angle, it was a trite repetition of what occurs whenever a desire for accountability, however nascent, arises. Telling examples include the commotion that Parliament's leadership (particularly Berri and Ferzli) helped make about the need for the forensic audit to include not only the Banque du Liban's accounts but also all the public sector without exception, primarily so that it would not seem like a tool for politically targeting Riad Salameh. Consequently, the forensic audit[8] of the bank was undermined and hollowed out without a single step, not even in rhetoric, being taken toward auditing the other administrations and institutions. The same discourse emerged over tracing the spending that occurred under Fouad Siniora's government in 2006-2010 (the case of the 11 billion dollars).[9]

This rhetorical approach was further entrenched via the press conference held by MP George Okais on 26 August 2021. In defense of Ibrahim Sakr,[10] who was charged for hoarding fuel, Okais asked, "Were people in the same situation [i.e. with similar stockpiles] as Ibrahim Sakr in the other Lebanese regions, in terms of fuel, medicine, and other things, arrested?" Then, in another conference, he said that if justice is "selective or discretionary", it is a "political attack". Similarly, on 19 March 2022, Lebanese Forces party leader Samir Geagea issued a statement in which he described the prosecution of several banks as a "farce" and said that "What's happening now in relation to the banks issue requires a comprehensive, objective, and nonselective approach to hold all the real people responsible to account, each according to his responsibility and role".

Consequently, this discourse usually seemed to be aimed more at delegitimizing the Judicial Council investigator's actions, specifically his requests to lift immunity from the people he had charged, and inciting against him than at correcting his performance by pressuring him to expand the reach of the charges.

8. Nizar Saghieh, "Suqut al-Tadqiq al-Jina'iyy: al-Sirriyya Khatim Sihriyy li-l-Iflat min al-'Iqab", The Legal Agenda, 27 November 2020.
9. Qasim S. Qasim, "al-Sanyura Yuridu Bara'at Dhimma, Al Akhbar, 24 February 2012.

2. Selectivity in Prosecuting Acts

The other basis on which Bitar was accused of selectivity was the investigation and charges' greater focus on negligence than on other crimes encompassed by the case, the goal being to charge ministers, security force leaders, and senior officials. This accusation came in the form of a discourse about the methodology that Bitar should have adopted and the matters that he should have examined. It usually also downplayed and trivialized the negligence. In particular, in a speech on 11 October 2021, Nasrallah told Bitar, "You are inflating the issue of occupational negligence, even though I am for accountability for it. The country is heading toward a great disaster if the judge continues along this course".

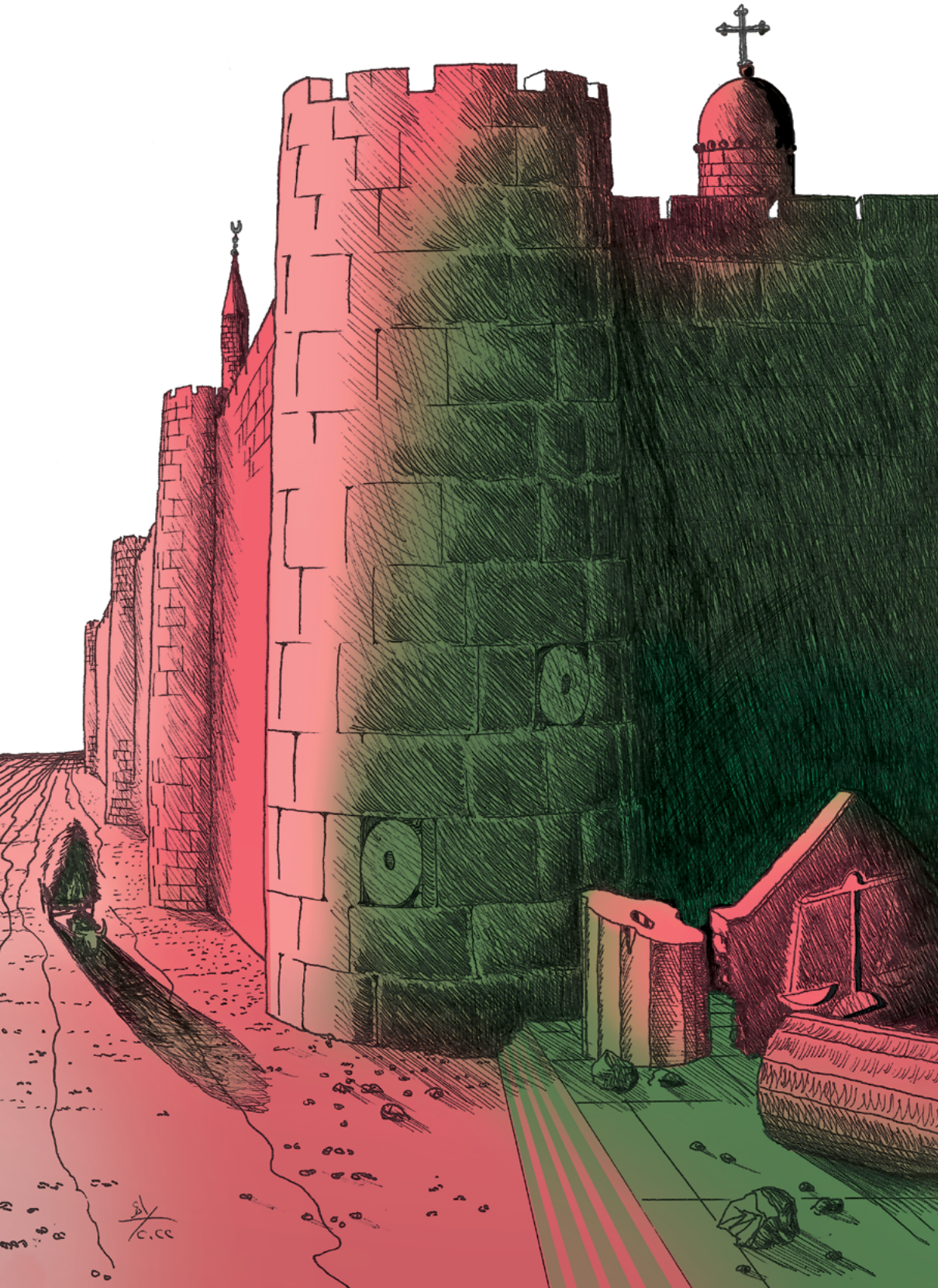
Besides the difficulty of verifying this accusation before Bitar finishes his investigations given investigation confidentiality, these accusations reflect contempt toward public responsibility and public interest as a whole. Irrespective of who owned the nitrate cargo, its intended use, or the possibility that the blast was intentional, the blast would never have occurred were it not for the quota-sharing in the administration and judiciary and their transformation into fiefdoms. Nor would it have occurred were it not for the degradation of public service and transformation of the understanding of public office from the service of public interest to the service of the interests of one faction or another. If there were a threat to the interests of any of the political forces at the port, the whole facility would have been shut down. But an explosion risk to the capital's neighborhoods and residents generated no desire to act. This we labeled the trivialization of public dangers, along with public interests. On this basis, the causes of the destruction of broad sections of the capital and its residents resemble the causes of the financial and economic collapse, which everyone knew about yet took no initiative to address. Hence, under Lebanon's circumstances, the negligence being downplayed appears to be the most serious act and one that warrants a deterrent punishment instigating an urgently needed shift from the rule of factional interests to the rule of public interest.

3. Selectivity in Interpreting Similar Legal Rules

This accusation of selectivity contended, in particular, that Bitar recognized the special process for charging judges governed by Article 344 and Article 354 of the Code of Criminal Procedure but refused to recognize the special procedures for trying presidents and ministers stipulated in the Constitution, as though he saw fit to provide cover for judges while defaming ministers. For example, on 12 August 2021, following the loss of the quorum for the parliamentary session to examine the indictment request, Ali Hassan Khalil angrily asked, "How did Judge Bitar follow a special process for judges guaranteed by law while disallowing a process guaranteed by the Constitution when it comes to trying presidents and ministers? How does the charge in the port blast case encompass specific ministers and not others?" Likewise, Hezbollah's secretary general argued that summary affairs judges bear the greatest responsibility but are not being defamed and objected to the fact that they remain anonymous. In his speech on 11 October, he said, "Judges are more responsible than the presidents, ministers, and MPs because they are the ones who gave the approvals". He added, "The judiciary wants to protect itself, but a respectable prime minister like Mr. Hassan Diab you want to lock up? Is this a state ruled by law or by the judiciary?"

Besides all the flaws in this discourse that we covered in Chapter 1, we have three observations:

Firstly, the anti-investigation forces were selective in the process of accusing Bitar of selectivity. On one hand, they blamed him for not charging the judges when he did what he was supposed to do by referring three judges to the Cassation Public Prosecution to be investigated. In contrast, the Cassation Public Prosecution failed to make its decision on whether to charge two of the judges. Their discourse was also selective because it exaggerated the responsibility of summary affairs judges, to the point of charging them with the greatest responsibility because they accepted the request by the Ministry of Public Works, while totally ignoring the latter's responsibility. It also totally ignored the responsibility of the cassation public prosecutor. The government (including Hezbollah's



ministers) avoided taking any initiative to appoint a replacement for him in this case – a move that would herald his prosecution.

Secondly, the selectivity argument aimed, once again, to free the charged ministers from the Judicial Council investigator's grasp by emphasizing the jurisdiction of the Supreme Council for Trying Presidents and Ministers rather than pressuring Bitar to take over the investigation of judges. Khalil or any of his MP colleagues could have submitted an expedited bill to amend the articles pertaining to trying judges, but none did so.

Thirdly, Bitar respected all special procedures, whether they pertained to lawyers, MPs (including Khalil), or judges. He could disregard the procedures for charging ministers stipulated in Article 70 of the Constitution only because the article defines the acts that are subject to these procedures, leaving other acts within the jurisdiction of the regular judiciary without special procedures. Hence, he charged these figures without seeking anyone's permission, having decided – using his authority over his judicial case – that the actions imputed to them do not fall under the definition in the article.

As for the special procedures for trying judges, they are binding irrespective of the specific crimes perpetrated, even if those crimes fall outside the scope of the judges' jobs.

Populism: Detestable Sympathy with the People's Causes

A third accusation still being widely repeated to discredit the decisions Bitar and his predecessor made is populism. This accusation, in reality, carries several meanings. The most common intent is that the judge makes his decisions to satisfy the demands of public opinion, which in major crimes are usually the demands of the victims. To this end, he interprets laws in whichever manner makes them most conducive to these demands, even if the interpretation is flimsy, and perhaps disregards them if they cannot be interpreted thusly. From this standpoint, accusing a judge of populism constitutes an attempt to cast doubt over his impartiality and

sobriety. Often, it is an accusation of appeasing and bribing the people with a view to obtaining political office.

While populism is, of course, not a commendable attribute for judges, we must put the accusation in its judicial, social, and political context in order to deconstruct its substance and potential meanings. While the dominant trend among judges has been to exercise a kind of self-restraint to avoid any clash with the political forces' red lines, during the past two decades an increasing number have endeavored to emancipate themselves from this self-restraint and engage positively with social demands and protests. This trend emerged in several socially or politically sensitive issues, such as women's right to pass on their nationality,[11] the right to asylum,[12] the right of the families of the Civil War missing to know their fate,[13] LGBT rights,[14] and the freedoms of expression,[15] protest,[16] and unionization.[17] It then expanded to encompass cases concerning corruption,[18] banks, and so on. This self-emancipation goes beyond judges' rulings to include interventions in public discourse, especially after the establishment of the Lebanese Judges Association,[19] which adopted a distinctly social and independence-oriented discourse. Beginning in 2019, the word "people" began to appear not only as a source of authority (all rulings are issued in the people's name) but also as a refuge to which judges appeal for support in the battles for judicial independence and against corruption,[20] with many forsaking their silence

11. "Madha Tu'allimuna Qadiyyat Samira Suwaydan", The Legal Agenda, 27 March 2015.
12. Ghida Frangieh, "Hukm Qada'iyy Yuqallibu 'al-Afkar al-Musbaqa' fi Qadiyyat Laji' Suriyy: 'Mumarasat Haqq al-Luju' min dun Tajawuz Laysa Jurman", The Legal Agenda, 2 August 2012.
13. Ghida Frangieh, "Shura al-Dawla al-Lubnaniyy Yukarrisu Haqqan Tabi'iyyan li-Dhawi al-Mafqudin fi al-Ma'rifa", The Legal Agenda, 8 April 2014.
14. "Ba'da 4 Ahkam Ibtida'iyya, Isti'naf Jabal Lubnan Tu'linu Anna al-Mithliyya Laysat Jurman", The Legal Agenda, 13 July 2018.
15. Nizar Saghieh, "Tahawwulat Ijabiyya fi Ijtihad Mahkamat al-Matbu'at fi Bayrut (1): Min Wajibina Ta'ziz Dawr al-I'lam fi al-Kashf 'an al-Fasad", The Legal Agenda, 20 May 2020.
16. Nizar Saghieh, "4 Qararat li-l-Qadiya Safa bi-Kaff al-Ta'aqqubat bi-Haqq Nashiti al-Harak al-Lubnaniyy: al-Difa' 'an al-Mujtama' Yubarriru al-Mass al-Zahir bi-Karamat al-Hukuma wa-Wuzura'iha", The Legal Agenda, 11 December 2018.
17. Nizar Saghieh, "Ba'da 6 Sanawat, 'Ummal Spinneys Yantasiruna: Qam' al-Niqabiyyin Jurm Jiza'iyy", The Legal Agenda, 10 January 2019.
18. Nizar Saghieh and Fadi Ibrahim, "'Kalb al-Harasa' fi Mujtama' Faqada Laqmat 'Ayshihi: Qarar Qada'iyy bi-Tawsi' Hamish al-Musa'ala al-I'lamiyya", The Legal Agenda, 6 November 2021.
19. Fadi Ibrahim, "Mahattat Asasiyya fi Hayat Nadi Qudat Lubnan: Hadha Ma Anjazathu Hay'atuhu al-Idariyya al-Ula", The Legal Agenda, 31 July 2021.
20. "Kalimat Ra'isat Nadi Qudat Lubnan Khilala Nadwat 'Istiqlaliyyat al-Sulta al-Qada'iyya: Tahaddiyat wa-Hulul'", The Legal Agenda, 6 June 2019.

and isolation. The trend culminated in the association's statement on 19 October 2019 (less than 48 hours after the October 17 Uprising began), which explicitly said that its judges will always stand with the people – the source of authority – in their positions, hopes, and aspirations. The same orientation is evident in the ruling that Single Criminal Judge Nadia Jadayel issued on 30 November 2020 in the case of activists of the 2015 movement.[21] The ruling stated,

> **"The judge issues his rulings 'in the name of the Lebanese people'. Hence, he is not a king sitting atop a throne, far removed from his subjects, living in an ivory lofty tower. Rather, he is the spokesperson of every individual in society (he lives the same pain, breathes the same stench of rubbish, and bears the same economic burdens and crises). Subsequently, he issues decisions derived from the sovereignty of the people so that the people are the judge – a people fed up with the string of crises... that have deprived citizens of the most rudimentary essentials of life, especially in terms of health and the environment".**

Thus, the reference to the people, its interests, and its authority seemed to be a cause for judges to free themselves from the political subordination that usually causes the judiciary to be seen as an arm of the political regime. Many judges have also expressed their new understanding of the judicial function in the header of their rulings – an understanding that is based on protecting rights and freedoms and breaks with the classical understanding of the judge as a mouthpiece of the law, which he or she must apply. In this new understanding of the judicial function, judges should interpret laws not necessarily in accordance with the intentions of the political authority but – first and foremost – in the manner that makes them most accordant with the system of rights and freedoms (which now has constitutional force by virtue of the Constitution's preamble), thereby making them more compatible with public good in practice.

21. Nizar Saghieh, "Muhakamat al-Mutazahirin Tatahawwalu ila Muhakama li-l-Nizam: 'al-Qadi Yatanashshaqu Ra'ihat al-Nufayat Nafsaha'", The Legal Agenda, 7 December 2020.

On all these occasions, "populism", as well as breaching the duty of reservation [mujib al-tahaffuz], became a canned accusation leveled to deter judges from proceeding down this path and, in practice, emancipating themselves from subordination and self-restraint or expressing independence. Often, the forces aggrieved by this new understanding of the judicial function have turned to the judicial hierarchy (the Supreme Judicial Council and the Judicial Inspection Authority) to intervene one way or another in order to check these deviant judges and force them back in line or else remove them. This trend increased after the collapse as popular resentment toward the political authority and incentives for judges to break with it increased. In particular, this accusation was used to delegitimize judicial decisions that go against the grain, making it easier to curb judges' enthusiasm to sympathize with society's vital interests and preventing the conceptualization of the judicial function from transforming from a conservative one in harmony with the prevailing regime to one that protects citizens' rights and freedoms. The accusation usually aims to establish red lines in front of the judge before he or she can change the politically agreed-upon rules of the game by enforcing accountability for public officials and subjecting them to red lines. From this angle, the rights-based approach is, in many respects, susceptible to the accusation of populism as its end goal is to consecrate equality in rights and duties, especially before the judiciary, in order to guarantee fairness and justice and hence change the rules of the game upon which the political regime is based, namely consensualism, quota-sharing, and mutual vetoes, which lead to total impunity.

For evidence of this, it is important to recall that the accusation of populism has been used not only against judges but also against ministers and MPs that could be attracted by the October revolution's slogans and demands. This is evident from the parliamentary debates documented by the Legal Agenda's Parliamentary Observatory. In "A Legislative Session to Restore Awe of Parliament in the Face of the Revolution",[22] the observatory quoted Ferzli as saying, "Laws derived from the discourse of the people are appeasement at the expense of Parliament's dignity", in

22. Maher El Khechen, "Jalsa Tashri'iyya li-Isti'adat Haybat al-Majlis fi Muwajahat al-Thawra.. al-Farzali: 'al-Israf fi Tabri'at al-Dhat Isqat Laha, wa-Yu'kalu al-Thawr al-Abyad Yawm Yu'kalu al-Aswad'", The Legal Agenda, 27 April 2020.

response to a bill to ban hanging pictures of politicians in public spaces. He then lambasted MPs' silence on such bills "derived from the discourse of the people" (i.e. populism), harshly imploring them to "shout and defend your perspective" and reminding them of the notion of divided-we-fall, as though any tolerance toward such bills could destroy the entire political structure. Most importantly, according to the observatory, Ferzli turned the same day toward the government and the ministers who tweeted that they are "here" because of the revolution or people, stressing that confidence is granted to them not by the revolution but by the MPs. He swore that if it happened again, he would withdraw confidence from them. Because of this intervention, MPs who had voted in favor of the bill re-voted to reject it.

This accusation was clearly used in the efforts to stay Judge Fadi Sawan's hand in the port investigations. Ministers Khalil and Zaiter explained in their legitimate-doubt case that the judge did a backflip "overnight from a judge who apologizes to us when receiving us as witnesses for five minutes in his office, saying loudly and clearly in front of us that 'it's not your concern – you have no knowledge' ... into a predator charging us and thereby flouting constitutional principles that must be observed". Remarkably, the claim attributed this backflip to Sawan's intent to "solicit praise after feeling pressure amid a wave of populism that has seen demonstrations below his home to condemn his slow procedures and demand the arrest of prominent figures, which had the greatest impact on his psyche".

