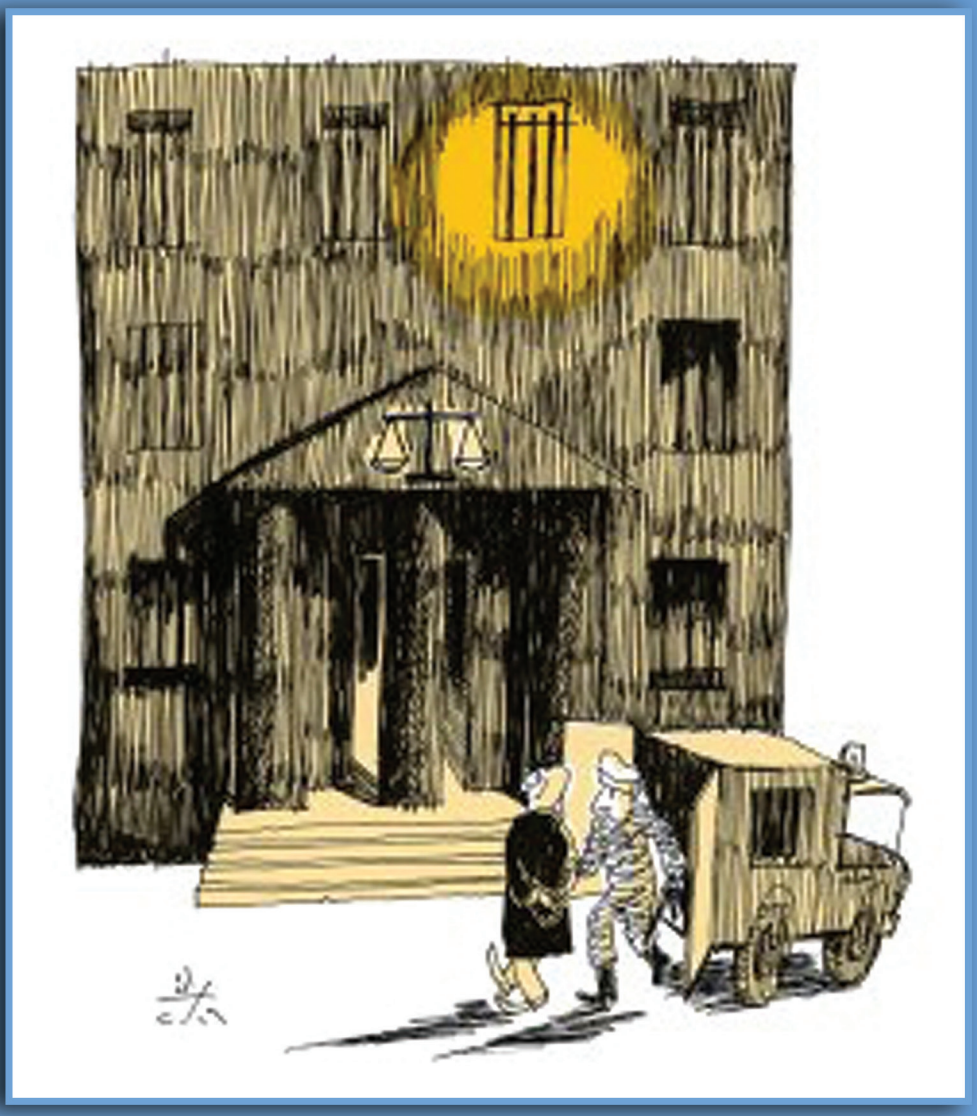
Pre-Trial Detention in Lebanon:

Punishment Prior to Conviction or a Necessary Measure?

An Analysis of Short-Term Pre-Trial Detention Rulings



المفكرة القانونية
THE LEGAL AGENDA

DIGNITY
DANISH
INSTITUTE
AGAINST TORTURE

Pre-Trial Detention in Lebanon:

Punishment Prior to Conviction or a Necessary Measure?