The Legal Agenda criticized the adoption of the ministers' arguments by the Court of Cassation in its commentary on the court's decision to stay Sawan's hand,[23] which was published in English as "Lebanese Court Removed Judge Who Sympathized With Beirut Explosion Victims". The article stated,

> **"On 18 February 2021, approximately two months after the confrontation began, the Court of Cassation issued a decision removing Sawan from the case. The court**

23. Nizar Saghieh, "Li-Hadha Ab'adat Mahkamat al-Tamyiz al-Qadi Alladhi Ta'atafa fa-Tajarra'a", The Legal Agenda, 24 February 2021.

relied on two arguments: Firstly, Sawan, influenced by the horror of the disaster and the humanitarian considerations it evoked within him, intentionally disregarded Zaiter and Khalil's parliamentary and professional immunities. Secondly, because of 'human nature', the damage that the explosion caused to Sawan's home would certainly influence his state of mind and hence his ability to investigate objectively. Although these arguments may appear distinct, they actually overlap as both contend that the extent to which Sawan was influenced in human terms by the disaster, which did not spare his house, casts 'legitimate doubts' over his impartiality in this case. Hence, the decision implies that the judge only broke with his history of reservation and charged people with immunities after he forsook his impartiality because of his sympathy for the suffering that the explosion caused for his society and people – sympathy that may not exist were he not also personally harmed. The court thereby seemed to be responding to the two ministers' demands and the political discourse accompanying them, not only by establishing 'immunities' as a red line separating the judge from the politician and rendering the latter untouchable, but also by laying down another, equally important red line separating the judge from society or the people."

While Bitar sought to avoid his predecessor's fate by respecting the formal procedures for prosecuting MPs and lawyers, the escalating accusations of populism he faced bore additional, graver significance: they were directed more at him than his decisions and went as far as to accuse him of demagogy and seeking to polish his image to gain political standing. The implication was that he is aiming, via his work, not to achieve truth and justice but to gain political credit that he might exploit in future elections. The first accusation of populism against him, albeit through insinuation, came in the wake of the widespread condemnation of the MPs' indictment petition (the "petition of shame"). Following the popular outrage at the petition, many political forces defended

themselves by portraying it as the correct avenue for accountability and truth and portraying Bitar's decisions as mere populism or chest-beating (hawbara, a word that appeared in statements by many MPs as a synonym for populism). Initially, on 22 July 2021, Parliament's Media Bureau issued a statement saying that Parliament's primary task is to pursue the investigation from start to finish "far removed from any political or populist exploitation that prevents a just result".[24] Then came statements from several MPs. For example, on 31 July 2021 Ali Bazzi, argued that "The difference is clear between chest-beating and the law, between blood merchants [tujjar al-dam] and kin of those whose blood was shed [awliya' al-dam], between those wanting truth and justice and those wanting to waste the blood of the martyrs and exploit their families suffering".[25] Likewise, Mohamad AlHajjar told Al Jadeed, "There is a clear constitutional article saying that ministers and prime ministers are tried before the Supreme Council... Unfortunately, some people don't want to see this for political and populist reasons and for the chest-beating goal of 'come on, let's lift immunities'".[26]

Subsequently, after tens of thousands applauded Bitar in a march on 4 August 2021, statements stigmatizing Bitar as "leader of the revolution" – a label used to mock people who participated in the revolution, accuse them of seeking goals beyond their abilities, and deny them any legitimacy – increased. On Al Mayadeen on October 12, Ali Hassan Khalil, after mentioning the statement imputed to Bitar about a need for change, opined that the latter had "become part of a political protest movement against the political class" and "been influenced by populism and public opinion".[27] Likewise, in a late attack on Bitar on Al Jadeed on Friday December 17, Wiam Wahhab opined that Bitar now considers himself the leader of the revolution and will enjoy great standing in society. In a tweet on the same day, he accused Bitar of "thuggery [tashbih] in the application of the law by granting himself the jurisdiction to try presidents, ministers, and MPs on a whim, thuggery that would put him in prison in a normal country".

24. Statement by Parliament's Media Directorate, Parliament's website, 22 July 2021.
25. "Na'ib 'Amal': La Hasana fi Infijar Marfa' Bayrut Illa...", Lebanon Debate, 31 July 2021.
26. "Jidal Mubasharatan 'ala al-Hawa' Bayna Muhammad al-Hajjar wa-Mansur Fadil Hawla Iqtirah Tayyar al-Mustaqbal fi Qadiyyat Marfa' Bayrut", Al Jadeed's YouTube channel, 30 July 2021.
27. Hiwar Khass | 'Ali Hasan Khalil – Wazir al-Maliyya al-Sabiq", Al Mayadeen's YouTube channel, 12 October 2021.

Perhaps the most telling accusation appeared in the disqualification case filed by Khalil and Zaiter with the Court of Cassation on 11 October 2021 and referred to the First Chamber, presided over by Naji Eid. The claim argued that Bitar "is very influenced by public opinion and the movements by victims and their families and acquiescent to them". They added, "The Judicial Council investigator should have thoroughly insulated himself from the rightfully agitated public so that he does not hear its shouting and groaning and is not influenced by it at the expense of truth, law, and justice".

Finally, the anti-investigation forces did not neglect, in the process of making these accusations, to demand that the judicial hierarchy – particularly Supreme Judicial Council President Suhail Abboud – intervene to put a stop to Bitar and, in practice, bring him back in line. This we will address in detail in Chapter 3.

Total Partisanship and Sectarianization

Additionally, the anti-investigation forces portrayed Bitar's performance as sectarianized. The goal of fabricating sectarianism was to expand the hostility toward Bitar to include not only their political supporters but also sectarian sentiments. This would create a vertical sectarian division, turning the case into a sectarian cause and completely stripping it of its rights-based dimensions. The accusations of sectarianism increased whenever the anti-investigation forces found themselves unable to persuade with arguments grounded in the investigation. If this discourse succeeded, continuing with the case would cause a perpetual sectarian rift whose dangers far outweigh its desired benefits. The effort peaked with the incidents in Tayouneh on 14 October 2021, when the sharp divide over the investigation turned into a battle that was portrayed as sectarian. Here too, the accusations were made in a virtually systematic and all-encompassing manner. Besides the sectarianization of the people charged via a greater focus on their sect than their actions, a great effort was exerted to sectarianize the victims and show a sectarian division inside the judiciary. The sectarianization was bolstered by the various religious authorities' engagement in this discourse, which reflects the transformation of the objection to Bitar's performance from a political

one to a religious, sectarian one. Sectarianization, too, is a practice to which the dominant political forces have traditionally resorted to prevent accountability. One of the most notable examples is the talk by the forces supporting late prime minister Rafic Hariri about Sunni frustration in response to the prosecution of some officials and ministers affiliated with them, including Fouad Siniora in 1999 and 2000.

1. Sectarianizing the Charged

Efforts to sectarianize the figures charged were initiated either by those people or by the forces opposed to holding them accountable. These efforts were closely connected to the foundations of the sectarian system, particularly the apprehensions about one sect prevailing over another, which would threaten the consensus system, or a sect's loss of any of its perks in the sectarian system. They also heavily involved the religious authorities and regular statements from them, leaving no room for doubt about the desire to sectarianize the prosecution of the defendants.

The quintessence of this sectarianization was former prime minister Diab. The bodies representing the Sunni sect (the Former Prime Ministers' Club, the Association of Muslim Scholars, and Dar al-Fatwa) cooperated to transform the charge against him into an action against the sect's main maqamat, as previously explained. This sectarianization effort was particularly glaring as these bodies, particularly the Former Prime Ministers' Club, had previously shunned Diab and implied that he does not represent the sect. Machnouk strived to capitalize on this climate by associating Diab and himself with Dar al-Fatwa whenever Bitar took measures against him. On 22 September 2021, while commenting on Bitar's decisions to serve Diab by taping the papers to the door of his last known address, Machnouk stated from inside Dar al-Fatwa that "Diab's address is Dar al-Fatwa, Beirut. Let them come and see if they can tape a notification or summons to the door".

The efforts to sectarianize the charges against ministers Khalil and Zaiter (and perhaps Abbas Ibrahim) portrayed them as aiming to tip the domestic (and hence sectarian) scales against the Amal-Hezbollah duo. Subsequently, the term "fitna", which denotes division and perhaps sectarian fighting, emerged amidst the broad mobilization for the October 14 protest, with a focus on Bitar being the cause,[28] as well as in the wake of it, when he was held responsible for the bloodshed.[29] In particular, on 12 October, Khalil told Al Mayadeen that "This judge's performance represents a great fitna project. We want to spare the country from this plight... It cannot be ruled out that what is happening is part of a regional and domestic machine working to change the political facts and balances inside the country". The same day, a series of figures and bodies in the same political orbit issued similar statements. For example, Grand Jaafari Mufti Ahmad Kabalan,[30] who gained prominence thanks to his statements on this case, said in a statement that the Judicial Council investigator "is virtually turning the government into barricades and pushing the country and street toward a disaster" and warned against "playing with fire".[31] As for after the incident, in the Friday sermon on 15 October Kabalan charged Bitar with responsibility for "the bloodbath of the Tayouneh ambush and all the breakdowns of security and destruction inflicting this country".[32] On the day of the incident, he had said that "all the blood, fitna, threat to domestic peace, and security breakdown that happened today to the unarmed protesters or will happen is on the US Embassy and Judge Tareq Bitar, who should be removed, arrested, and held firmly accountable".[33] The Supreme Shia Islamic Council, the Assembly of

28. Razi Ayoub, "'Fitnat Bitar'... Hawla Sina'at al-Sardiyya wa-l-Hadth wa-Tabrir al-Ta'assuf", The Legal Agenda, 27 October 2021.
29. The hashtag #al-dam_bi-raqabatika_yabitar ("The blood is on you, Bitar") spread on 14 October in reference to the victims of the Tayouneh incident. Famous media figures, as well as many fake accounts, participated.
30. "Ahmad Qabalan li-l-Qadi al-Bitar: al-Qada' Yabda'u bi-Ru'us al-Afa'i wa-Laysa bi-l-'Amal li-l-Afa'i", Elnashra, 12 October 2021.
31. "Qabalan: al-Matlub Iqalat al-Bitar al-An wa-Hadhar al-La'b bi-l-Nar", LBCI, 13 October 2021.
32. "'Mu'tayat Khatira'... Qabalan: Wahim Man Yazunnu Anna Kamin Madhbahat al-Tayuna Huwa al-Nihaya", Lebanon Debate, 15 October 2021.
33. "Qabalan: Kull Dam wa-Fitna wa-Tahdid li-l-Silm al-Ahliyy wa-Falatan Amniyy Huwa bi-'Unuq al-Safara al-Amrikiyya wa-l-Qadi Tariq al-Bitar", Elnashra, 14 October 2021.

Mount Amel Scholars,[34] and the Assembly of Muslim Scholars[35] all issued statements agreeing that Bitar is part of the fitna.

Wiam Wahhab summarized these efforts in his own way in his 17 December interview on Al Jadeed. He said that the charges affect the Sunni and Shia sects and wondered what coexistence will remain if this continues. He added, "A judge who, with all due respect, is making himself out to be a leader of a revolution cannot encroach on the powers of Parliament". He concluded by saying that this encroachment is an attack on the Shia sect and that "This game could turn against all sects".

On the other hand, this sectarianization required these forces to sideline the other charges against Fenianos, Saliba, and senior officials such as Badri Daher.

2. Sectarianizing the Victims

In parallel with the efforts to sectarianize the defendants, the anti-investigation forces made a clear effort to sectarianize the victims, who managed to present a unified stance in support of Bitar until the beginning of October. This effort aimed not only to make the narrative and accusations of sectarianism more credible, but also – and more importantly – to strip Bitar of the universal confidence and support of the victims' families [awliya' al-dam], confidence that was embarrassing for anyone who needed to convince the public that there was legitimate doubt in Bitar. The first signs of annoyance at the victims' unity around Bitar appeared when the major figures charged and forces supporting them claimed to identify with the victims, speak in their name, and – most importantly – be more intent on justice and truth in the port blast case than the victims' families, who were supposedly being misled and had to be protected from themselves. This is evident from the name that the unit of lawyers established to defend Abbas Ibrahim initially gave itself – the "Unit for Pursuing the Case of the Port Martyrs' Families" –

34. "Tajammu' 'Ulama' Jabal 'Amil ila al-Bitar: La Takun Wuqudan aw Ada li-l-Fitna", Al-Manar, 14 October 2021.
35. "al-Muqawama Tufshilu Mukhattat Jarr Lubnan ila Jahannam al-Fitna wa-Da'awat ila Tawqif al-Mujrimin wa-Mu'aqabatihim bi-Shidda Majzara Ghadira fi al-Tayuna: 6 Shuhada' wa-'Asharat al-Jarha bi-Rasas Qannasin Ihtijajan 'ala Tazahura Silmiyya! 'Amal' wa-'Hizbullah' Yattahimani 'al-Quwwat' bi-Tanfidh al-I'tida' wa-Ja'ja' Yuqirru Dimnan", Al-Binaa, 15 October 2021.

amid opposition by the victims' families expressed in a statement they issued on 11 July 2021. The unit justified its name on the basis that "the greatest crime against the martyrs and their families is wild accusations... We are forming a legal unit to monitor the investigation in order to ensure the rights of the martyrs' families". Similarly, on 12 August 2021, after the loss of the quorum for the parliamentary session to examine the petition to impeach the ministers, Ali Hassan Khalil said angrily, "We are awliya' dam in this case".(36)

These efforts reached their pinnacle in the speeches of Hezbollah's secretary general. In several speeches, he warned the families of the martyrs that "If you are expecting to reach truth with this judge, you won't reach justice. This judge is practicing politics and harnessing the blood of the martyrs and wounded to serve political ends". These speeches aimed, in particular, to shake the trust of everyone who supports and believes him (including victims) in Bitar and to push them to break ranks with the victims (see, for example, the October 11 speech). The transformation of support for Bitar into a direct challenge to Nasrallah put many families of victims under widespread social pressure to withdraw it. Consequently, a new assembly for victims' families was announced and quickly took on a Shia color. This occurred immediately after the Tayouneh killings (see the video published by Ibrahim Hutayt, former spokesperson of the Association of the Families of August 4 Victims, on 16 October 2021).

This divide was apparent in the split of the vigil for the victims and their families on the 4th of each month into two,(37) one held in front of the Statue of the Emigrant and demanding that the obstacles to the Judicial Council investigation be lifted and the MPs, ministers, and public officials concerned be tried and held accountable, and another held at Gate 3 of the port involving the victims and families questioning the Judicial Council investigator's performance and demanding his disqualification. The latter group called themselves the "Constituent Committee for the

36. "Saqata al-Nisab wa-l-Ahali Atahu bi-Jalsat al-'Ar.. wa-l-Jalsa al-Muqbila ila Ajl Ghayr Musamma", Al Jadeed, 12 August 2021.
37. "Shahran 'ala al-Infijar... Waqfatan li-Ahali Dahaya al-Marfa' Bayna Timthal al-Mughtarib wa-l-Bawwaba Raqm (3)", Annahar, 4 November 2021.

Families of the Beirut Port Blast and Assembly of Relatives of the Martyrs, Wounded, and Victims of the Beirut Port Blast". Thus, after the victims had boasted about being a cross-sect group whose only borders are those of the nation,[38] here was a new assembly redrawing the dividing lines in conformity with Nasrallah's discourse. On 10 December 2021, one father of a victim (Youssef el-Maoula) even followed the example of the charged ministers by filing a Court of Cassation case to transfer Bitar on the basis of legitimate doubt in him on 10 December 2021.

3. Sectarianizing the Judiciary

In parallel with the efforts to sectarianize the people charged and the victims' families, efforts to sectarianize Bitar and even the entire judiciary also began, culminating in total sectarianization that paves the way for total politicization irreverent to any rights-based considerations. Bitar does what he does, the courts support him, and the Supreme Judicial Council takes no action to remove him not because of his independence or a judicial awakening and judicial solidarity to protect the investigation, but primarily because they are all Christians who stand in solidarity with one another.

Suddenly, discussion of Bitar's Christian identity began. One newspaper went so far as to note that his language featured "Christianism", that he was unwilling to marry a Muslim woman, and that he is proud of his Christianity (Al Akhbar, 13 December 2021). In parallel, information about the identity of the presidents of the cassation and appellate chambers that dismissed the disqualification and transfer requests, all of whom are Christians, circulated widely. While the Twelfth Chamber of the Court of Appeal (presided over by Nassib Elia) and the Fifth Chamber of the Court of Cassation (presided over by Janet Hanna) had jurisdiction under a work distribution decision that preceded these requests, focus was placed in particular on the first and fifth chambers of the Court of

38. "al-Tahqiq fi Majzarat al-Marfa': Ma'rika Didd Funun al-Iflat min al-'Iqab", one of a series of discussions held by the Legal Agenda, 26 July 2021 (speakers: Nizar Saghieh, Ghida Frangieh, Osama Saad, Mazen Houtait, Riad Kobaissi, Ibrahim Hutayt).

Cassation, presided over by Naji Eid and Janet Hanna, which examined these requests pursuant to a special referral from Court of Cassation President Suhail Abboud. This narrative was bolstered by this degree of supposed sectarianization and went even further by suggesting that judges are vertically divided on a sectarian basis, once again charging Bitar with responsibility for dividing the judiciary.

This narrative was clear in Al Akhbar articles that spoke about a sectarian divide within the judiciary. The most important include an article published on the day of the 14 October Tayouneh demonstration under the title "Suhail Abboud and Tareq Bitar Ignite the Street Amidst Sectarian Seething: An Explosion Threatening the Government and Devastation Threatening the Country", written by Ibrahim Al Amine. A second article entitled "Demands to Disqualify Suhail Abboud: He Caused a Sectarian Divide in Adleih" was published on 18 November.[39] The latter stated that because of this case,

> **"Rifts have emerged among judges and taken on dimensions that go beyond disagreement over legal interpretations and jurisprudence and verge on sectarian division. The judicial body is witnessing complete chaos that has put the entire judicial issue on the table following scandalous practices. Because of these practices, Adleih [the judicial district] was virtually shut down over the past two weeks following a series of interlinked cases exchanged by the two sides of the conflict. This tied everyone's hands as they searched for a new legal framework in a battle that has become about settling political scores."**

The same day, the narrative was repeated in Aljoumhouria, which quoted "Shia duo" sources lamenting the "fracture of the judiciary between Muslim and Christian judges in the worst vertical split caused by [the Supreme Judicial Council president's] practices".[40] The paper quoted the same source as saying that "in the darkest days of the war,

39. Mayssam Rizk, "Matalib bi-Tanhiyat Suhayl 'Abbud: Tasabbaba bi-Iqtisam Ta'ifiyy fi al-'Adliyya", Al Akhbar, 18 October 2021.
40. "al-Thuna'iyy li-l-Jumhuriyya: Asas al-Mushkila Huwa al-Qadi Suhayl 'Abbud fa-fi Zamanihi Inqasama al-Qada' fa-Ayna 'Awn wa-Miqati min Mumarasatihi", Al Joumhouria, 18 November 2021.

the judiciary remained united, and under Abboud it has divided". On 15 December, Parliament Speaker Nabih Berri affirmed this narrative, charging the Supreme Judicial Council with responsibility for the sectarianism now afflicting the judiciary.[41]

This narrative warrants several observations:

Firstly, contrary to the talk about the solidarity with Bitar taking a sectarian turn, the Lebanese Judges Association, which is religiously diverse and represents the independence current within the judiciary, expressed clear and explicit support for Bitar in several statements (see its statement on 15 October in particular).[42] Moreover, the Twelfth Chamber of the Court of Appeal, which ended the longest suspension of the investigation in 2021 (the suspension caused by Judge Habib Mezher in a blatant contravention of the law, as we explain at length in Chapter 3) was presided over in an acting capacity by a non-Christian judge (Randa Harruq) and has a non-Christian majority (Myriam Shams El-Din and Harruq). The Full Bench of the Court of Cassation, which dismissed the maljudging cases concerning the actions of the Judicial Council investigator, as we explain in Chapter 3, also had a non-Christian majority (three of five members).

Secondly, the danger of this narrative lies in the fact it not only increases pressure on Bitar by holding him responsible for dividing the judiciary but also obscures all the practices that the governing system has for decades employed to divide important judicial positions into cantons and networks of interests. Moreover, the narrative is disproved by a detailed examination of the various aspects of judicial organization, which the Legal Agenda completed when preparing the bill on the independence of the judiciary. The examination showed the extent of the political (sectarian) quota-sharing in the judicial personnel charts, especially for important and sensitive positions, as well as the appointments to judicial authorities, foremost among them the Supreme Judicial Council and the Judicial Inspection Authority.[43] There is no stronger evidence than the appointment of Judge Habib Mezher as a

41. "al-Ra'is Barriyy: Ma'aruf Man Lam Yu'ayyid al-Ta'if wa-Lam Yutabbiq La al-Qanun wa-La al-Dustur", meeting with the Editors' Syndicate, 15 November 2021.
42. Lebanese Judges Association statement, 15 October 2021.
43. See the special issues of The Legal Agenda on the judicial and administrative judiciaries.

member of the Supreme Judicial Council (the Shia member) following Berri's approval of his nomination. The Legal Agenda showed in detail how this quota-sharing in the judicial authorities transforms them into bodies that represent the dominant political forces in accordance with the established sectarian formula. Hence, they become more of an arm of politicians, and the interests these politicians represent, inside the judiciary than a shield to protect its independence from the politician. This arm usually divides the important judicial positions, via consensus, among judges subordinate or close to the political forces while marginalizing all judges who maintain a distance from them. Hence, the "judicial unity" about which Nasrallah and others spoke stems not from within the judiciary but from outside it, specifically from the political forces that control it. In other words, this unity stems from a consensus among these forces on divvying up positions and interests and is rocked by the fall of this consensus, as occurred between 2005 and 2008 and may be occurring at present. More importantly, this unity is merely an optical illusion that is, at best, limited to the top of the judicial pyramid and the judges that occupy important positions and benefit from its perks. It conceals deeper divisions between these judges and all the judges whom sectarian quota-sharing leaves liable to be wronged and marginalized. In other words, this "unity" is merely a synonym for the political forces' ability to divvy the judiciary up and impose their interests upon it without any resistance. The divide troubling the anti-investigation forces would never have occurred were it not for a disturbance in this consensus, which enabled judicial bodies (including Bitar and the courts that rallied around him and protected the investigation) to confront the diktats without being repressed.

To confirm this, we need only recall that the occasions when judges have been accused of dividing the judiciary are generally ones on which a desire for change or independence within the judiciary or a judicial effort to break the system of immunity arose. One of the most important of these occasions was the establishment of the Lebanese Judges Association, which the Supreme Judicial Council deemed a project that would divide and weaken the judiciary. Another was Judge Aoun's insistence on confronting the decision to stay her hand from the investigation into the Mecattaf-Sehnaoui-Salameh case.[44]

44. Nizar Saghieh, Fadi Ibrahim, and Imad Sayegh, "Fath 'Ulbat Pandora bi-Munasabat Qadiyyat Mecattaf: Man Hawwala al-Amwal ila al-l-Kharij? Wa-Kayfa?", The Legal Agenda, 24 September 2021.

Subsequently, the sectarianization of the judiciary reached a new level with the emergence of the issue of the sectarian identity of the members of the Full Bench of the Court of Cassation and hence the majority inside this body. On 16 April 2022, Minister of Finance Youssef Khalil justified his refusal to sign the decree appointing the chamber presidents in the Court of Cassation on the basis that he wanted to avoid establishing a precedent that the country could do without.[45] Although he did not explain what this precedent was, it was understood to be a supposed breach of sectarian parity in the distribution of the Court of Cassation presidencies. The decree applied a 50-50 distribution to these positions (five Christian presidents and five Muslim presidents) without taking into account the first president of the court itself (presently Judge Suhail Abboud). Hence, it would cause the Full Bench to be composed of six Christians and five Muslims.[46] This was confirmed by charged MP Ali Hassan Khalil on 19 April 2022 when he said that a decree that contravenes the sectarian balances by adding a new Court of Cassation chamber cannot be signed.[47] While some media outlets (Al Jadeed) reported on May 24 that the new draft contained significant changes, the only change turned out to be the name of one judge who had retired during the period between the two drafts. In no way did it address the sectarian issue that the minister of finance had raised.

Previous personnel chart decrees (2009-2010 and 2017) confirm that appointments have occurred on the bases that the minister of finance now rejects as a new "precedent". His real motive was obviously to keep the investigation into the port case frozen until after the parliamentary elections or perhaps some settlement, in keeping with the interests of the political forces that appointed him. Blocking the filling of the vacancies in the Court of Cassation presidencies prevents its Full Bench from convening because of the unmet quorum. Hence, this action prevents the examination of the abusive requests filed with the court in the port case. Examining these requests is a precondition for resuming the investigation into the case, as we explain in Chapter 3.

45. Nizar Saghieh, "'Veto' Wazir al-Maliyya Yu'attilu Mahkamat al-Tamyiz: Damana Jadida li-Nizam al-Iflat min al-'Iqab", The Legal Agenda, 26 May 2022.
46. Lara El Hachem, "Barriyy Handasa wa-Miqati Tafarraja wa-l-Dahaya Yasrukhuna", Media Factory News, 27 May 2022.
47. "'Ali Hasan Khalil li-'Awn: 'Attaltu al-Tashkilat al-Qada'iyya... wa-La Yumkinuka al-Daght 'Alayna", Al Akhbar, 19 April 2022.

Naivety: Judicial Impartiality and Independence Are Not Enough

The accusation of naivety directed against Bitar[48] is mild in comparison to all the other accusations as it does not impute malice. Nevertheless, we have included it in the list of accusations leveled against Bitar because of its dimensions and the caution and suspicion toward judicial independence in general that it betrays – dimensions that complement the other accusations. The "naivety" narrative contends that Bitar is unqualified to conduct the port investigation not necessarily because he is malicious but because he lacks wisdom, awareness, and precaution. He makes risky decisions without considering the extreme social harm they cause, and he continues with them without any self-reflection and while insisting on absolving himself from all their consequences, including the division of the judiciary, the government shutdown, and the Tayouneh killings. According to this narrative, Lebanon in its entirety has fallen victim to a judge who took on a dangerous task from which there is no mechanism to stay his hand or remove him.

While this accusation differs from the previous accusations in that it does not contest the impartiality of Bitar and his decisions, it is no less grave as it deems Bitar a danger irrespective of whether the anti-investigation forces have any proof that he is biased. The doubt in him in this instance concerns not partiality or involvement in political agendas but, to the contrary, the consequences of his impartiality and pursuit of his work without considering the explosive political circumstances surrounding him. From this angle, this accusation is akin to a warning about the dangerous consequences of partiality and judicial independence in the absence of checks ensuring that judges heed a set of social and political considerations, which naturally remain unspecified and open to interpretation and expansion. Hence, if this argument becomes acceptable, various influential parties can justify their interference in the judiciary based on doubt not in its impartiality but its wisdom. For example, the Association of Banks in Lebanon has argued that rulings against banks could abort all their efforts to protect depositors' rights, and any political faction can argue that the prosecution of any of its leaders or

48. Ibrahim Al Amine, "al-Sadhij", Al Akhbar, 13 December 2021.

an acknowledgment of his victims' rights could cause a civil war, among other examples that verge on absurdity. Hence, this accusation, like the other accusations, in reality justifies interference and maintaining a grasp on the judiciary in order to avert any naive judicial decisions causing extreme social harm.

Making this narrative even more problematic, it addresses the dimensions of Bitar's decisions that it labels dangerous without discussing the social consequences of the system of immunities, which the criticism of Bitar re-entrenches, or the system of impunity. It handles this system as a fate for the Lebanese people that all judges must treat as a matter of fact that cannot be altered without causing great social danger.

Discrediting the Whole Judiciary: No Confidence in the Judiciary

The anti-investigation forces were not content to merely dispute Bitar's impartiality; they also discredited the judiciary as a whole. In addition to the aforementioned efforts to sectarianize the judiciary, this discourse took three forms: (1) exaggerating the responsibility of certain judges for the entire explosion, making them into the case's principal defendants, (2) discrediting all judicial bodies and organizations that defended Bitar, especially the Lebanese Judges Association, and (3) declaring a lack of confidence in the judiciary's ability to achieve accountability in this and all other important cases. One MP went as far as to say that the judiciary is in the process of destroying itself because of its abdication of its responsibilities. This we shall detail below.

1. Focusing on the Judiciary's Responsibility for the Blast

Since the day after the explosion, several parties strived to absolve themselves from any responsibility by casting it on Summary Affairs Judge Jad Maalouf, arguing that he was the one to approve the unloading of the ship's explosive cargo, appointed a judicial guard for it, and made no subsequent decision on it despite receiving repeated correspondences from former and current directors of customs Shafik Merei and Badri Daher about the need to export or auction it. Blaming Maalouf, who is not

affiliated with any of the ruling political forces, would conveniently allow them to spare their ministers and senior officials from any responsibility. This trend included several news reports. On 12 August 2020, Al Jadeed published a report from journalist Radwan Mortada that stated, "The primary responsibility is borne by the judiciary and the judge who asked for the nitrate cargo to be unloaded and approved its storage". Al Mayadeen then followed the same trend in its November 2021 investigation entitled "Telling the Truth". This trend was then supported by Hezbollah Secretary General Hassan Nasrallah in his speech on 17 October 2021. He placed much responsibility on Maalouf while vocally defending the reputations of the ministers, including ministers of public works Zaiter and Fenianos, and their right not to be subject to the judicial judiciary. He ignored the fact that the ministry, under Zaiter, requested that the ship be unloaded and served as the judicial guard of its cargo over the years under both Zaiter and Fenianos. Note that the Execution Department had not sequestered the goods, only the ship.

To correct the fallacies, we must also note the following:

Firstly, Maalouf approved the request by the Directorate of Land Transport on the basis that the ship was in a critical condition and, if it sank, could cause environmental pollution due to its cargo and obstruct the port. The request came not from a private company but a public administration that is supposed to be the most capable and competent party in this regard. Moreover, at any time, the ministry could have changed the material's storage conditions for the sake of public safety.

Second, Maalouf allowed the Ministry of Public Works to unload the cargo on the condition that it be transported and stored in an appropriate place determined by the ministry, that it be under the ministry's guard, and that the measures necessitated by the danger of the materials first be taken. Hence, he clearly left it up to the ministry to determine the storage location, once again on the basis that he was tasking not a private company but the state, which is supposed to be the most capable and competent party in this regard. Instead of choosing a safe location, the ministry chose Warehouse 12 at the port. Neither the ministry, nor the port's administration, nor the Directorate of Customs considered the storage conditions or objected to the presence of fireworks in the warehouse beside the nitrate.

Thirdly, upon receiving the letters from Merei and Daher, Maalouf found himself facing two state agencies – the Directorate of Customs and the Ministry of Public Works – that were not communicating with each other or agreeing on a unified position concerning the goods placed under its guard. Hence, he repeatedly wrote to the Cases Authority (the state's representative), which wrote to the Ministry of Public Works (the judicial guard of the goods) without receiving any response.

Hence, while Maalouf could have been more attentive and precautious at all these stages, his major liability stems from the fact that he treated the state as what it is supposed to be and not what it actually is, namely a set of fragmented fiefdoms. The people may have a right to hold him to account for this action, but the very political forces instrumental in fragmenting the state and eroding its public administrations have no place to cast blame.

2. Attacking the Judicial Bodies Supporting Bitar

The anti-investigation forces fiercely attacked the judicial bodies that dismissed the requests to disqualify Bitar or took stances supporting him. The attack affected Supreme Judicial Council President Suhail Abboud in particular when demands and insinuations that he should be dismissed because of his inability or refusal to stop the approach taken by Bitar became widespread. These forces faulted Abboud for a series of moves and stances that he took in his various capacities. Besides the criticism for referring the disqualification requests filed with the Court of Cassation to "Christian" bodies, as previously explained, the decisions issued by the Full Bench of the Court of Cassation (over which Abboud presides) came under a stunning attack by Nasrallah in his 26 November 2021 speech, to which we will return later. Abboud was also accused of interfering, in his capacity as Supreme Judicial Council president, to protect Bitar and abort the attempt to stay his hand via a council decision.[49] He was even accused of being part of an American political scheme, as well as aspiring to become president of the republic with support from the French Embassy. The fiercest attack on Abboud may have been the one by Parliament Speaker Nabih Berri, who even held him responsible for sectarianizing the judiciary, as previously explained.

49. "'Handasat Qada'iyya' bi-Ri'ayat Ra'is Majlis al-Qada' al-'Ala... Khilafan li-l-Qanun: Mamnu' Kaff Yad al-Bitar", Al Akhbar, 6 November 2021.

The Lebanese Judges Association also faced a series of accusations. Most prominently, the Amal Movement's Central Bureau for Syndicates and Free Professions issued a statement on 16 October 2021 denying the association's legitimacy and legality and accusing it of responsibility for the Tayouneh killings based on its October 15 statement supporting Bitar and warning the political forces against continuing to "tamper with the last bastion of the state idea".(50) The Amal statement said that the association had "caused our killing" and "rendered our blood fair game". It also accused the association of obstructing "the great effort that the parliament speaker and the Development and Liberation bloc are exerting to issue a judicial independence law".

One of the practices used against the bodies supporting Bitar was a punitive approach in the deliberations over the partial personnel charts. Information appeared in the media about a refusal to appoint judges who helped to dismiss the requests to stay Bitar's hand, such as Janet Hanna and Randa Kfoury, to the Court of Cassation presidencies.(51)

3. No Confidence in the Judiciary

The assault on the judiciary did not stop with Bitar and his supporters. Rather, it reached the point of passing judgment on the entire judiciary by declaring a lack of confidence in its ability to reach truth and justice. In a speech on November 26, Nasrallah commented on the decisions by the Full Bench of the Court of Cassation to dismiss several of the cases to stay Bitar's hand by saying that "No judge dares take any measure against this judge [Bitar], behind whom stands the United States, represented by the US Embassy in Lebanon". He then accused the judiciary of "protecting one another" and covering for the "accused judges" in the port blast case and concluded that the current judicial process "will deliver neither truth nor justice" because "the judicial parties concerned are practicing selectivity and submitting to politics". He did not neglect to praise the one judge who dared to stay Bitar's hand, namely Habib Mezher (a matter we shall detail later). Nasrallah added that Mezher was subsequently threatened – a reference to the broad condemnation of his illegal

50. "Maktab al-Mihan al-Hurra fi Amal: Kafa 'Abathan bi-l-Qada', Lebanon 24, 16 October 2021.
51. "'Abbud fi 'al-Qada' al-'Ala': Ana aw La Ahad!", Al Akhbar, 16 February 2022.

decision on social media and the protest held by the victims' families and rights activists in front of his office and home. With this speech, Nasrallah seemed to understand politicization of the judiciary selectively. A judge who issues a decision pandering to Hezbollah's demands, even one with a clearly flimsy legal basis (such as the decision by Mezher, who has acted as though he is tasked with staying Bitar's hand ever since he was appointed to the Supreme Judicial Council with Berri's approval), is not necessarily politicized. Rather, a decision issued in contravention of Hezbollah's demands is politicized, irrespective of its legal basis. Put simply, a politicized judiciary is not necessarily one that issues decisions on political bases but one that issues decisions against the will of the most powerful national political force – a conclusion verging on absurdity. Loyalty to the Resistance bloc MP Ibrahim Mousawi went in the same vein on 11 August 2021, declaring no confidence in judges on Al-Manar: "The whole world knows that the judiciary is politicized, there are whispers in the judiciary's ear, it is influenced here and there, it is penetrated by domestic and foreign forces. Everyone now knows that there is selectivity. The whole world knows that there is silence [about many cases]".

For his part, Loyalty to the Resistance bloc MP Hassan Fadlallah argued in a speech on 12 December 2021 that the judiciary is totally unable to perform its role in accountability or its duties under the law.[52] While this discourse concerned financial cases and not the port blast case, it cast general judgments on the judiciary: "The judiciary responds to internal and foreign pressure at the expense of justice and people's livelihood and is in the worse condition it has ever reached throughout its history. Today, this judiciary is destroying itself by itself by prioritizing the political and sectarian considerations of a select few with a grip over its decisions". Although Fadlallah declared that this incapacity exists "for the sake of politicians in the country", he only condemned the judiciary and did not name or point fingers at any of these political actors. Evidentially, he preferred – perhaps out of pragmatism – withdrawing confidence from the judiciary because of the political forces' interference in it to going after the political forces for this interference.

52. "Fadlallah: Jahizun li-Khawd al-Intikhabat al-Niyabiyya wa-l-Mutala'ibun bi-l-Dular Ma'rufun 'Inda al-Qada'", Elnashra, 12 December 2021.

Declaring no confidence in the judiciary by stripping it of its role resembled the parliamentary debates over the law to lift banking secrecy.[53] MPs in the joint committees held months of discussions over the bill, which granted the Public Prosecution the power to lift banking secrecy from the public officials' accounts. Yet shortly before the vote on the bill in the General Assembly, a band of MPs from several blocks suddenly emerged in opposition to granting the Public Prosecution offices this power, arguing that the judiciary is politicized and there is no confidence in it. Subsequently, they succeeded in denying the Public Prosecution the power to lift banking secrecy. The General Assembly vote ultimately kept this power restricted to the Special Investigation Commission (presided over by Riad Salameh), thereby preserving its broad power to open and close the files of whomever it pleases. The only exception is illicit enrichment cases under the Banking Secrecy Law of 1956. Hence, just as declaring no confidence in the judiciary was a means of preventing any reduction of banking secrecy and therefore any accountability and punishment for financial crimes (Riad Salameh remains master), in the port blast case it serves as grounds to spare people with immunities from accountability (why lift or reduce immunities when the apparatus responsible for this accountability is untrustworthy and guarantees neither truth nor justice?). From this angle, the argument, at its core, constituted yet another avenue for consecrating the system of impunity. The argument is especially egregious because none of the forces casting doubt over the judiciary have proposed a serious bill to reform it.