- Published by The Legal Agenda

Al Nakhel bldg. 6th floor, Laure & Joseph Moughayzel Street, Badaro, Beirut, Lebanon

Tele/fax: +961 (1) 383 606

info@legal-agenda.com

www.legal-agenda.com

www.facebook.com/LegalAgenda

legal_agenda

- **Writer:** Ghida Frangieh
- **Legal Review:** Nizar Saghieh
- **Editing:** Lamia Sahili, Sarah El Khoury Cupler
- **Research Support:** Hala Najjar, Nay Abi Samra
- **Administrative Support:** Jihad Medlej
- **Translation:** Lamia Sahili, Ghada Haydar
- **Drawings:** Raed Charaf
- **Design & Printing:** Printing Group

This study was produced under the project titled “Reducing the Use of Pre-trial Detention in Lebanon” that is funded by the Swiss Federal Department of Foreign Affairs (FDFA) and the Danish Ministry of Foreign Affairs (DMFA). The content of this publication is the responsibility of The Legal Agenda and does not necessarily reflect the opinion of the donors.

Pre-Trial Detention in Lebanon:

Punishment Prior to Conviction or a Necessary Measure?

An Analysis of Short-Term Pre-Trial Detention Rulings

Legal Agenda

January 2019

TABLE OF CONTENTS

Introduction

This study intends to understand the judicial policies and practices related to the use of pre-trial detention in criminal trials in Lebanon. The term pre-trial detention covers the detention period that occurs from the moment of arrest until the end of the criminal trial. This encompasses the period during which individuals are detained before a conviction, while they are still presumed innocent.

The study examines judicial documents related to pre-trial detention in order to determine if they abide by the principles of the presumption of innocence and that pre-trial detention should be the exception and not the rule. It focuses specifically on short-term pre-trial detention that does not exceed one month, given that around a third of defendants held in pre-trial detention in recent years in Lebanon were held for around one month or less. The study seeks to examine this form of detention in an attempt to paint an initial picture of its use and purpose.

The aim of this study is to answer two main questions. Firstly, is short-term pre-trial detention a necessary measure and in compliance with Lebanese laws? Secondly, how do judicial authorities make decisions related to pre-trial detention, and to what extent do they guarantee the protection of personal freedom from arbitrary and unjustified deprivation of liberty?

After an overview of the pre-trial detention process, the study will assess the legal compliance of judicial rulings related to the start and end of the pre-trial detention period in 48 cases, and will compare these rulings to the outcome of the trials.

The Context of Pre-trial Detention

The Lebanese criminal justice system operates in a difficult environment with minimal resources available to guarantee fair and just criminal procedures. [1] Legal reforms are needed to update criminal rules in order to reflect social change. While criminal procedures were reformed in 2001, the criminal law has not seen a serious and major reform since its adoption in 1943 despite the profound changes witnessed by society since then. This has exacerbated the difficulties with the criminal justice system. In this context, practices of excessive and arbitrary detention continue, including an excessive recourse to pre-trial detention, which often does not conform to national legislation and international standards.

In August 2018, the prison population in Lebanon reached 6,614 individuals in 23 detention centres designed to hold a total of 4,800 inmates.[2] In other words, the prisons are significantly overcrowded, with an occupancy level of approximately 138%. The primary reason for this overcrowding is the placement of suspects and defendants in detention for prolonged periods and lengthy pre-trial detentions. During the first half of 2017, 54.8% of the prison population was made up of persons in pre-trial detention,[3] a high proportion of the total prison population. Among these, an estimated 25% were held in pre-trial detention for a period that did not exceed one month.[4]

These figures, however, exclude other detention centres, indicating that the ratio of individuals held in pre-trial detention is higher. There were an estimated 2000 individuals held in pre-trial detention at the Internal Security Forces (ISF) police stations in March 2018.[5] In addition, 2235 detainees were held at the detention centre of the General Directorate of the General Security (the General Security) in mid-July 2018,[6] which is mainly used for immigration detention purposes (non-Lebanese nationals violating residency and work regulations), but often includes persons held during their trial. On the other hand, no official information is available pertaining to the number of individuals detained at the holding facilities of the Ministry of Defence, the Military Police, the Military Intelligence and the State Security, which also include individuals held in pre-trial detention.

Despite this excessive recourse to pre-trial detention, Lebanese authorities have not developed or published clear policies related to criminal justice priorities, including pre-trial detention policies. There is also no published official information related to available judicial resources for the criminal justice system or to processing pre-trial detention cases. This is further exacerbated by judicial authorities' refusal to provide such information upon request, contrary to the 2017 Access to Information Law. However, the Legal Agenda estimates that the shortage of judges in the Lebanese judiciary reached 37% in 2010 and 35% in 2017, which thus confirms the limited available resources.[7]

Furthermore, judicial authorities have not established any mechanism to provide detained defendants with information regarding their pre-trial detention, which affects their ability to challenge the detention. Defendants' held in pre-trial detention are not systematically informed of their rights, the legal requirements of pre-trial detention, the legally prescribed delays for the processing of their cases or the available recourses to put an end to their pre-trial detention. This contributes to the popular perception that judicial decisions are arbitrary or at least unfair.