It is worth returning to a statement made by Deputy Parliament Speaker Elie Ferzli, one of the most important spokespeople of the ruling political regime, in one legislative session in Parliament in 2020. The Legal Agenda's Parliamentary Observatory quoted him as saying, while commenting on a bill to grant MPs the capacity to challenge administrative decisions affecting state property, the environment, and other important interests before the State Council, that MPs "over-incline toward the people in order to increase the judiciary's purview

53. "Kamil Nata'ij al-Jalsa al-Tashri'iyya Ayyar 2020: Muhasasat al-'Afw al-'Amm Tutayyiru al-Jalsa Ba'da Munaqashat 11 min Asl 37 Muqtarahan 'Mazlumiyyat' al-Nuwwab wa-Khawfuhum min Kaydiyyat al-Qada' Ghayr al-Mustaqill Tasunu Sirriyyatahum al-Masrafiyya", The Legal Agenda – Parliament Observatory, 30 May 2020.

and prevent any interference in it". He continued, "The current judiciary needs comprehensive change. Either we change it completely, or we remain as we are without increasing its powers. But it would be wrong to enact laws that allow us to rejoice for a few minutes and then do not get applied". He then announced his opposition to subjecting the authority to any accountability under the current judiciary: "Can we open the way for the current judges to present reports about perpetrators when one of us could be among them?"[54]

The same was evident in Prime Minister Najib Mikati's responses to a series of judicial decisions, including Advocate General Jean Tannous' decision to raid the banks in order to obtain bank statements for Riad and Raja Salameh, and Appellate Public Prosecutor in Mount Lebanon Ghada Aoun's decisions to charge these two brothers and arrest Raja, and the seals placed on Fransabank's assets. On 12 January 2022, Mikati attacked Tannous' raid in a statement on Almodon, saying the judiciary is not operating in a measured and logical manner and questioning "the use of an armed security agency to enter places and premises".[55] He continued, "Even Israel, when it invaded Beirut, did not enter establishments with weapons in this manner".

Mikati again attacked the judiciary at the conclusion of the Council of Ministers meeting on 16 March 2022 following several prosecutions, most importantly the prosecution of the Salameh brothers by Appellate Public Prosecutor in Mount Lebanon Ghada Aoun. According to the Prime Minister's Office, he said that "As a combined council of ministers, we cannot but respond to the arbitrariness and hotheadedness occurring in the judiciary, especially as there is a public impression that some of what is happening in the judiciary bears no relation to judicial procedure. What's happening in the banking case is unsound. Our priority was and will remain depositors' rights, and that's what we focus on in all our plans. But the showy and police-like way the issue of rights and the legal cases concerning the banks is being approached is dangerous and could undermine what trust remains in the banking system. The depositors will pay the price again, and I fear dire consequences if the excess and dysfunction occurring isn't rectified".

54. Maher El Khechen, "Jalsa Tashri'iyya li-Isti'adat Haybat al-Majlis fi Muwajahat al-Thawra.. al-Farzali: 'al-Israf fi Tabri'at al-Dhat Isqat Laha, wa-Yu'kalu al-Thawr al-Abyad Yawm Yu'kalu al-Aswad'", The Legal Agenda, 27 April 2020.
55. "Miqati li-l-'Mudun': Inhiyar al-Balad wa-l-Hukuma Mamnu'..wa-l-Sira'at Mustamirra hata al-Intikhabat", Almodon, 12 January 2022.

While Mikati suggested that the Council of Ministers had asked the minister of justice to "correct the course of the general judicial situation", after Raja Salameh was arrested he called an emergency Council of Ministers session for the sole purpose of "developing a mechanism for judicially handling the banks issue".[56] Almodon mentioned that Mikati invited "Supreme Judicial Council President Suhail Abboud, Cassation Public Prosecutor Ghassan Oueidat, and Judicial Inspection Authority President Barkan Saad to discuss the form of a mechanism for handling this issue judicially".[57] However, these figures refused to attend the session because of its offensive nature and the blatant interference in the judiciary that it represented. According to Al Akhbar, the invitation was accompanied by statements and insinuations about the possibility of removing Abboud and Oueidat.[58] Mikati even threatened the judges and Cassation Public Prosecutor Ghassan Oueidat, saying that Oueidat could be fired if he did not respond to his demands concerning the prosecutions of the banks. Although the judges refused to attend, the mere invitation constituted a declaration that the executive branch, which properly manages public affairs, has superiority over the judicial branch, which is drowning in selectivity and chaos. In turn, Minister of Agriculture Abbas Al Haj Hassan condemned the "selectivity in judicial decisions" and added that "Had the judiciary performed its role, we wouldn't have come to this".

56. "al-Thawra al-Mudadda" li-Hizb al-Masraf: Miqati 'Yantafidu' wa-Yuhaddidu 'Uwaydat bi-l-Iqala", Al Akhbar, 19 March 2022.
57. "al-Quda Rafadu al-Hudur: Azmat al-Qada'-al-Masarif Tuhasiru Hukumat Miqati", Almodon, 19 March 2022.
58. "al-Thawra al-Mudadda" li-Hizb al-Masraf: Miqati 'Yantafidu' wa-Yuhaddidu 'Uwaydat bi-l-Iqala", Al Akhbar, 19 March 2022.

Chapter 3

An Open and Asymmetrical Battle to Remove Bitar

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Following the intense efforts to manufacture legitimate doubt in Judge Bitar, the anti-investigation forces took practical steps to stay his hand. From September 2021 onwards, they resorted to various kinds of court cases, especially ones that would immediately halt the investigation. After the first cases they filed failed, they escalated the confrontation and means of direct pressure in an effort to impose their vision of justice, i.e. their own private justice. The most notable of these means involved suspending Council of Ministers sessions for three months in late 2021. They also involved sending messages to Bitar that at the very least verged on threats and, ultimately, disrupting the whole justice system by blocking the partial judicial personnel charts pertaining to the chamber presidents of the Court of Cassation, which put the investigation into a coma from the beginning of 2022.

These forces seemed to be engaging in an open, asymmetrical battle to stay Bitar's hand with no care whatsoever for any constraints or the appearance of asymmetry made especially flagrant by their abandonment of such constraints. Note that these forces generally intensified the accusatory discourse against Bitar – particularly the accusations of involvement in political schemes and affiliation with the American axis – whenever they were preparing to escalate the pressure, using it to justify this escalation in their open and asymmetrical battle against one person, at least for their audience.

The Strategy of Intensifying Litigation

As a political discourse against Bitar developed, as previously explained, the charged ministers filed a series of coordinated cases to several judicial bodies. The cases varied inasmuch as their objectives did. In three sections, we will review the types of cases filed, then the grounds on which they were based, and finally the courts' stances on them. The courts concerned generally showed a desire to prevent the

investigation from being suspended, although the anti-investigation forces managed to break through this trend, particularly via the dubious delegation of Judge Habib Mezher to a particular judicial function, as we detail below. However, they only managed to halt the investigation for long periods by shutting down the Full Bench of the Court of Cassation and thereby preventing it from adjudicating its pending cases concerning the investigation.

Before detailing the cases filed by the charged ministers, we must note that the strategy of litigation against Bitar that they adopted to block the port investigation was, at its core, identical to the efforts to block the investigations into cases against the banks, Banque du Liban Governor Riad Salameh, and his brother, which targeted the judges investigating these financial crimes. Hence, any objective reading of these measures shows that their common goal was to fetter the judiciary and fortify the system of impunity against judges who dare to confront it.[1]

1. A Hysterical Flurry of Cases to Besiege the Judicial Council Investigator

The first case filed against Bitar was a request to transfer the case based on legitimate doubt filed by the charged minister Youssef Fenianos on 22 September 2021. It also included a request that the court stay Bitar's hand from the investigation until it had been adjudicated as filing such a case does not automatically have this effect. Although the charged ministers' effort to cast doubt over Bitar began much earlier, this case was precipitated by the issuance of the in absentia arrest warrant against Fenianos on September 16. The filing raised concerns about a repetition of what happened to Bitar's predecessor, Sawan, who was removed in February 2021 via a similar case filed by Ali Hassan Khalil and Ghazi Zaiter. The concern grew when it became apparent that this case was part of a coordinated trend by Fenianos and the other charged ministers aimed at staying Bitar's hand, especially as the formation of Najib Mikati's government and its winning of confidence two days before the filing had ended Parliament's extraordinary session, thereby removing the

1. Independence of the Judiciary Coalition, "Mukhasamat al-Qadi Alladhi Tajarra'a 'ala al-Sirriyya al-Masrafiyya fi Qadiyyat Salamah", The Legal Agenda, 10 November 2021.

temporary parliamentary immunity with which three of them (Machnouk, Khalil, and Zaiter) were shielding themselves and allowing Bitar to schedule interrogations for them on September 30 and October 1, 2021.

Subsequently, in parallel with a large media and political assault, Machnouk, Khalil, and Zaiter filed two requests to disqualify the Judicial Council investigator to the Beirut Court of Appeal on 24 September 2021. This type of request could affect the investigation more than Fenianos' transfer request because under Article 125 of the Code of Civil Procedure, notifying the investigator of it immediately stays his hand from the investigation, irrespective of its validity. These requests are particularly grave because they occurred in the context of an investigation that includes hundreds of plaintiffs and defendants, all of whom must in principle be notified before they are examined. That process could take weeks and therefore lead, at a minimum, not only to the cancellation of the interrogations that the Judicial Council investigator had scheduled but also to a lengthy suspension of the entire investigation. The Legal Agenda mentioned that these cases abuse the right of defense, not only because of their content and goals but also because previous Court of Appeal jurisprudence held that the court lacks the jurisdiction to examine disqualifying a Judicial Council investigator. This jurisprudence appeared in its decisions on 28 August 2007 and 1 August 2007 concerning two requests filed against Elias Eid, the Judicial Council investigator examining the assassination of Rafic Hariri.[2] The Beirut Court of Appeal dismissed Machnouk, Khalil, and Zaiter's requests on 4 October 2021 for lack of jurisdiction. Note that they also violated another Code of Civil Procedure rule requiring that disqualification requests be filed within eight days of the occurrence or discovery of the grounds for disqualification.

While these two requests failed to stall the investigation for longer than a week, as we explain later, because the court managed the case well, their dismissal opened the way for what could be called a hysterical flurry of cases that, though varied in subject matter and form, sought the same result, namely to stay Bitar's hand. This hysteria extended to include cases and efforts to stay the hands of the courts and judges who

2. "al-Mufakkira Tanshuru Qararay Isti'naf Bayrut fi 2007: Talabat Radd al-Muhaqqiq al-'Adliyy Ghayr Qananiyya", The Legal Agenda, 27 September 2021.

ultimately dismissed these requests and cases. Later, three plaintiffs (two relatives of victims and one wounded victim) and seven defendants in custody joined in with the filing of such cases. They continued to be filed, especially after 25 November 2021, when the Full Bench of the Court of Cassation was determined – based on a request filed by Zaiter and Khalil – to be the authority competent to adjudicate cases to disqualify the Judicial Council investigator.

On that basis, in addition to the two disqualification requests filed with the Court of Appeal, the charged ministers filed the following requests and cases in an attempt to stay Bitar's hand from the investigation:

- Three disqualification requests before the Court of Cassation. The first of these requests was filed by Khalil and Zaiter on 8 October 2021, five days after a similar disqualification request that they had filed with the Court of Appeal was rejected. This request aimed to block the interrogations that Biter had scheduled for October 12 and 13. While the Court of Cassation (the Fifth Chamber, presided over by Judge Janet Hanna) rejected this request for lack of jurisdiction, on October 11 Khalil and Zaiter filed a second disqualification request, which was referred to the First Chamber, presided over by Naji Eid. When this chamber also dismissed the request for lack of jurisdiction days after it was served to Bitar, on 27 October 2021 Khalil and Zaiter asked the Full Bench of the Court of Cassation to identify the authority competent to examine the disqualification requests. After the Full Bench vested the Court of Cassation with this power, the duo asked the Court of Cassation (the First Chamber) to reconsider the disqualification case they had previously filed and proceed with it on 16 December 2021. While the chamber began its work and the investigation was suspended for the fourth time on 23 December 2021, on 4 January 2022 the duo filed yet another disqualification case, this time against Chamber President Naji Eid and auxiliary judge Rosine Ghantus. After this last case was dismissed on 15 February 2022, on 21 February 2022 they filed a maljudging case against Eid before the Full Bench of the Court of Cassation. As the Full Bench lost its quorum, the

case prevented Eid from adjudicating the disqualification request and froze the investigation to the date of writing.

• Four cases for transfer on the basis of legitimate doubt filed with the Court of Cassation. These were filed after Fenianos, as we explained above, by Machnouk on 8 October 2021, one of the wounded on 27 October 2021, and a relative of a victim on 10 December 2021.

• Three maljudging cases against the Judicial Council investigator filed with the Full Bench of the Court of Cassation. They were filed by former prime minister Hassan Diab on 27 October 2021, Machnouk the following day, and Fenianos on 2 December 2021. This timing indicates that the steps taken by the charged ministers were highly coordinated. While these cases aimed to quash Bitar's decisions to charge the applicants on the basis that a serious error occurred, the immediate goal was to restrain Bitar from taking any action against them until the cases were adjudicated. Khalil and Zaiter also filed four maljudging cases against Court of Appeal and Court of Cassation judges for rejecting the duo's requests to disqualify Bitar or for administrative decisions they made in the process of examining the disqualification requests.

• Two new requests to dismiss Bitar filed with the Beirut Court of Appeal. Despite the decisions by the Court of the Appeal declaring that it lacks jurisdiction to examine requests to disqualify the Judicial Council investigator, on 26 October 2021 Fenianos surprisingly filed a new request with it. Zaiter and Khalil followed suit on 28 October 2021. The three ministers also filed requests to disqualify the Court of Appeal judges examining the disqualification requests. Although the court dismissed Zaiter and Khalil's request on 20 December 2021 for res judicata without suspending the investigation, Fenianos' request went a different way. While the case seemed like a longshot, it proved to be more effective than any other request as it suspended the investigation for more than a month, as we will explain below when we examine the courts' attitudes to these requests and cases.

In sum, in addition to the case to stay Sawan's hand, just the charged ministers filed twelve cases against Bitar and nine against the judges who made decisions not to stay his hand, for a total of 21. Khalil and Zaiter led with 11 cases, followed by Fenianos with six, Machnouk with three, and Diab with just one.

2. The Cases' Grounds

Despite the varied nature and venues of the cases filed by the charged ministers, they made repetitive and similar arguments and demands. Most were based on three cornerstones: 1) Bitar's violation of Article 70 and Article 71 of the Constitution and, by extension, his lack of power to prosecute presidents and ministers, 2) doubt in Bitar's impartiality due to press statements attributed to him and media analyses, and 3) matters falling within the case's merits invoked to deny any responsibility on the part of the charged ministers.

The use of the same arguments in the disqualification requests, the requests for transfer based on legitimate doubt, and the maljudging cases in and of itself reflects an abuse of access to justice as these claims require different conditions to be accepted.

The Violation of Article 70 and Article 71 of the Constitution

Citing Article 70 and Article 71 of the Constitution, the aforementioned cases all denied the Judicial Council investigator's competence to prosecute the charged ministers because the power to indict them belongs to Parliament and the jurisdiction to try them belongs to the Supreme Council for Trying Presidents and Ministers. They rushed to argue that Bitar's decisions are an encroachment on these powers and grounds for legitimate doubt in his impartiality. Remarkably, some resorted to filing a legitimate doubt case based on this issue even before raising it in their preliminary defense (their procedural motions) before the Judicial Council investigator himself.

Similarly, several of the charged ministers condemned Bitar for supposedly ignoring the parliamentary indictment request, even though such a request has no legal weight in the course of the investigation until Parliament votes on it and establishes a special committee to investigate it. Parliament was unable to take these steps as the session scheduled for them in August 2021 was canceled because the quorum was unmet.[3] This Bitar mentioned clearly in his decision to dismiss the procedural motions presented by Fenianos.

Diab faulted Bitar in the maljudging case for exaggerating the acts imputed to him (complicity in homicide based on dolus eventualis intent) in order to bypass his immunity. He argued that Bitar should have substantiated that intent rather than leaving it up to surmise, conviction, and deduction.

Doubt in Bitar's Impartiality Due to Press Statements Attributed to Him and Media Analyses

These cases were also based on media coverage of the investigation, including both statements attributed to Bitar and (more often) analyses by online political analysts. Remarkably, the request to disqualify Bitar filed by Zaiter and Khalil on 24 September 2021 cited political analyst Michel Nasr's article on Lebanon Debate stating that Bitar is certain that he cannot be removed because he has foreign support. The article is a piece of political analysis and there is no evidence that Bitar made any statement to this effect. Similarly, the dismissal request that Khalil and Zaiter filed on 11 October 2021 argued that Bitar enjoys the "privilege" of foreign support, citing a statement by two members of the US Congress' Foreign Affairs Committee.

The charged ministers also cited statements attributed to Bitar to accuse him of populism or breaching investigation confidentiality. The request to transfer cases filed by Fenianos on 22 September 2021 cited press statements attributed to him concerning General Director of General

3. "Madha Ba'da Suqut Jalast al-Ittiham al-Niyabiyy? al-Mufakkira Tujibu 'ala As'ilatikum", The Legal Agenda, 13 August 2021.

Security Abbas Ibrahim and a statement that he sympathizes with the victims' families. Likewise, the disqualification request filed by the Zaiter-Khalil duo with the Court of Cassation on 11 October 2021 went as far as to say that Bitar should have "thoroughly insulated himself from the ... agitated public so that he does not hear its shouting and groaning and is not influenced by it at the expense of truth, law, and justice". The charged ministers generally argued that the statements attributed to Bitar suggest that he is prejudiced against them.

These arguments converged with those that several bank directors presented in the transfer request they filed against Judge Amani Salameh. They cited statements she made in the media as president of the Lebanese Judges Association about the financial and economic collapse and its causes in order to argue legitimate doubt in her impartiality.[4]

Broaching the Case's Merits

Another cornerstone of the parallel cases was the charged ministers' attempts to detail the facts and address the case's merits in order to deny their responsibility and suggest that Bitar was targeting them vexatiously.

They claimed that they performed all their legal duties to avert the disaster, such as forwarding the correspondence they received, and pointed out the limitations of their powers. Machnouk went on the longest about this point, dedicating large sections of his requests and cases to it as though he was using them to defend his reputation before public opinion while refusing to appear before a judiciary that he deemed lacks the jurisdiction to try him. Here too, the charged ministers preferred to defend themselves this way, in cases aimed at denying the jurisdiction of the Judicial Council investigator to question them and – most importantly – filed with courts that had no capacity to examine their validity.

Machnouk even questioned whether Bitar had ulterior motives against him (nawaya mubayyata, a phrase he repeated several times in the request he filed with the Beirut Court of Appeal) and/or affinity for

4. Myriam Mehanna, "al-Tamyiz Tartabu bi-Qadiya 'ala Khalfiyyat Intiqad 'al-Manzuma al-Masrafiyya'", The Legal Agenda, 4 February 2021.

the plaintiffs (the families of the victims). The request stated, "Judge Bitar's ulterior motives did not stop with affinity for the plaintiff; rather, they went as far as direct and personal hostility to the client and exacting revenge on him by harming his reputation and dignity, bringing him to interrogation, and humiliating him before the public".