Effects of Pre-trial Detention

Pre-trial detention may amount to arbitrary detention when it breaches legal requirements or when it is used excessively and without an identifiable purpose. It is a violation of the fundamental personal freedom and increases the risk of inhuman and degrading treatment or punishment, particularly in situations where detention facilities are grossly overcrowded. Pre-trial detention also undermines the chance of a fair trial, given that it affects defendants' ability to access legal counsel, prepare for a defence, and communicate with other people.

Moreover, pre-trial detention has a large socio-economic cost which is often overlooked, despite significant consequences to the current economic crisis facing Lebanon. Defendants bear the brunt of the cost: the deprivation of liberty has an impact on their physical and mental health, their livelihoods and their normal lives. Pre-trial detention has a higher impact on people in precarious economic situations, who may lose their livelihoods and housing as a result of the detention. Low-income defendants are particularly at risk of losing their jobs and shelter when they are engaged in daily work or residing in unsecure housing, as is the case of a large part of the resident population in Lebanon living in situations of poverty or extreme poverty.[8]

Pre-trial detention also negatively effects the defendant's socio-economic circle. The defendants' relatives and dependants suffer from their deprivation of liberty, particularly if the detainees are the financial providers. Relatives will also need to provide financial, material and psychological support to the detainees, particularly in light of the limited governmental and non-governmental services available to detainees in Lebanon. The defendants' co-workers, employers, employees and businesses are also affected by their absence during their detention, which highlights the economic costs of pre-trial detention.

In addition to the detention authorities' cost of receiving and caring for detainees, pre-trial detention also has a cost on the judicial sector. When judicial authorities show limited respect to the presumption of innocence, it weakens the public's faith in the efficiency and fairness of the judicial system. More practically, excessive recourse to pre-trial detention adds an additional burden on the judicial sector. Judges and judicial clerks must prioritise cases of detained defendants over other cases and must work under extreme pressure in order to comply with the legally prescribed delays for the processing of detained defendants. Lawyers providing legal assistance to detained defendants must also prioritise these cases and work under extreme pressure to secure their release, which often leads them to increase

their legal fees and creates an additional obstacle for defendants to access legal counsel.

Methodology

Sample Selection

The study aims to understand the current trends in the use of short-term pre-trial detention by the Lebanese judiciary. In order to achieve this purpose, we identified clear criteria for the selection of the sample study, mainly related to the timeframe, geographical distribution and judicial documents that will be covered in the sample. The criteria took into consideration obstacles to accessing judicial documents as well as the limited timeframe and financial resources available for the study.

As such, the most important criteria adopted for the purpose of this study are the following:

- **Criteria related to the type of offences:** The sample was limited to cases where the defendants were charged with petty offences and misdemeanours, as the study aims to assess short-term pre-trial detention. Indeed, persons who are held in custody and not charged are likely to be released within shorter periods, given that the maximum period allowed for custody is four days, while defendants who are charged with a felony are likely to be detained for longer than a month. As such, the sample is limited to cases adjudicated on by the Single Criminal Judge who hears cases of petty offences and misdemeanors. During the 2012-2017 period, single judges across the country received an average of 60,000 cases per year.[9]
- **Criteria related to time-frame:** The sample was limited to cases in which a Judgment was issued in 2017, which allowed us to access rulings on pre-trial detention issued in 2017 and in previous years and compare these rulings to the Judgments' findings.
- **Criteria related to geographical distribution:** The sample was limited to the courts located in Beirut and Baabda, covering two districts in two different governorates (Greater Beirut and Mount Lebanon) of Lebanon's eight governorates *(Mohafaza)*.
- **Criteria related to judicial documents:** the sample included the Judgment, arrest warrants and judicial hearing records, which maintain a record of pre-trial

detention rulings. Following an initial review of cases, additional documents such as preliminary investigations reports and criminal history records were also added to the sample.