While these were the dominant trends in these cases, some contained other arguments specific to one minister or another. For example, Fenianos made arguments concerning his status as a lawyer. In the case seeking a transfer based on legitimate doubt, he faulted Bitar for scheduling his interrogation before being officially delivered the Bar Association's permission to prosecute him. He faulted Bitar for notifying him of a session by taping the papers to his door even though his attorney had already been notified and accused Bitar of fraudulently deeming the service proper. He objected to Bitar's decision, during a session attended by his lawyer, not to postpone the interrogation and to issue an arrest warrant against him. And he faulted Bitar for only charging five of the 12 ministers named in the previous Judicial Council investigator's letter, continuing the series of selectivity accusations. Khalil and Zaiter included the same argument in the disqualification case they filed with the Court of Cassation on 11 October 2021, which was distinguished by the many labels – such as selectivity, picking and choosing, and bias – that it applied to Bitar's work in this regard.

Khalil and Zaiter's case was also distinguished by the fact that it addressed the eight-day time limit, from the date the grounds for disqualification occur or are discovered, to file such a case. It argued that the countdown is interrupted by the legal procedures they file. Consequently, they cited acts they imputed to Bitar dating back several months in order to challenge his impartiality.

As for Machnouk, the transfer request he filed on 8 October 2021 was distinguished by two things, besides what we already mentioned. Firstly, he faulted Bitar for insisting on interrogating him as a defendant before taking his statements as a witness, even though nothing legally compels the Judicial Council investigator to take anyone's statements as a witness before charging them. To the contrary, the judiciary has an obligation to summon serious suspects as defendants, not witnesses, so

that they can defend themselves and bring a lawyer. Secondly, Machnouk argued that the Judicial Council has no power to examine this case to begin with because it does not fall within the crimes stipulated in Article 356 of the Code of Criminal Procedure, which limits the Judicial Council's jurisdiction to the crimes stipulated in articles 270 to 336 of the Penal Code.

Finally, note that Machnouk's arguments went beyond doubt in the judge to include doubt in fair trial conditions in light of the exceptional procedures applied in the investigation and trial of crimes referred to the Judicial Council. Such trials occur on only one level, and the investigator's decisions are not appealable. While we acknowledge the pertinence of this point, which has concerned us ever since the case was referred to the Judicial Council,[5] it constitutes doubt in the parliamentary blocs and MPs (including Machnouk) as not one of them has presented a bill to abolish the exceptional courts for the sake of fair trial conditions. Throughout his parliamentary term to the current date, Machnouk has not presented any bill, as documented by the Legal Agenda's Parliamentary Observatory in its reports on parliamentary work in 2019, 2020,[6] and 2021.[7]

3. How Did the Courts Handle These Cases?

Contrary to the findings of the Court of Cassation in the case filed against Judicial Council Investigator Fadi Sawan, there was a trend toward not only dismissing the requests and cases seeking to stay Bitar's hand on various grounds but also protecting the investigation against efforts to block and suspend it, which characterized of them. Nevertheless, in the decisions, the courts retained a degree of caution so that they too would not become immersed in a confrontation with the anti-investigation political forces. Only Habib Mezher, the judge recently appointed to the Supreme Judicial Council, went against this trend and caused the investigation to be obstructed for over a month, as we will address below.

5. Nizar Saghieh, "12 Mu'ashshiran Salbiyyan fi Mustahill al-Tahqiqat fi Majzarat Bayrut", The Legal Agenda, 21 August 2020.
6. "'Amal al-Majlis al-Niyabiyy li-'Ammay 2019-2020", Parliamentary Observatory – the Legal Agenda, November 2021.
7. "Nata'ij al-Majlis al-Niyabiyy li-'Amm 2021", Parliamentary Observatory – the Legal Agenda, April 2022.

Jurisprudence to Protect the Investigation

The most notable jurisprudence appeared in the decisions concerning the disqualification requests successively filed by the accused ministers, with the exception of Diab. As these requests are subject to the Code of Civil Procedure, the courts traditionally – pursuant to this law – serve the request to the judge concerned and all other parties in the case so that they can comment on it. The judge then refrains from taking any measure in the case until the request is adjudicated. Hence, the effect of disqualification requests differs from that of cases seeking transfer in that they automatically suspend the work of the judge concerned, irrespective of their earnestness or the stance of the court examining them, as previously explained. This effect constitutes overprotection of the right of defense, especially in criminal cases as it endangers public right and the rights of all the cases' other litigants. The danger is greater when there are many litigants and parties to the case, as in the port blast case (which includes hundreds of plaintiffs and dozens of defendants), as they must all be served the case documents and given time to comment, which could take weeks. This increases the scope for abuse as any party can suspend the investigation whenever it wants irrespective of how flimsy its demands are.

So what did the Court of Appeal and Court of Cassation, with which these requests were filed, do? How did they confront the abusive filing of such requests in the absence of any text vesting either of them with the jurisdiction to examine them (they only examine requests filed to disqualify judges subordinate to them, whereas this investigator belongs to neither of them and works within an exceptional court, namely the Judicial Council)? Did they follow the existing practice, or did they create new jurisprudence to block the charged ministers' abuse and prevent the obstruction of the investigation into one of the gravest crimes ever committed in Lebanon?

In this regard, the courts took an extremely important stance. They dismissed the requests without serving them to the judge or the parties on the basis that they were filed with courts that obviously have no jurisdiction to examine them.

In this regard, the first measure was the two decisions that the Beirut Court of Appeal (the Twelfth Chamber, comprising Nassib Elia as president and Myriam Shams El-Din and Rosine Hujaili as auxiliary judges) issued on 4 October 2021 to dismiss the two requests filed against Bitar by Machnouk and the Zaiter-Khalil duo. The court dismissed the requests less than ten days after they were filed, explaining its haste on the basis that halting the investigation into this "shocking" crime could have grave consequences and the court obviously has no jurisdiction to examine them. To this end, the court stressed that the law contains no explicit text vesting the Court of Appeal with jurisdiction over a disqualification or self-recusal request pertaining to this investigator (who is not subordinate to it but "part of the Judicial Council", an exceptional judicial body) and that it has no power to fill the legislative gap and determine who does have jurisdiction. In justifying its decision, the court was helped by a procedural error that the plaintiffs made, namely failing to list the parties (plaintiffs and defendants) that must be notified. The decision's text even implicitly reprimanded the registry clerk for serving Bitar with Machnouk's disqualification request against its instructions,[8] an action that stopped him from working for a week. The court went even further by fining the plaintiffs LL800,000 – the maximum amount stipulated by law – in order to establish that the filing was abusive.

The Fifth Chamber of the Court of Cassation (comprising Janet Hanna as president and Joseph Agaka and Noel Kerbaj as auxiliary judges) went in the same vein on 11 October 2021.[9] It too dismissed the request for lack of jurisdiction and took the appropriate measures to prevent such requests from becoming a tool to obstruct the Judicial Council investigation. To declare its lack of jurisdiction, the court explained that "the Judicial Council judge ... is not a judge of the Court of Cassation ... and under Article 123 of the Code of Civil Procedure, a request to disqualify him is not filed with this court". Hence, the court deemed that it cannot "take on the disqualification request and go forward with its procedures ... as the proper administration of justice precludes a decision to serve the disqualification request and impose the concomitant effects, the most important being that the judge stops examining the case".

8. Nizar Saghieh and Fadi Ibrahim, "Hikmat 'Isti'naf Bayrut' fi Himayat Tahqiqat al-Marfa': La Yajuzu Mumarsat Haqq al-Difa' Ta'assufan", The Legal Agenda, 7 October 2021.
9. Fadi Ibrahim, "Tadamun Qada'iyy Wasi' li-Himayat Tahqiqat al-Marfa': Hazima Qadaiyya Thaniya li-l-Thuna'iyy Za'itar – Khalil", 11 November 2021.

On 14 October 2021, the majority of the First Chamber of the Court of Cassation (its president Naji Eid and auxiliary judge Rosine Ghantus) went in the same vein. After a hesitation that involved serving Bitar the request and thereby stopping the investigation for two days, it too held that the Judicial Council investigator is not one of the court's judges. The hesitation resulted in the cancellation of Machnouk, Zaiter, and Khalil's interrogations scheduled for October 12 and 13. Note that auxiliary judge Lilian Saad dissented against the decision, arguing that the Court of Cassation does have jurisdiction over the request.

On 13 April 2022, the Fourth Chamber of the Court of Cassation (comprising Afif el Hakim as president and Maha Fayad and Noel Karbag as auxiliary judges) dismissed a request to disqualify Bitar by the wife of a victim, arguing that all the acts for which she faulted him occurred more than eight days before she filed it. Eight days is the window that Article 124 of the Code of Civil Procedure allows for filing such a request. This decision was a positive sign because in practice, it deprives litigants of the ability to file more abusive disqualification requests for actions taken more than eight days earlier, most importantly the charging of the former ministers, which occurred months ago.

The same spirit of protecting the investigation appeared in the decision issued on 25 November 2021 by the Sixth Criminal Chamber of the Court of Cassation (comprising Judge Randa Kfoury as president and Rola Musallam and Fadi al-Aridi as auxiliary judges). The decision dismissed Fenianos' case seeking transfer based on legitimate doubt. The decision corrected several fallacies widely used to contest Bitar's impartiality. One of the most important points it made was that "the selectivity and obfuscation [ta'miya] mentioned cannot be verified at this stage before the investigation concludes". This straightforward grounds eloquently responds to all the accusations of selectivity leveled against the judge while he is still in the process of investigating. Another, equally important point the court made was that "the issue of legitimate doubt in judges is so important that it cannot be based on hearsay or rumors, nor can statements made by a party in the case that have nothing to do with the judge or media analyses be relied on to infer that he is biased ... and note that the statements attributed to Bitar ..., which are unproven, do not imply bias". This grounds responds to a popular political discourse

holding Bitar responsible for political or media accusations made by one party or another. The same protective and pedagogical spirit can be glimpsed in the decision issued by the same chamber on 15 November 2021 to dismiss Machnouk's transfer case. As with Fenianos' request, the court, responding to Machnouk's claim of obfuscation, mentioned that Bitar had not yet indicted him, and he could deliver his motions and defense concerning the merits before the Judicial Council investigator, as well as assert a lack of jurisdiction before the Judicial Council investigator or Judicial Council, if he gets indicted.

Two decisions were also issued by the Full Bench of the Court of Cassation, comprising Suhail Abboud as president and Roux Rizq, Suheir Harake, Afif el Hakim, and Jamal al-Hajjar as auxiliary judges, on 25 November 2021 to dismiss the maljudging cases against Bitar filed by Diab and Machnouk. The decisions compelled Diab and Machnouk to each pay LL1 million in compensation to the state. To this end, the court argued that this type of case is an exceptional pathway that cannot be used until all other available pathways for challenging the decision in question (e.g. procedural motions) have been exhausted.

The Courts Avoid Plugging into the Confrontation

Despite the courts' general trend of protecting the investigation, they were also cautious and averse to becoming immersed in the confrontation. The clearest indicators of this include the following:

First, the courts worked to dismiss the cases and requests to stop Bitar from working without allowing their jurisprudence to reach the point of backing him in any of the legal issues raised against him. This meant explaining the dismissal of the requests and cases using brief formal arguments and not addressing, even for the sake of thoroughness, any issue concerning the merits, especially the question of whether the regular judiciary has the jurisdiction to criminally prosecute ministers. Hence, despite the continuous commotion over this issue, the Court of Cassation – in its Full Bench and its various chambers – refrained from offering a reading of the article, e.g. by mentioning its various interpretations and the Judicial Council investigator's right to adopt the reading he deems the most appropriate pursuant to the principle of the separation of powers.

Secondly, all the courts did to deter abuse was hand down fines of up to LL1 million. This fine has no deterrent effect. The Court of Cassation (the Sixth Chamber), when dismissing the two cases seeking transfer based on legitimate doubt, refrained from examining plaintiffs' requests that the parties seeking the transfer be forced to pay damages. Hence, it wasted a valuable opportunity to deter abusive claims.

Attempts to Breach the Investigation's Judicial Fortress

Bitar's endurance and the courts' tendency to protect him induced anxiety in the anti-investigation forces. In a speech on 11 October, Hezbollah's secretary general expressed clear displeasure with the prompt decisions by the Court of Appeal and Court of Cassation to dismiss the requests to disqualify Bitar. Then, in an interview on 18 October, he suggested that Bitar had become a "dictator" as he seems irremovable and impossible to hold accountable. While the anxiety prompted these forces to frantically exert pressure on multiple levels (including shutting down the government until Bitar's hand was stayed), parallel efforts were exerted to cause a breach within the judiciary. While these efforts were unusual and extra-procedural in general, they peaked with the illegal interference of Judge Mezher, who went as far as to take control of a judicial case not belonging to him (an act the Legal Agenda labeled "usurpation"). The most prominent of these stances were the following:

a) The Public Prosecution Sides Against Judge Bitar in the Issue of Prosecuting Ministers and Obstructs the Investigation

The first breach came from the Cassation Public Prosecution. It adopted the anti-investigation forces' stance on the issue of prosecuting the ministers, arguing that the alleged actions fall among those subject to the procedures stipulated in Article 70 of the Constitution and that the judicial judiciary is not competent to try them. The Public Prosecution, represented by Cassation Advocate General Ghassan Khoury, expressed this opinion first in the case to stay the hand of the first Judicial Council investigator, Fadi Sawan, on the basis of legitimate doubt and then in the case to stay Bitar's hand and in its correspondence with Parliament. This stance by the prosecuting authority seemed to conflict with its fundamental function. While this authority is expected to interpret in the

direction of constricting the scope of immunity in defense of the rights of society that it represents, it seemed to be striving to strengthen the doubt in the judge who had attempted to do that. The Bar Association's office for representing port blast victims condemned this counterintuitive stance in a statement on the first anniversary of the crime: "Instead of opening the way for the Full Bench, the Judicial Council investigator, or a ruling judicial authority to decide on the jurisdiction issue, the prosecuting authority pre-dodged having to take any prosecution procedure concerning presidents and ministers".[10] In a submission that the Cassation Public Prosecution made concerning the procedural motions that Fenianos presented to Bitar, it again mentioned the need to examine the Judicial Council investigator's competence, recalling an earlier submission on the same subject that it delivered to the previous Judicial Council investigator Fadi Sawan.

The Public Prosecution (represented by Cassation Advocate General Imad Kabalan, who succeeded Khoury) was similarly evasive when it came to executing the arrest warrants against Ali Hassan Khalil. It instructed the judicial police to execute the warrant not immediately but after Parliament's regular session (for Autumn) at the end of 2021,[11] contrary to Bitar's explicit decision that it must be executed immediately on 10 December 2021.

On 30 August 2021, the Beirut Bar Association filed a request to disqualify Cassation Advocate General Ghassan Khoury from the port case based on legitimate doubt. It cited several grounds suggesting he has a conflict of interests, in addition to his actions that had obstructed the investigation. Note that Khoury was appointed illegally after Cassation Public Prosecutor Ghassan Oueidat recused himself in December 2020, as previously explained. The request noted that Khoury had examined the case of the nitrate before the explosion and closed it even though State Security's report had explicitly informed him of the material's danger. Hence, the Bar Association argued that Khoury was trying to direct the case in a manner that erases his personal responsibility for his decision preceding the blast.

10. "Maktab al-Iddi'a' fi Niqabat al-Muhamin fi Bayrut: 'Adam al-Rida wa-l-Itmi'nan 'ala Masar al-Tahqiqat fi Milaff Infijar al-Marfa'", Annahar, 4 August 2021.
11. "'al-Tamyiziyya' Talabat Ta'mim Mudhakkirat al-Tawqif al-Ghiyabiyya bi-Haqq 'Ali Hasan Khalil", Annahar, 14 December 2021.

The request recounted many attempts by Khoury to obstruct the investigation, most notably the following:

Khoury's rejection of the Judicial Council investigator's request for his final investigation report about the materials stored at the port and his decision to close it, as well as his decision to withhold these documents from the Bar Association. He withheld these documents even though referring everything related to the case to the Judicial Council investigator is mandatory.

- Khoury's failure to carry out the necessary notifications. Even though he was asked to serve Fenianos fifteen days before the session, Khoury returned the papers two days before the session on the pretext that road closures had totally isolated the North (which was untrue, and a telegram could have been sent to the North Lebanon detachment to serve him).

- Khoury's failure to accept delivery of the Judicial Investigator's requests on the pretext that the "Cassation Public Prosecution is closed", which caused some interrogations to be canceled.

- The leak of documents pertaining to the ministers' prosecution. The Beirut Bar Association argued that the leak came from the Cassation Public Prosecution, specifically from Khoury, as the picture of one confidential document (the enforceable summons for Hassan Diab) was taken on his distinctly red desk.

On 25 November 2021, the Sixth Criminal Chamber of the Court of Cassation issued a decision accepting the request and disqualifying Khoury. The court's explanation stated that "What appears in some his stances ..., which do not conform with the Public Prosecution's usual stances in the conduct of public right cases, could strengthen the plaintiff's belief that he is partial".

On 6 April 2022, the Beirut Bar Association filed another request to disqualify Cassation Advocate General Imad Kabalan (who succeeded Khoury) from the port blast case. It argued that Kabalan had breached investigation confidentiality and granted several defendants in custody

permission to deliver media statements from their places of detention while the investigation was frozen. The Bar Association considered this action a failure to protect the investigation, an obstruction to it by the party tasked with representing public right, and bias in favor of the defendants. After Kabalan was served the disqualification request on 9 May 2022, Cassation Advocate General Sabouh Suleiman took over the Public Prosecution's functions in the port case.

b) Mezher Usurps the Case to Disqualify Bitar in Order to Suspend the Investigation

On 26 October 2021, former minister Fenianos filed another disqualification request against the Judicial Council investigator. The request was bewildering: Why would Fenianos' lawyers insist on resorting once again to the Court of Appeal, which had dismissed similar requests on the basis that it lacks jurisdiction pursuant to well-established jurisprudence? However, this measure quickly proved to be the most effective, which suggested that there may have been prior collusion to achieve a result that defies objective expectations. This result was reached via three interconnected measures. The first was a request filed by Fenianos to disqualify the chamber president Nassib Elia from examining the request to disqualify Bitar. The second, which came after Elia recused himself from examining the request to disqualify him (as a judge examining his own disqualification has an obvious conflict of interest), was the decision by Beirut Court of Appeal President Habib Rizkallah to delegate Habib Mezher to the presidency of the Twelfth Chamber to examine the request to disqualify Elia. This delegation is curious as Mezher had previously expressed hostility to Bitar in the Supreme Judicial Council, as reported by many media outlets. The third was Mezher's decision on 4 October 2021 to join the request to dismiss Bitar (which was totally outside his jurisdiction as he had not been assigned it) with the request to dismiss Elia (the only request assigned to him), to serve the request to Bitar (an action that would stay his hand from the investigation), and to "advise the Judicial Council investigator's registry to deposit the whole case file with us [i.e. Mezher] ... for viewing".

In the Legal Agenda's opinion, Mezher thereby committed two usurpations. Firstly, he usurped a judicial case belonging not to him

but to the Twelfth Chamber, as established by Judge Habib Rizkallah's testimony that he was seconded to examine Fenianos' case to disqualify Elia (no. 72) and not Fenianos' case to disqualify Bitar (no. 69). Secondly, he usurped the court's decision-making as his decisions went beyond administrative matters to include decisive decisions that can only be made by the chamber's full membership. He also attempted to usurp the whole port investigation file as his decision asked for it to be deposited with him. These facts raise suspicion that Fenianos filed his request to disqualify Elia after ascertaining that Mezher would be delegated to examine it – certainty that could only have been reached if Mezher had received assurances from Rizkallah that he would be delegated.

Of course, this breach was the gravest as it caused the investigation to be suspended for over a month, i.e. the period that the procedures to undo Mezher's wrongdoings took. These procedures occurred in four stages. After Rizkallah took about two weeks to decide to separate the two disqualification requests filed against Bitar and Elia (no. 72 and no. 69) on 23 November 2021, citing his power to ensure the court's proper functioning, he then delegated Judge Randa Harruq to preside over the Twelfth Chamber when Elia recused himself from examining the request to disqualify Bitar. The Court of Appeal also rejected Fenianos' request to disqualify auxiliary judge Rosine Hujaili. That done, the Court of Appeal, consisting of Harruq, Shams El-Din, and Hujaili, issued a decision rescinding the decision to notify the Judicial Council investigator and dismissing the request to disqualify him on 7 December 2021. In the decision's text, the court explicitly deemed Mezher's decision null and void because it was issued by someone with no legal right to issue it. Even though Mezher's violations had been established, the Judicial Inspection Authority has so far taken no action against him, even though the lawyers representing foreign victims filed complaints against him.

c) The Full Bench of the Court of Cassation Legitimizes the Disqualification Requests

In one day, namely 25 November 2021, the Full Bench of the Court of Cassation, composed of Suhail Abboud, Roux Rizq, Suheir Harake, Afif el Hakim, and Jamal al-Hajjar, issued five decisions.[12] Four were oriented

12. "'al-Mufakkira Tanshuru Qararat Mahkamat al-Tamyiz fi Jarimat Marfa' Bayrut fi Tishrin al-Thani 2021", The Legal Agenda, 26 November 2021.

toward protecting the investigation, while the fifth opened the door wide for more abusive obstruction. The four were issued in maljudging cases (two concerning Bitar's actions and filed by Machnouk and Diab and two concerning the decisions by the Court of Appeal and Court of Cassation to dismiss the disqualification requests filed by the Khalil-Zaiter duo). As for the fifth decision, it held that a Judicial Council investigator is disqualifiable and identified the Court of Cassation as the body competent to examine such requests. Zaiter and Khalil quickly capitalized on this decision by resurrecting the request they had filed with the First Chamber of the Court of Cassation, which notified Bitar of it, thereby suspending the investigation – for the fourth and longest time – from 23 December 2021 until the time of writing. We fear that the identification of the authority in this manner may have resulted from a compromise among the members of the Full Bench whereby the four maljudging cases were dismissed in exchange for allowing disqualification proceedings before the Court of Cassation. From this standpoint, this decision constitutes another breach in the wall of judicial protection for the investigation.

Private Justice, or the Rule of Power

As previously explained, these cases were just some of the means used to lift Bitar's hand from the investigation. The anti-investigation forces allowed themselves to use a great many means and methods to get what they wanted. These means graduated from messages verging on threats, to pressuring the Supreme Judicial Council and government to decide to stay his hand irrespective of the decision's legality, to refraining from executing his in absentia arrest warrants for former ministers Khalil and Fenianos, to blocking the personnel charts pertaining to the chamber presidents of the Court of Cassation. This we shall detail below.

Many of these means were later reused in the cases against the people in charge of Banque du Liban and other banks, as we will explain below when we address them.

1. Threats?

On 21 September 2021, LBC journalist Edmond Sassine published a tweet on his personal account that read as follows:

> **"Hezbollah, via Wafiq Safa, sent a threatening message to Judge Tarek Bitar: 'We've had it up to here with you. We will go along with you until the end of the legal process, but if it doesn't work out, we'll remove you'. Bitar's response: 'It's fine, I don't care how they will remove me'. #God_Protect_Bitar"**

It turned out that the person who sent the message, namely the head of Hezbollah's Liaison and Coordination Unit Wafiq Safa, had made several visits to the courthouse, including to Supreme Judicial Council President Suhail Abboud and Cassation Public Prosecutor Ghassan Oueidat. During these visits, he met LBC journalist Lara El Hachem and gave her the aforementioned message. She was then contacted to confirm the delivery of the message and Bitar's response. Sassine and El Hachem confirmed all these facts on Sawt al-Naas, a program produced by LBC and SBI. The Cassation Public Prosecution promptly opened an investigation into the matter, asking Bitar to make a statement in this regard. Al Akhbar reported that Bitar confirmed the information in the tweet, although he refrained from taking action as a civil plaintiff in order not to be sucked into a dispute that could be used to manufacture political doubt against him.[13] He thereby adopted the same means of restraint – namely distancing himself from a verbal confrontation with these figures – that he adopted in all the cases filed against him.

Despite the gravity of the incident and its confirmation by several parties, Hezbollah issued no statement to deny or confirm it. One of its allies, Wiam Wahhab, explained in a television interview on Al Jadeed on 16 December 2021 that Safa sent the message after receiving information (which turned out to be inaccurate) about an attempt to pressure the president of the port administration, Hassan Koraytem, to say that Hezbollah was storing weapons in Warehouse 12 and they

13. "Riwayat Tahdid al-Qadi al-Bitar: Madha sa-Yakshifu al-Tahqiq?", Al Akhbar, 24 September 2021.

exploded. If Wahhab's statements are true, then Safa allowed himself to send a threat-like message to the judge based on mere apprehensions. Worst of all, the Cassation Public Prosecution, which rushed to ask Bitar and El Hachem whether the news was true, took no subsequent measure in this regard. No interrogation of Safa was announced. If the message were found to be a threat, it would constitute a crime under Penal Code Article 382 (threatening a judge), Article 419 (soliciting a judge with any request), and Article 371 (influence peddling). These articles stipulate punishments of up to three years of imprisonment.

Finally, note that this serious incident resembles Prime Minister Mikati's threat to dismiss the Supreme Judicial Council's members and Cassation Public Prosecutor Ghassan Oueidat if it did not put an end to the ongoing chaos in the prosecutions against banks, which he made under the pretext of restoring balance between the government and the judicial branch. In a television appearance on 19 March 2022, he was asked whether firing the Supreme Judicial Council or Oueidat was on the table if it did not respond to his demands. He responded that "nothing is off the table" and called on the council members to fulfill their role.

2. Pressure to Force a Political Settlement Removing Bitar

In his speech on 11 October 2021 following the aforementioned message, Nasrallah charged the Supreme Judicial Council and Council of Ministers with responsibility for removing Bitar even though they lack the powers to do so. In the same speech, he warned that the country is heading for a "great catastrophe if the judge continues with this course". This pressure reached the point of treating staying Bitar's hand from the case, or at least from the ministers' prosecution, as a political demand that may be incorporated into the usual political bargaining. While the talk of reaching a "settlement" began in 2021 in Bechara Boutros al-Rahi's meetings with the president, prime minister, and Parliament speaker following the Tayouneh incident, it returned in December in connection with the Constitutional Council's examination of a challenge filed against the electoral law.

The Supreme Judicial Council Summons Bitar

When Hezbollah's secretary general demanded that the Supreme Judicial Council take the appropriate measures, the council was inoperative as the term of most of its members had ended in May 2021 and Prime Minister Hassan Diab refused to sign the decree appointing replacements under a caretaker government.[14] Nasrallah's demand was accompanied by a media campaign against Supreme Judicial Council President Suhail Abboud to compel him to take a firm stance. The campaign suggested that either Abboud helps remove Bitar or he himself would be removed so that a more receptive council president could be appointed. This campaign then escalated with every major event, with Berri ultimately declaring that Abboud was responsible for the sectarianization of the judiciary, as though that sectarianization had not already occurred (15 December 2021).[15]

It quickly became apparent that the anti-investigation forces were pressuring the Supreme Judicial Council not only from outside it but also from within. This occurred after 21 October 2021, when a decree appointing four council members was issued based on a proposal by the new minister of justice Henry Khoury, thereby reenabling the council to convene duly and make decisions. To ensure the appointments would go through, Khoury sought Parliament Speaker Nabih Berri's approval of the Shia member to be appointed, who it was agreed would be Habib Mezher (the council's second Shia member would be appointed once the chamber presidencies in the Court of Cassation were filled). Thereafter, Mezher was intent on pressuring inside the council for Bitar to be summoned to discuss matters raised in the media, as a precursor for making a decision on him. Consequently, Bitar was summoned to a private session on 25 October 2021.[16] This measure constituted a dangerous precedent that opens the door for the Supreme Judicial Council to interfere in judicial cases and pressure judges. This council is – like other authorities –

14. "Majlis al-Qada' al-'Ala Mu'attal: al-Mufakkira Tujibu 'ala As'ilatikum", The Legal Agenda, 8 June 2021.
15. "Barriyy: 'al-Thuna'iyy' La Yuridu Tatyir al-Bitar wa-Suhayl 'Abbud Laysa Ibn 'Ammi wa-Hadha Huwa al-Matlub Minhu", Nida Al Watan, 16 December 2021.
16. "Majlis al-Qada' al-'Ala Tadawala ma'a al-Bitar Bima Huwa Muthar bi-Sha'n Infijar al-Marfa' wa-Shaddada 'ala Injaz al-Tahqiq Sari'an", NNA, 25 October 2021.

obliged to respect and ensure the independence of the judiciary. However, after the session the council refrained from making any decision on Bitar, prompting several newspapers to accuse it of failing to fulfill its responsibilities.[17]

Finally, note that although the Supreme Judicial Council took no official stance on any of the threats or fierce attacks targeting Bitar for months, it rushed to issue a statement condemning the protest held by a group of women in front of Mezher's office against his illegal decision to suspend the investigation.[18]

Shutting Down the Government

Diab's government resigned on 8 August 2020, days after the blast, after referring the case to the Judicial Council. We had to wait 13 months for the government of Mikati to be formed via a decree on 10 September 2021 and be granted confidence as the "hope and action government" on 20 September 2021. Twenty-two days later, the government convened a tumultuous meeting in which Minister of Culture Judge Mohammad Mortada played the central role. The Legal Agenda learnt from reliable sources that after mentioning that he speaks for both Berri and Nasrallah, he asked the minister of justice to replace the Bitar and declared that any refusal would lead to a shutdown of government sessions. He also asked Minister of Interior Bassam Mawlawi to instruct the Internal Security Forces not to execute Ali Hassan Khalil's arrest warrant as it was issued by a "collaborator" judge. He declared that he would wander with Khalil in Corniche in order to demonstrate that the warrant was as good as nonexistent. While the minister of justice argued that neither he nor the government has any power to make such a decision and that the judge is his own master, he proposed seeking a law to establish a (Judicial Council) indictment chamber that examines appeals to the Judicial Council investigator's decisions concerning the charged ministers.[19] He worked to have it presented as an expedited bill in the legislative session scheduled for 19 October 2021. The Legal Agenda deemed this

17. Mayssam Rizk, "Da'awa Jadida Didd al-Bitar: Man Yadmanu al-Qadi Suhayl 'Abbud?", Al Akhbar, 29 October 2021.
18. NNA, 10 November 2021.
19. "Insha' Hay'a Ittihamiyya fi al-Majlis al-'Adliyy? Taswiya Siyasiyya bi-Mithabat Tadakhkhul Jama'iyy fi al-Qada'", The Legal Agenda, 19 October 2021.

bill another maneuver to limit Bitar's authority in the case and collective legislative interference in the judiciary's work in contravention of the separation of powers, interference devoid of any reformist orientation encompassing the status of this exceptional court. However, several statements suggested that the settlement was not yet fully developed because the party opposed to Bitar was insisting on immediate results, which could only occur if it succeeded in ensuring that the members of the indictment chamber would be appointed quickly and – more importantly – that most of them could be subordinated. As the Legal Agenda expected, this initiative did not bear fruit, as evidenced by the fact that no such bill was put on the legislative session's agenda.[20]

Hence, the government – for which we had long waited – remained shut down for three months because Hezbollah and Amal's ministers threatened to resign and refused to attend its sessions until Bitar was removed. This period witnessed a return to the practice illegally adopted by caretaker governments of substituting government decisions and decrees with extraordinary approvals signed by the president of the republic and prime minister. For example, extraordinary approvals were issued concerning air traffic controllers, the board of Ogero, and the IMPACT platform.[21]

Prime Minister Mikati did not use the government-shutdown mechanism to impose red lines on judicial work in the cases concerning the banks,[22] like the Amal-Hezbollah duo had done. However, he exploited his position to obstruct these cases just a few days after the resumption of government sessions (which occurred on 15 January 2022 following a joint statement[23] by the duo that it would return to the government to "finish the budget"[24]). This involved scheduling a government session to

20. Aljoumhouria reported that, in response to Khoury's letter mentioning Bitar's determination to continue prosecuting former ministers and current MPs based on Article 97 of Parliament's Internal Statute, "Parliament rejected the minister's request, insisting this time that 'Parliament has already told you that this investigation falls within the jurisdiction not of the Judicial Council investigation but the of Supreme Council for Trying Presidents and Ministers'".
21. Rola Ibrahim, "Bid'at 'al-Muwafaqat al-Istithna'iyya': 'Awn wa-Miqati Yakhtazilani al-Hukuma", Al Akhbar, 4 November 2021.
22. Nizar Saghieh and Fadi Ibrahim, "Niyabat 'Amma Tafirru min al-'Adala? Milaff Salama 'Qunbula' La Tajidu man Yahmiluha", 23 June 2022.
23. "Harakat Amal wa-Hizbullah: Man'an li-Ittihamina bi-l-Ta'til Nu'linu al-Muwafaqa 'ala Hudur Jalsat Majlis al-Wuzara' al-Mukhassasa li-Iqrar al-Muwazana wa-Munaqashat Khuttat al-Ta'afi al-Iqtisadiyy", NNA, 15 January 2022.
24. Ibid.

discuss judicial work on 19 March 2022,[25] to which the Supreme Judicial Council president, the Judicial Inspection Authority president, and the cassation public prosecutor were all invited but declined to attend. The session ultimately tasked the minister of justice with developing a vision to address the conditions and dysfunctions in the judiciary and then presenting it to the Council of Ministers. Not only did Mikati play the government card to pressure the judiciary, he also suggested, during the parliamentary session on 30 March 2022,[26] a vote to withdraw confidence from his own government if Parliament did not pass a capital control law that protects the banks from prosecution.

The Specter of "Political Settlement": When Staying Bitar's Hand Became a Political Issue Open to Bargaining

In addition to the direct pressure, discussion emerged about political settlements that would transform staying the Judicial Council investigator's hand into a political issue open to the usual "one package" bargains. Most of these settlements revolved around establishing a parliamentary committee to investigate the charged ministers and thereby strip Bitar of the power to prosecute them in exchange for other political gains for various political forces. The first references to a settlement came from Maronite Patriarch Boutros al-Rahi after his meetings with the president, prime minister, and Parliament speaker on 26 October 2021. He announced that a constitutional solution to the political crisis had been proposed. Bitar would continue working on the condition that his jurisdiction not include prosecuting the ministers, the argument being that the Constitution grants that power to the Supreme Council for Trying Presidents and Ministers. Some attributed the emergence of a settlement to al-Rahi's concern that Samir Geagea would be prosecuted for the Tayouneh incident as it was said to encompass that case too. If that information is correct, then this settlement would have legitimized interference in two major cases and, most importantly, clearly subject

25. al-Ra'is Miqati Yatara''asu Jalsat Majlis al-Wuzara' Khussisat li-Bahth al-Wad' al-Qada'iyy", website of the Prime Minister's office, 19 March 2022.
26. "al-Barriyy Yarfudu Tarh al-Thiqa bi-l-Hukuma ... wa-Miqati Yuhaddidu", Asharq News, 30 March 2022.

the judiciary to political decision-making. Although it is certain that this settlement was not implemented, the reasons it failed remain vague.[27]

The gravest potential political settlement that emerged in public discourse was a broad settlement that would enable the Constitutional Council to issue a decision sustaining the challenge filed by Strong Lebanon bloc MPs to the electoral law, which would prevent expatriates from voting in all districts, and see the government resume its sessions, in parallel with changes in the top positions inside the Supreme Judicial Council and Public Prosecution offices and the replacement of Banque du Liban Governor Riad Salameh.

Just the discussion of this settlement is concrete evidence of what we already knew through analysis and deduction, namely that political forces are controlling several members of the Constitution Council who can block its decisions by depriving its sessions of their quorum,[28] as previously occurred in 2013 when it examined Parliament's extension of the MPs' term, or preventing the seven-member majority required to make decisions. This control is particularly grave as it subordinates the work of the entire Constitutional Council (which exists to protect society and the Constitution from the tyranny of the majority) to the decisions of the dominant political forces that appoint its members via quota-sharing. The mere proposal of such a settlement also confirms how the political authority approaches the role of the leaders of the Supreme Judicial Council and Public Prosecution, who must conform to political decisions or else face replacement. In practice, this settlement, had it gone through, would have stayed the Judicial Council's hand from the port case (which in principle would infringe the victims' rights to justice and redress) in exchange for preventing expatriates from voting in all districts.

27. "During the meeting, Berri refused any return to the Council of Ministers before the appropriate resolution to the Bitar issue is found. He said to Mikati, 'Go to the president of the republic and work on complying with the agreement we made together in the meeting celebrating Independence Day, namely the legal and constitutional agreement announced by Maronite Patriarch Bechara Al-Rai. Later, the president reneged on it'".
"Miqati Yarfudu al-Tawarrut fi 'Safqa' wa-Yanfi al-Istiqala", Almodon, 20 December 2021.
28. Nizar Saghieh, "Wasfa Lubnaniyya li-Ta'til al-Mahakim al-Dusturiyya: al-Rub' al-Mu'attil", The Legal Agenda, 17 June 2013.

Efforts to Resolve the Requests to Release the Investigation's Detainees and Ultimately Spread Impunity

The features of yet another political settlement appeared in statements by Minister of Justice Henry Khoury in an interview with Nidaa Al Watan on 25 June 2022.[29] This settlement sought a path for the release requests filed by detainees in the port case to be examined by other judicial bodies, given that the investigation was frozen and Bitar had been restrained from taking any procedure concerning it. Khoury stated that the case was now pending "petitions submitted by detainees' families concerning transferring the case from Judge Bitar to another judge, because of the inability to proceed with the investigation. For the sake of the proper administration of justice, there is a text in the Code of Criminal Procedure that stipulates that if the case cannot progress, the Court of Cassation shall examine the petition and assess the grounds and whether the inability [to proceed with the case] is established and there is an interest in proceeding with the case and the proper administration of justice". However, he did not clarify which text he was citing. Remarkably, he did this after faulting Bitar for taking too long to issue his indictment decision or respond to political questions posed about the investigation. Khoury's statement was accompanied by a campaign in the media and on social media, involving many Free Patriotic Movement MPs and activists, for the release of Director of Customs Badri Daher. The campaign pointed out that many other suspects remained free because they had refused to appear before the judiciary, as in the case of Zaiter, or the nonexecution of arrest warrants, as in the cases of Khalil and Fenianos, yet it made no demand to reactivate the investigation. The Free Patriotic Movement thereby seemed to have accepted the halting of the investigation so long as the detainees affiliated with it are released and, in practice, it benefits on par with others from the system of paralyzing the judiciary and impunity.