The lack of digitalisation of judicial work in Lebanon was an obstacle to selecting a reliable and representative sample, as there is no available mechanism to identify relevant cases or decisions. The only available recourse is to rely on the knowledge and cooperation of judicial clerks who are in charge of the administrative processing of court cases. The sample selection therefore relied on the clerks' manual selection of cases. We requested from several clerks in the selected locations to provide us with several Judgments issued by their courts in 2017 where at least one defendant was detained for a maximum period of one month. Clerks were asked to select cases with diversity in terms of nationality and gender of defendants, nature of offences and nature of the plaintiffs (public prosecution or civil action).

As a result, the sample includes 47 court Judgments issued in 2017 by Single Criminal Judges in which 48 defendants were detained between five and 31 days. The Judgments were issued by nine different Single Judges located in Beirut (22 decisions by five different judges) and Baabda (25 decisions by four different judges). In addition, the sample included pre-trial detention rulings issued by nine different Investigating Judges in Beirut (three judges) and Mount Lebanon (six judges).

Table 1: Court Judgments by Date and Location

Court Location / Date of Judgment	Baabda	Beirut	Total
January 2017		5	**5**
February 2017	1	2	**3**
March 2017	3	1	**4**
April 2017	3	1	**4**
May 2017	4	2	**6**
June 2017	5	2	**7**
July 2017	1	1	**2**
August 2017		2	**2**
September 2017	1		**1**
October 2017	4	4	**8**
November 2017	3	2	**5**
December 2017		1	**1**
Total	**25**	**23**	**48**

It should be noted that some of the Judgments in the sample included several detained defendants. Those whose pre-trial detention exceeded a month were however not included in the sample.

It should also be noted that judicial documents do not include information regarding the place of detention of the defendants. Despite a 2012 government plan to transfer prison management from the Ministry of Interior to the Ministry of Justice, the Ministry of Justice does not manage detention centres in Lebanon. As such, the authority that legally rules on pre-trial detention is separate from the authority that physically holds the detainees. Pre-trial detention is therefore often affected by obstacles in the communication between judicial authorities and the Internal Security Forces or other detention authorities.

It is therefore outside the scope of this study to identify where the defendants were held in custody or pre-trial detention and whether or not they were separated from convicted detainees. Judicial documents also do not include information on the effective date when detainees were released, but only when judicial decisions ordering releases are sent out to the detention authorities.

Sample Description

The sample includes 48 adult defendants who were detained between five and 31 days. 90% of the detained defendants were men (43 men) with only four women included in the sample. More than half of the male defendants were Lebanese (25 defendants) and 23% were Syrians (11 defendants). Others were Palestinians (seven men) and one was a Stateless person residing in Lebanon. The four female defendants were Lebanese, Syrian, Ethiopian and Stateless. 81% of the defendants were aged between 19 and 45 years old at the time of their arrest with only nine defendants above the age of 45 years old.

More than 83% of defendants included in the sample were held in pre-trial detention for a period between 11 and 31 days (41 defendants) while eight defendants were held between five and ten days. More than 79% of defendants were arrested during 2016 and 2017 (38 defendants) while others were arrested between 2011 and 2015 (10 defendants).

Table 2: Nationality, Gender and Age of Detained Defendants

Nationality	Age / Gender	19-25	26-35	36-45	46-55	56-64	Total
Lebanese	Male	7	5	7	4	**2**	**25**
	Female	-			1	-	**1**
	Sub-Total	***7***	***5***	***7***	***5***	***2***	***26***
Syrian	Male	6	2	3	-	-	**11**
	Female	-	-	-	1	-	**1**
	Sub-Total	***7***	***2***	***3***	***1***	***-***	***13***
Palestinian	Male	1	2	3	1	-	**7**
	Sub-Total	***1***	***2***	***3***	***1***	***-***	***7***
Stateless	Male	-	1	-	-	-	**1**
	Female	1	-	-	-	-	**1**
	Sub-Total	***1***	***1***	***-***	***-***	***-***	***2***
Ethiopian	Female	-	1	-	-	-	**1**
	Sub-Total	***-***	***1***	***-***	***-***	***-***	***1***
Total		**15**	**11**	**13**	**7**	**2**	**48**

Table 3: Date of Arrest vs Duration of Detention

Duration of Detention / Date of Arrest	5-10 days	11-20 days	21-31 days	Total
2011			1	**1**
2013		1		**1**
2014		1		**1**
2015	2	3	2	**7**
2016	3	8	7	**18**
2017	3	7	10	**20**
Total	**8**	**20**	**20**	**48**

The criminal lawsuits against the 48 defendants are divided between 43.5% of public actions brought by the Public Prosecutor Offices in Beirut and Mount Lebanon (21 defendants) and 56.5% of civil actions brought by plaintiffs as civil parties (27 defendants). Half of the detained defendants were charged with one offence (24 defendants) while others were charged with multiple offences: 29% were charged with two offences (14 defendants), 19% were charged with three offences (nine defendants) and 2% were charged with four offences (one defendant).