29. Ghada Halawi, "Wazir al-'Adl li-'Nida' al-Watan': li-Majlis al-Qada' Dawruhu Lakinna al-Dawr al-Asasiyy li-l-Taftish li-Husn Sayr al-'Adala", Nida Al Watan, 25 June 2022.

3. Selectivity in Serving the Judicial Council Investigator's Summons and Executing In Absentia Arrest Warrants

The abuse extended to having the Internal Security Forces refuse to serve notification of the interrogations or execute in absentia arrest warrants, particularly against ministers Khalil and Fenianos. This reflected a trend toward constraining the judiciary's power by stripping it of its executive arms, which too have been subjugated to political decision-making.

The refusal to serve notifications came out in a statement by Minister of Interior Bassam Mawlawi on 24 September 2021.[30] He announced that he had received a letter from the Internal Security Forces asking him to excuse them from serving the enforceable summons to Diab and he agreed. Mawlawi justified his stance on the basis that the responsibility for serving notifications belongs to process servers, the Internal Security Forces conduct such notification only under exceptional circumstances pursuant to Article 210 of the law regulating this agency, and serving papers by attaching them to the subject's door is a technical matter that does not require the security forces. This explanation is counterfactual as investigating judges (and criminal court judges in general, including Mawlawi when he presided over the North Lebanon Criminal Court), have always served notification of the sessions they schedule via the Internal Security Forces because of the executive branch's failure to establish the special detachment stipulated in the Code of Criminal Procedure. Likewise, process servers could face difficulty reaching the charged ministers or their homes, especially if they have security guards.

As for the execution of the in absentia arrest warrants, on 8 November 2021 General Director of the Internal Security Forces Imad Osman asked whether they could be executed against MP Ali Hassan Khalil given that Parliament was in session[31] and Article 40 of the Constitution prohibits the prosecution or arrest of MPs during the parliamentary session except

30. "Wazir al-Dakhiliyya Yuqarriru 'Adam Tabligh Diyab wa-l-Mashnuq wa-Za'itar wa-Khalil... Hadha Huwa al-Sabab", MTV Lebanon, 24 September 2021.
31. "Tawdih Khabar Rafd al-Mudir al-'Amm li-Quwa al-Amn al-Dakhiliyy al-Liwa' 'Imad 'Uthman Ta'mim Mudhakkirat Tawqif Sadira bi-Haqq al-Na'ib 'Ali Hasan Khalil", website of the Internal Security Forces, 8 November 2021.

in in flagrante crimes or if Parliament grants permission. The Cassation Public Prosecution referred this question to the Judicial Council investigator, who responded on 10 December 2021 that execution must occur immediately. However, Cassation Advocate General Imad Kabalan answered Osman that the warrant should only be executed after the regular session ends at the end of the year. While Bitar's stance is based on Article 97 of Parliament's Internal Statute,[32] which stipulates that a prosecution of an MP that began while Parliament was not in session continues after Parliament enters session, Bitar refrained from explaining his stance in order to underscore that the matter was indisputable and the Public Prosecution and judicial police must execute the arrest. Otherwise, these apparatuses would be able to veto such decisions. The abuse subsequently peaked with the nonexecution of this warrant both during the parliamentary session, contrary to the Judicial Council investigator's decision, and after it finished at the end of 2021. The failure to make the arrest became particularly glaring when Ali Hassan Khalil held a live press conference on 3 January 2022. In parallel with this pressure via the Internal Security Forces to obstruct the execution of a judicial decision, Parliament Speaker Nabih Berri made successful efforts to obtain approval from the president of the republic to open an exceptional Parliamentary session beginning on 10 January 2022,[33] which would enable Khalil and his associates Machnouk and Zaiter to again invoke Article 40 to evade the various judicial decisions. On January 5, the prime minister announced the beginnings of a resolution in this issue, which involved a resumption of government sessions in exchange for opening an exceptional parliamentary session.

Note that the Internal Security Forces also refused to execute the enforceable summonses issued by Mount Lebanon Public Prosecutor Ghada Aoun against Riad Salameh. In an episode of Sarelwa2et on 13 January 2022, Minister of Interior Bassam Malawi disclosed that he had

32. Article 97 of Parliament's Internal Statute stipulates,
"If an MP is prosecuted for an in flagrante offense, outside of session, or before being elected as an MP, the prosecution shall continue during subsequent sessions without any need for Parliament's permission. However, the minister of justice must inform Parliament of the matter in the first meeting it convenes, and Parliament may decide, when necessary based on the report of the Joint Committee mentioned in Article 100, to halt the MP's prosecution and temporarily release him during the session if he is detained, until after the session."
33. Nicolas Nassif, "'Awn – Barriyy: Ta'ayush La Yutaq", Al Akhbar, 4 January 2022.

denied the Internal Security Forces' Information Branch permission to conduct the raid.

4. Obstructing the Judicial Personnel Charts and the Full Bench of the Court of Cassation

Finally, the most notable means that the anti-investigation forces adopted was Minister of Finance Youssef Khalil's refusal to sign a decree to fill the vacant chamber presidencies (seven of ten) in the Court of Cassation, as previously explained. While the minister invoked a supposed breach of sectarian parity in the distribution of the chamber presidencies (a pretext refuted by previous personnel chart decrees),[34] his real motive was probably to keep the port investigation frozen until some settlement occurred, in keeping with the interests of the political forces that appointed him. Besides the fact that blocking the filling of these vacancies negatively impacts the performance of this court, which is weighed down by a backlog of cases, it also prevents its Full Bench from convening because of the unmet quorum. Hence, this action prevents the examination of the abusive requests filed with the court in the port case. Examining these requests is a precondition for resuming the investigation, especially the maljudging case filed by the Zaiter-Khalil duo against Judge Naji Eid on 21 February 2022, which will probably be dismissed on formal grounds (per previous jurisprudence). In early March 2022, after the investigation entered a full coma, the Legal Agenda sounded the alarm because its resumption was contingent on the completion of the partial personal charts and therefore a decision not by the courts, as was previously the case, but the executive authority.[35] Subsequently, when the Supreme Judicial Council finally managed to overcome its disagreements over the nominations for the chamber presidents (some of which stemmed from pressure exerted on its members by political and banking forces),[36] the personnel charts proposal struck the finance minister's veto. This veto

34. Nizar Saghieh, "'Veto' Wazir al-Maliyya Yu'attilu Mahkamat al-Tamyiz: Damana Jadida li-Nizam al-Iflat min al-'Iqab", The Legal Agenda, 26 May 2022.
35. "'al-Mufakkira' Taduqqu Naqus al-Khatar: al-Tahqiq fi Jarimat al-Marfa' Dakhala fi Ghaybuba Tamma", The Legal Agenda, 4 March 2022.
36. There are also serious concerns that the Association of Lebanese Banks interfered directly and indirectly in the production of these charts to eliminate judges who had taken stances in favor of depositors (most notably Janet Hanna) or appoint judges close to the association, such as Habib Rizkallah (an in-law of its former president Joseph Torbey).

not only confirms, once again, the control that influential forces exercise over the judiciary in various ways, but also reflects the penetration of the system of quota-sharing and subsequent bargaining and vetoes into governance practices and the vital need to overcome it.

The anti-investigation forces' use of mechanisms of the system of judicial organization (which does not guarantee the independence of the judicial judiciary and violates the principle of the separation of powers) to shut down the highest judicial bench succeeded in freezing the port investigation. However, the freeze also extends to the prosecutions for financial crimes as the banks, Banque du Liban Governor Riad Salameh, and his brother have also filled maljudging cases against the judges prosecuting them (Jean Tannous,[37] Ghada Aoun,[38] and Ghassan Oueidat[39]) in order to obstruct the investigations. Alarmingly, this situation could open the door for settlements and trade-offs between the port investigation, on one hand, and the investigations into financial crimes, on the other, as a precondition to resuming the operation of the Full Bench of the Court of Cassation.

37. Independence of the Judiciary Coalition, "Mukhasamat al-Qadi Alladhi Tajarra'a 'ala al-Sirriyya al-Masrafiyya fi Qadiyyat Salamah, The Legal Agenda, 10 November 2021.
38. "al-Masarif 'Tukhasimu' al-Dawla wa-'Awn 'Tataharrabu'...", Nida Al Watan, 5 April 2022.
39. "Salama Yadda'i 'ala 'Uwaydat: Muhawala Akhira li-Man' al-Iddi'a'", Al Akhbar, 9 June 2022.

Timeline of Important Events and Statements

Red indicates the periods when the entire investigation was frozen.
Orange indicates the periods when the procedures against one or more of the charged ministers (Machnouk, Diab, or Fenianos) were frozen.

4/8/2020
The explosion occurs at Beirut's port.

10/8/2020
The Council of Ministers refers the case to the Judicial Council.

10/8/2020
Hassan Diab's government resigns.

13/8/2020
Fadi Sawan is appointed as Judicial Council investigator.

2020/12/10
Sawan charges Diab, Khalil, Zaiter, and Fenianos.

14/12/2020
Ghassan Oueidat recuses himself from the case and appoints Ghassan Khoury to replace him.

16/12/2020
Zaiter and Khalil request that Sawan's hand be stayed based on legitimate doubt.

11/1/2021
The Court of Cassation rejects Zaiter and Khalil's request to temporarily halt the investigation until their transfer request is adjudicated.

16/2/2021
Hassan Nasrallah says that the judiciary must publicize the technical part of the investigation.

18/2/2021
The Court of Cassation stays Sawan's hand.

19/2/2021
Bitar is appointed Sawan's successor as Judicial Council investigator.

1/3/2021
The Association of the Families of August 4 Victims is established.

2/7/2021
Bitar deems Diab, Machnouk, Zaiter, Khalil, Fenianos, Ibrahim, Saliba, Kahwaji, and two judges suspects.

5/7/2021
Nasrallah delivers a speech labeling the leak of the list of people whom Bitar seeks to charge political exploitation.

6/7/2021
Fahmi withholds permission to prosecute Abbas Ibrahim.

9/7/2021
Parliament's Joint Commission asks to be supplied the full investigation file, in violation of the Internal Statute.

11/7/2021
A "unit" of lawyers issues a statement against the "targeting" of Major General Ibrahim.

13/7/2021
Elie Ferzli says that "We are the ones who will reveal the truth, and we're not waiting for the Bitar [family] son".

14/7/2021
Victims' families place caskets in front of Fahmi's home and come under attack by riot police.

21/7/2021
Thirty MPs ask for the charged ministers to be indicted before the Supreme Council for Trying Presidents and Ministers.

21/7/2021
Outrage emerges against the MPs requesting indictment, who are labeled "MPs of shame" and "nitrate MPs".

26/7/2021
President Aoun announces that Najib Mikati has been designated as the new prime minister.

27/7/2021
Hariri proposes amending the Constitution to lift all immunities in the port case.

28/7/2021
The Beirut Bar Association grants permission to prosecute Zaiter and Khalil.

29/7/2021
The Tripoli Bar Association grants permission to prosecute Fenianos.

7/8/2021
Nasrallah accuses Bitar of politicization, selectivity, and collusion with insurance companies and warns victims' families against believing him.

11/8/2021
The Supreme Defense Council withholds permission to prosecute Saliba.

11/8/2021
Personnel attack families of victims around Ain el-Tina Palace

12/8/2021
The "Session of Shame" for freeing presidents and ministers from the Judicial Council investigation loses its quorum.

26/8/2021
Fenianos appeals the Bar Association's decision to permit his prosecution.

26/8/2021
Bitar issues an enforceable summons for Diab after he fails to intend his interrogation.

30/8/2021
Victims' families protest in front of the cassation public prosecutor's home.

30/8/2021
The Bar Association requests that Cassation Advocate General Ghassan Khoury be disqualified from the investigation.

10/9/2021
Najib Mikati announces the formation of his government.

16/9/2021
Bitar issues an in absentia arrest warrant for Fenianos after he fails to attend his interrogation.

20/9/2021
Mikati's government wins confidence and parliament subsequently ceases convening.

21/9/2021
Bitar schedules interrogations for Machnouk, Zaiter, and Khalil on September 30 and October 1.

21/9/2021
Journalist Edmond Sassine publishes the content of Wafiq Safa's threatening message to Bitar on Twitter.

22/9/2021
Fenianos asks the Court of Cassation to transfer the case from Bitar based on legitimate doubt.

22/9/2021
From inside Dar al-Fatwa, Machnouk states that "Diab's address is Dar al-Fatwa, Beirut. Let them come and see if they can tape a notification or summons to the door".

24/9/2021
Mufti Ahmad Kabalan says that "Our country cannot tolerate a new Detlev Mehlis".

24/9/2021
Machnouk and the Zaiter-Khalil duo file cases to disqualify Bitar with the Court of Appeal.

24/9/2021
With a new government formed, Bitar again asks for permission to prosecute Ibrahim and Saliba.

27/9/2021
Keyboard armies launch a campaign against Bitar (#Bitar_Needs_Replacement).

27/9/2021
Bitar deems Ghassan Khoury a suspect and asks to interrogate him.

27/9/2021
Bitar is notified of Machnouk's request to disqualify him and the investigation is consequently suspended.

4/10/2021
The Beirut Court of Appeal dismisses the requests by Machnouk and the Zaiter-Khalil duo to disqualify Bitar.

5/10/2021
Cassation Advocate General Imad Kabalan closes the investigation into Judge Khoury.

8/10/2021
Machnouk asks the Court of Cassation to transfer the case from Bitar based on legitimate doubt.

Khalil and Zaiter filed a request to disqualify Bitar with the Court of Cassation.

10/10/2021
Minister of Interior Mawlawi withholds permission to prosecute Ibrahim.

11/10/2021
The Court of Cassation (Fifth Chamber) dismisses the request to disqualify Bitar filed by Zaiter and Khalil.

The duo again asks the Court of Cassation to disqualify Bitar.

Nasrallah warns of a catastrophe, calling on the Supreme Judicial Council or the Council of Ministers to take the necessary action to disqualify Bitar.

12/10/2021
Bitar issues an in absentia arrest warrant for Ali Hassan Khalil after he fails to attend an interrogation.

Minister of Culture Judge Mohammad Mortada threatens to suspend government sessions if Bitar is not disqualified.

12/10/2021
Bitar is notified of the new disqualification case filed by the duo, and the investigation is suspended for the third time.

12/10/2021
The Supreme Defense Council withholds permission to prosecute Saliba.

13/10/2021
Parliament's General Secretariat deems any procedure by Bitar against presidents, ministers, or MPs an overreach of his power.

14/10/2021
The Court of Cassation (First Chamber) dismisses the duo's disqualification request.

14/10/2021
Seven people are killed in Tayouneh during a Hezbollah and Amal demonstration in front of the courthouse.

15/10/2021
Mufti Kabalan says that "Judge Bitar is responsible for the bloodbath of the Tayouneh ambush and all the breakdowns of security and destruction inflicting this country".

17/10/2021
The minister of justice proposes establishing an exceptional indictment chamber to review Bitar's decisions.

18/10/2021
Nasrallah states that the investigation contains nothing against Hezbollah and his objection stems from his quest for truth.

21/10/2021
Cassation Advocate General Imad Kabalan confirms the decisions prohibiting the prosecution of Saliba and Ibrahim.

25/10/2021
The Supreme Judicial Council summons Bitar and interviews him.

26/10/2021
Fenianos requests Biatar's disqualification before the Court of Appeal, namely the chamber presided over by Judge Nassib Elia.

26/10/2021
Patriarch Boutros al-Rahi visits Berri, and the media talks about a "trade" between the port crime and Tayouneh crime.

27/10/2021
The duo asks the Full Bench of the Court of Cassation to identify the authority competent to examine requests to disqualify Diab.

27/10/2021
Diab files a maljudging case challenging Bitar's decisions, thereby halting all procedures pertaining to him.

27/10/2021
Hashim Hasan Haydar Ahmad, one of the wounded, asks the Court of Cassation to transfer the case from Bitar based on legitimate doubt.

28/10/2021
Machnouk files a maljudging case challenging Bitar's decisions, thereby halting all procedures pertaining to him.

28/10/2021
The duo again requests Bitar's disqualification before the Court of Appeal.

28/10/2021
Fenianos requests that Elia be disqualified from examining the request to disqualify Bitar.

29/10/2021
Elia recuses himself from examining the disqualification request filed against him.

2/11/2021
Beirut Court of Appeal President Habib Rizkallah delegates Habib Mezher to examine the request to disqualify Elia.

3/11/2021
The duo requests the disqualification of the bench of the chamber set to examine its request to disqualify Bitar.

4/11/2021
Mezher issues a decision joining the request to disqualify Bitar to the request to disqualify Elia and asking for the whole investigation file and for this request to be served to Bitar, suspending the investigation for the fourth time.

8/11/2021
Fenianos requests the disqualification of Rosine Hujaili, a member of the chamber examining his request to disqualify Bitar.

8/11/2021
The duo files a maljudging case concerning the Court of Cassation decision to dismiss the request to disqualify Bitar.

11/11/2021
The duo files a maljudging case concerning the Court of Appeal decision to dismiss the request to disqualify Bitar.

23/11/2021
The first president of the Court of Appeal separates the requests to dismiss Bitar and Elia, confirming that Mezher's actions were an attempt to usurp the investigation.

25/11/2021
The Court of Cassation (Sixth Chamber) accepts the Bar Association's request to disqualify Ghassan Khoury from the investigation.

25/11/2021
The Court of Cassation (Sixth Chamber) dismisses Fenianos' request to transfer the case from Bitar based on legitimate doubt.

25/11/2021
The Full Bench of the Court of Cassation dismisses Diab and Machnouk's maljudging cases.

25/11/2021
The Full Bench dismisses two maljudging concerning actions by Court of Cassation and Court of Appeal judges.

25/11/2021
The Full Bench identifies the Court of Cassation (First Chamber) as the authority competent to examine requests to dismiss a Judicial Council investigator.

26/11/2021
Nasrallah attacks the Court of Cassation decisions and commends the courage of Mezher's decisions.

30/11/2021
The Court of Cassation (Sixth Chamber) dismisses Machnouk's request to transfer the case based on legitimate doubt.

2/12/2021
Fenianos files a maljudging case contesting Bitar's decisions, thereby halting all procedures pertaining to him.

7/12/2021
The Beirut Court of Appeal dismisses Fenianos' request to disqualify Bitar and deems Mezher's decision null and void.

7/12/2021
The Beirut Court of Appeal dismisses the duo's request to disqualify the bench of the chamber examining the request to disqualify Bitar.

10/12/2021
Youssef el-Maoula, a relative of a victim, asks the Court of Cassation to transfer the case from Bitar based on legitimate doubt.

10/12/2021
Bitar asks that Khalil's arrest warrant be executed immediately.

14/12/2021
Cassation Advocate General Imad Kabalan postpones the execution of Khalil's arrest warrant until after Parliament's ordinary session ends.

16/12/2021
With the Full Bench having issued a decision on jurisdiction, the duo requests a review of the Court of Cassation decision to dismiss the disqualification case for lack of jurisdiction.

20/12/2021
The Beirut Court of Appeal dismisses Zaiter and Khalil's request (filed on October 28) to disqualify Bitar, citing res judicata.

21/12/2021
The Constitutional Council fails to make a decision on the challenge to the electoral law amid talk about a failed settlement.

23/12/2021
Bitar is notified of the revival of the duo's request to disqualify him, and the investigation is consequently suspended, for the fifth time, until the request is adjudicated.

3/1/2022
Khalil holds a public press conference even though a warrant is out for his arrest and the parliamentary session has ended.

4/1/2022
The duo ask for judges Eid and Ghantus, who are examining the case to disqualify Bitar, to be disqualified.

10/1/2022
An exceptional parliamentary session is opened and used as a pretext for restoring MPs' immunity and not executing the arrest warrants.

12/1/2022
The Full Bench of the Court of Cassation loses its quorum when Judge Roukoz Rizk retires.

15/1/2022
The Hezbollah-Amal duo announces its return to government.

15/2/2022
The Second Chamber of the Court of Cassation rejects the Amal duo's request to disqualify Eid and Ghantus.

21/2/2022
The Amal duo files a maljudging case with the Full Bench of the Court of Cassation in connection with Eid's decision, preventing him from examining the request to disqualify Bitar until the Full Bench – which had lost its quorum – issues its decision. Hence, the investigation remains frozen.

1/3/2022
The wife of one blast victim files a case to disqualify Bitar with the Court of Cassation.

21/3/2022
The Supreme Judicial Council adopts the personnel charts draft and refers it to the minister of justice.

22/3/2022
Mohammad Al Mawla, the detained head of the Beirut port, files a request with the Court of Cassation to transfer the case from Bitar.

23/3/2022
The minister of justice signs a personnel charts draft that restores the quorum of the Full Bench of the Court of Cassation and refers it to the minister of finance.

24/3/2022
Detainees Hassan Koraytem and Mohammad al-Awf file a request with the Court of Cassation to transfer the case from Bitar.

31/3/2022
Three detained defendants file a request with the Court of Cassation to transfer the case from Bitar.

6/4/2022
The Bar Association files a request to dismiss Cassation Advocate General Imad Kabalan with the Court of Cassation.

13/4/2022
The Court of Cassation dismisses a request by the wife of a blast victim to disqualify Bitar.

16/4/2022
Minister of Finance Youssef Khalil announces his refusal to sign the judicial personnel charts that would restore the quorum of the Full Bench of the Court of Cassation.

9/5/2022
Cassation Advocate General Imad Kabalan's is removed and Sabouh Suleiman takes over the Public Prosecution's functions in the case.

15/5/2022
The Zaiter-Khalil duo is reelected to Parliament.

23/5/2022
The minister of justice signs a new personnel charts decree amended by the Supreme Judicial Council and refers it to the minister of finance.

7/6/2022
The Zaiter-Khalil duo wins the majority of MPs' votes in elections for the Finance and Budget Committee and the Administration and Justice Committee.

7/6/2022
The detained general director of customs Badri Daher files a request to disqualify Bitar with the Court of Cassation.

Conclusion

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To Topple the Wall of Impunity, We Must Understand It

Once again, we find ourselves facing a wall that threatens victims' right to justice and society's right to truth. However, unlike in most cases, which falter behind the scenes in or outside the judiciary, this wall was assembled like a mosaic in full view of the public in connection with the Beirut port blast investigation and in light of its progress. Hence, within months, we went from an ostensible consensus on supporting an impartial investigation to the rise of a powerful force with its own discourse and declared tenets restricting the investigation within certain pre-agreed parameters, a force that has so far succeeded in freezing the investigation. Because of the widespread interest in the port blast case, we were able to witness the assembly of this wall piece by piece, albeit in a climate of muddying, misdirection, and occasional fearmongering about civil strife and war, which frequently caused the meanings of words and actions to become lost and distorted. Hence, in this conclusion, we must think about how to restore clarity to words and actions and examine their meanings and dimensions in the hope of determining the best ways to breach and topple this wall.

Conclusion 1: The Wall's Meanings and Dimensions

As previously explained, the forces opposed to the port blast investigation succeeded in building a wall that has completely frozen it for months. This success stems from not only the considerable political weight of these forces, but also the fact that they employed an escalatory approach to achieve their goal, iterating through the pillars of the system of injustice prevailing in Lebanon. The most important of these pillars that these forces progressively put forward include immunities, inviolable dignitaries [maqamat], partisanship, control over key levers of the state, and reciprocal vetoes, not to mention the fearmongering about civil strife and war and the octopian media networks that played a key role in obscuring the investigation process in fog and misdirection.

The most important stage in the erection of this wall may be the shift of the forces opposed to the investigation from confronting it via the law (a confrontation that lasted more than three months) to using means with no connection to the law on an unprecedented scale.

Nabih Berri began the legal confrontation in the wake of the requests to lift immunity issued by Judicial Council Investigator Tarek Bitar by affirming that he would deal with them only via the law. In this regard, the first response was the anti-investigation forces' attempt to effectuate the articles pertaining to impeaching ministers before the Supreme Council for Trying Presidents and Ministers and, in practice, the articles concerning ministerial immunity. When they failed to achieve a parliamentary majority to this end, their second legal response was to attempt to use trial procedure to remove Bitar from the entire investigation for what they deemed a breach of impartiality. Notably, most of the charged ministers (most notably the Ghazi Zaiter-Ali Hassan Khalil duo) did not request that the cases be transferred based on legitimate suspicion (the means that statutory law explicitly provides for challenging judges working in regular courts or exceptional courts, including the Judicial Council). Rather, they preferred to wage a battle to establish their eligibility to file cases to disqualify the Judicial Council investigator, supposedly pursuant to their legitimate right of defense. Clearly, the reason was that such claims would automatically stay the investigator's hand as soon as he was notified of them and until they were adjudicated, whereas transfer requests do not suspend the investigation unless an explicit decision to this effect is issued by the competent court. When the Full Bench of the Court of Cassation declared that they could file such disqualification cases with its chambers, as they had requested after the Court of Appeal and Court of Cassation initially declared these cases invalid, they did so only to promptly obstruct their examination in a clear abuse of political authority (Minister of Finance Youssef Khalil abstained from signing the judicial personnel charts decree), thereby freezing them and keeping the investigation frozen indefinitely. Hence, these figures sought to obtain the "defense right to file disqualification cases" not to actually practice it but to exploit it to obstruct the course of the entire investigation. The examination of the disqualification case that Zaiter and Khalil filed against Bitar with the First Chamber of the Court of Cassation was, in

fact, suspended when filed a maljudging case against the chamber's president before the court's Full Bench, which was inoperative because it had lost its quorum due to the aborted personnel charts. Remarkably, in the legislative session on 26 July 2022,[1] Berri implicitly acknowledged that he controls the finance minister's decision on whether to sign the personnel charts decree and that he has no qualms about prolonging the obstruction for a decade if necessary. Thus, Berri shifted from his commitment to responding only via the law to only trampling over the law in order to obstruct the investigation.

This coup against the law was corroborated by the message that Wafiq Safa sent to Bitar expressing a clear intent to remove him either via the law or outside it. The message illustrated the slide occurring in the handling of the Judicial Council investigator, marking a shift from confronting him via the law to confronting him via any means possible, even extralegal ones. It was followed by a series of revealing measures, most importantly a boycott by the ministers of the Amal-Hezbollah duo of government sessions until Bitar's removal. This led to the complete suspension of these sessions, accusations against Bitar of causing civil strife [fitna] and the deaths of seven citizens in the Tayouneh incidents, and ultimately, the abortion of the judicial personnel charts. The anti-investigation forces sought to surround these obstructionist means with sources of alternative legitimacy (all illicit and unconstitutional), hoping to compensate for their violation of legal legitimacy and mitigate the spectacle of naked power and heinousness of obstructing an investigation into one of the bloodiest crimes.

One of the most important sources of alternative legitimacy on which the anti-investigation forces capitalized was sectarian partisanship, particularly among Shia (by highlighting the sectarian identity of the judges and victims and portraying the investigation as targeting the Resistance) and Sunnis (as is evident from the discourse against prosecuting the position of prime minister when Hassan Diab was charged). Perhaps the worst thing these forces did was divide the victims' movement and sectarianize a segment of them (i.e. cause their sectarian identity to prevail over their identity as victims) so that they would show support for

1. Fadi Ibrahim, "Kamil Nata'ij Jalsat 26/7/2022: 'Unf "Batrikiyy" Munazzam wa-Barriyy Yafshalu fi Muwasalat Nahjihi fi Idarat al-Majlis", The Legal Agenda, 27 July 2022.

obstructing the investigation. This evocation of partisan sentiment quickly generated partisan stances by parties supporting the investigation, making this support seem like it was driven more by partisanship than by concern about a rights issue. Consequently, suspending the investigation was portrayed as serving the interest of certain sects and continuing it was portrayed as serving the interests of others. This drew the case into the futile sectarian conflict, opening up the possibility of settlements, bargaining, and obstruction. The carnage at Tayouneh roundabout is the best testament to this peril.

Another, equally important source of alternative legitimacy was the exploitation of the power vested in certain positions belonging to anti-investigation forces because of the sectarian quota-sharing governing the distribution of public offices. The most important include the positions of the ministers appointed by these forces, who ceased attending government sessions in order to suspend them. They also apparently include the Ministry of Finance, which is one of the positions allocated per an unconstitutional custom to a Shia citizen (it falls within the Shia leader's share) and was exploited by the anti-investigation forces to abort the judicial personnel charts and thereby suspend the Full Bench of the Court of Cassation. These forces also exploited the appointment of Habib Mezher, a judge close to them, to the Supreme Judicial Council through the usual quota-sharing in order to exert pressure on Bitar and influence the content of the personal charts. Mezher also usurped the investigation file for weeks, as we explained, without any accountability. Thus, these forces' shutdown of the government and obstruction of the personnel charts occurred through formal mechanisms, even if it involved a clear abuse of authority to serve factional interests, completely contrary to public interest. Clearly, these means of obstructing the investigation would not have gone over so easily had they not been widely and regularly adopted by all political forces dominating the political landscape. This is evidenced by the period that forming governments has taken since 2005, as well as the abortion of seven of the nine judicial personnel charts during the past decade because of one political faction or another for reasons that may be just as factional as the anti-investigation forces' reasons for obstructing the latest charts.

The final source of alternative and unconstitutional legitimacy was the exploitation of the interest that all political forces have in spreading a culture of judicial interference and impunity for influential people and destroying what remains of the culture of judicial independence because most of their icons have been involved in crimes that would be prosecuted were the law actually enforced. Here, it suffices to mention several facts that we explained at length in the body of the study and that showed the similarity between the arguments the anti-investigation forces raised and the arguments that have been raised by many other political forces in the context of major social crimes, such bank crimes, hoarding, and corruption. The most important of these arguments include that the judge is being selective, that he is targeting people politically, and that there is no confidence in a non-independent judiciary. On 19 March 2022, this discourse culminated in Prime Minister Najib Mikati's call for a government session on curbing "judicial chaos" following the issuance of a decision to arrest Banque du Liban Governor Riad Salameh's brother. In many cases, influential suspects and defendants have also refused to appear before the courts under the cover of a political discourse identical to the discourse for obstructing the investigation in the port case. Suspects have even obstructed investigations into them using the means that the anti-port investigation forces introduced, namely filing maljudging cases against judges with the Full Bench of the Court of Cassation, which suspends their prosecutions indefinitely. And let us not forget the resistance that most MPs continue to show to lifting banking secrecy on the pretext of distrust of a politicized judiciary, an argument that multiple blocs have repeated on multiple occasions despite its absurdity. This stance is particularly egregious because, as already explained, banking secrecy provides cover for all corruption crimes, just as the mass graves provided and continue to provide cover for the crimes of the war. To all this can be added the periodic talk of a large settlement that could include suspending several court cases to benefit one party or another.

Thus, the wall was constructed by force of the entire prevailing regime and for its benefit. This system of inviolable dignitaries [maqamat], immunities, partisanship, impunity, and dodging responsibility has no regard for the authority of the law or judiciary or a sense of justice. In a word, it is a system of total politicization, a post-right-and-wrong system wherein there is no place for anything but power and its various

constituents and balances, a system wherein most of society ends up the victims of a powerful few. So how can we confront it?

Conclusion 2: What Means Are There for Confrontation?

We will now explore some of the best means of confronting this wall in a manner commensurate to its thickness and dangers.

Clarity in Response to Muddying the Waters

Efforts to restore clarity to the case (including this study) are one of the most important means of building a strong public opinion against attempts to obstruct the investigation. As mentioned in the introduction, clear vision in the issue of immunities was extremely important to the construction of a strong public opinion against attempts to expand and impose them, as shown by the widespread indignation toward the request to impeach the charged ministers.

Conversely, the muddying effort conducted via the systematic targeting of the Judicial Council investigator shifted the focus from determining liabilities for the port blast (one of the bloodiest crimes in Lebanese history) to the question of whether his decisions were correct and whether he is impartial. When this muddying escalated because of the suspension of the disqualification cases filed against Bitar, which kept the doubts raised over his impartiality unresolved, it misled and divided public opinion, shaking the trust of much of the public in Bitar and the judicial process.

This is exactly what continues to happen in financial cases (including the prosecution of the Salameh brothers). Usually, the judges' decisions and conduct become the focus of attention and accusations while the main question of responsibility for the collapse and improvisation of an entire people gets overlooked. Muddying the waters in important judicial cases and turning them into opportunities to bully judges who dare to prosecute influential figures has virtually become an organized practice participated in by politicians, media figures, lawyers, judges, and social media influencers, a practice aimed more at protecting the influential party concerned from prosecution than at correcting the course of the investigation.

From this standpoint, efforts to restore clarity in this case are very important. Besides the fact that clarity could temper the accusations thrown at Bitar and strengthen the possibility that they are addressed and resolved within their judicial framework, it also exposes the truth of the anti-investigation forces' stances and goals, just as we did above (though these stances are now clearer because these forces remain remarkably silent and indifferent even though many months have passed since they caused the investigation to be frozen). Clarity could also expose the parties that find an interest in the continuation of the system of impunity (for we should "know our enemy"), contribute to an understanding of the bullying faced by many of the judges who take bold actions in other socially important cases perhaps as important as this one, and thereby bring the blast victims and victims of the collapse closer together on the basis that they are all victims of the system of injustice and impunity. Hopefully, all this will eventually help to develop the broad strokes of democratic political projects that are more appealing and capable of rallying support.

Perseverance, Action, and Refusing Normalization

The second means of confrontation is to refuse to normalize the system of impunity and the post-right-and-wrong system. This refusal may not lead to direct change, but it ensures that forces are combined and mobilized to expose the existing system and achieve goals at odds with its foundations. Actions by the families of port blast victims have so far been the biggest factor sustaining this confrontation. These actions were conducted during the various phases of the wall's erection and were not limited to specific occasions, such as the August 4 anniversary. The families organized notable actions to protest both the refusal by the parties concerned to give the permission needed to prosecute senior officials or former ministers and, recently, the decision to demolish the building housing the grain silos at the port. The latter were part of a broader civil campaign to conserve the building in order to eternalize the memory of the victims and prevent it from being erased.[2]

2. Nabila Ghousein, "Itlaq al-Hamla al-Tadamuniyya li-Himayat al-Ihra'at: La li-Hadm 'al-Shahid al-Samit'", The Legal Agenda, 5 July 2022.

While some criticized this latest confrontation for overshadowing the obstruction of the investigation with a predominantly symbolic issue, the goal of conserving the silos was a key stimulus for movements by the victims' families and for social forces to join them in defending the national memory, all amidst a months-long complete freeze of the investigation with no prospect of resumption – i.e. despite the most frustrating of circumstances. In this regard, the label that the campaign to conserve the silos gave the building – namely the "silent witness" – is very revealing. It implies that the silos are not just a monument to a tragic event and its victims but also, first and foremost, a witness to a crime whose investigation must be completed so that the criminals are held responsible. In other words, the building is a living monument that will hopefully influence the present and future as much as it reminds of the past. The power of this testament is boosted by the fact that the damaged silos sit at the center of the city and on its seafront, reminding not only of the deceased victims but also the hundreds of survivors who could have been killed had the silos not blocked the explosion. The legacy that our parents and grandparents built before the war to guarantee our food security became a shield that probably protected broad sections of the capital from the enormous dangers caused by the present ruling forces. Because of all these dimensions, the silos building is a symbol not just of the port blast crime but also of a whole victimized nation. Hence, while the first anniversary witnessed many debates about the most appropriate monument, on the second anniversary this question appears to have been resolved without serious controversy.The silos building is the one and only unrivaled monument that must be protected just as it protected us. The vitality of this testament increased on the eve of the second anniversary when a fire broke out and parts collapsed, as though the building, with all its symbolism, was itself participating in the commemoration.[3]

Worth noting here is the striking similarity between the movement of the families of port blast victims and the movement of the families of the missing and forcibly disappeared. This decades-long movement was the major and sometimes only force raising questions about the crimes and tragedies of the 1975-1990 war after the social and political forces at large became reconciled to a system based on erasing the memory

3. "Nida' min al-Hamla al-Tadamuniyya li-Himayat al-Ihra'at li-l-Sulutat: Akhmidu al-Niran al-Mushta'ila Fawran", The Legal Agenda, 19 July 2022.

of the victims and glorifying the war's protagonists, some of whom still occupy the highest positions of government. The families of the missing had to face alone a system that had successfully divided society into groups rallied around elite leaders, which they could never have done had their identity as victims not prevailed over the dominant sectarian identities. Decades passed before this movement managed to extract the right to know, in court[4] and then legislation[5] (although the ruling forces are still obstructing it in practice). Today, the families of the blast victims are not alone but surrounded by hundreds of thousands of victims of the economic collapse, and they all interact amid a broad movement wherein consciousness has reached an unprecedented level. Hence, without downplaying the thickness of the existing wall or the difficult challenges obstructing truth and justice in the port case, we must point out that there is room for hope, room that grows broader the stronger the solidarity among and around the victims becomes and that we should not ignore.

A Unifying Discourse in the Face of Factionalism and Partisanship

The third means is the adoption of a unifying discourse accentuating public interest in the face of the various factional interests. This discourse is essential not only to halt the descent into which we have slipped as a society and state but also, first and foremost, for political accountability for the port blast, which would never have occurred had rampant factional interests not prevailed over public interest. This accountability – to which the Legal Agenda called attention in the wake of the blast[6] – is just as important as legal accountability. The port blast, just like the financial collapse, was an event that any well-informed observer could have anticipated and any public authority could have preempted had it any regard for public risk prevention or fear of accountability.

4. Ghida Frangieh, "Shura al-Dawla al-Lubnaniyy Yukarrisu Haqqan Tabi'iyyan li-Dhawi al-Mafqudin fi-l-Ma'rifa", The Legal Agenda, 8 April 2014.
5. "Iqrar Qanun al-Mafqudin wa-l-Makhfiyyin Qasran bi-Quwwat al-Harak al-'Amm: Waqf al-I'tida' 'ala Dahaya al-Harb fi Lubnan", The Legal Agenda, 29 May 2019.
6. "Bayan 'al-Mufakkira al-Qanuniyya' bi-Sha'n Majzarat al-Marfa': Laysa bi-l-Musa'ala al-Jina'iyya Wahdaha Nunsifu al-Dahaya", The Legal Agenda, 7 August 2020.

From this standpoint, any attempt to restore respect for public interest, including accountability and the judicial independence it presupposes, is a key precondition for confronting partisan sentiments (which fuel one another) and, most importantly, their tensions and discourse, which can only lead to carnage like that in Tayouneh.