These offences varied in nature, but the majority of defendants were charged with offences against goods, followed by immigration and drug offences:

- 60.5% were charged with offences against goods (29 defendants). These include: theft, breach of trust, fraud, embezzlement, non-sufficient funds and destruction of property. Some of these offences were related to conflicts of a civil nature, such as conflicts arising from the execution of service provision contracts. In these type of conflicts, plaintiffs often resort to criminal lawsuits instead of civil lawsuits, as they are deemed more efficient.
- 21% were charged with immigration offences (10 defendants). These include illegal entry, illegal stay and failure to declare a change of residency or employer.
- 19% were charged with drug offences (nine defendants). These include possession and use of drugs.
- 14.5% were charged with offences against public trust (seven defendants). These include: forgery, the use of forged documents and use of fake identity.

- 12.5% were charged with offences against persons (six defendants), most of them were also charged with arms offences (five defendants). These include: assault, threats, illegal possession or use or carrying of arms, threat with the use of arms.
- 8% were charged with offences against public morality (four defendants). These include: offences to public decency or public morality, illegal prostitution, facilitation of illegal prostitution and inappropriate contact with a minor.
- 2% were charged with a petty offence of violating administrative regulations related to the sponsorship of Syrian nationals (one defendant)

Table 4: Defendants by Nature of Offences and Type of Plaintiff

Plaintiff / Nature of Offences in Charges	Public Prosecution	Civil Party	Total
Offences against goods	2	17	**19**
Drugs offences	8	-	**8**
Offences against persons & arms offences	2	3	**5**
Offences against public morality & immigration offences	3	1	**4**
Offences against goods & against public trust	-	3	**3**
Offences against public trust & immigration offences	3	-	**3**
Offences against goods & immigration offences	-	2	**2**
Offences against persons	-	1	**1**
Offences against public trust	1	-	**1**
Drugs & immigration offences	1	-	**1**
Petty offences	1	-	**1**
Total	**21**	**27**	**48**

Overview of The Pre-Trial Detention Process

I. General Principles of Pre-trial Detention

The Lebanese Constitution guarantees personal liberty and freedom from arrest, imprisonment, or custody except in accordance with provisions of the Law (Art 8). The rights guaranteed by the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights are also granted constitutional value.(10) These include the right to liberty and security, freedom from arbitrary arrest and detention (Art 3 and 9 UDHR, Art 9 ICCPR), the right to a fair trial (Art 10 UDHR), and most importantly the presumption of innocence (Art 11 UDHR).

Art 9 of the ICCPR guarantees in its third paragraph the basic principles related to pre-trial detention, which are also further detailed by international standards related to detention:(11)

- **The right of detainees to a prompt appearance before a judge:** *"Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release."*

  This right is intended to bring the detention of a person in a criminal investigation or prosecution under judicial control and serves as a safeguard for the prohibition of torture and ill-treatment, as it requires the physical presence of detainees at the hearing. The hearing allows the judge to assess the legality and necessity of the detention. While the exact meaning of "promptly" may vary on a case by case basis, international standards consider that the delay must ordinarily be within 48 hours and should not exceed a "few days", unless there are exceptional circumstances to justify a longer delay.(12)

- **Pre-trial detention is not the rule, but an exceptional measure:** *"It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgement"*

  This principle establishes that it should not be a general practice to subject

> defendants to pre-trial detention, as it should be based on an individualised determination that it is reasonable and necessary. Such a determination should be reviewed periodically to ensure that pre-trial detention continues to be reasonable and necessary. Pre-trial detention should not be ordered for a period based on the potential sentence for the crime charged, rather than on a determination of necessity. Judicial authorities should also examine whether alternatives to detention would render pre-trial detention unnecessary.[13] Anyone held in pre-trial detention is entitled to release or trial within a reasonable time.

These principles constitute the cornerstone of the international and constitutional regime for pre-trial detention. They are also reflected in national laws related to criminal justice. The Lebanese Code of Criminal Procedures (CCP) adopted by Law No. 328 of August 2, 2001 is a comprehensive law that sets the legal framework for criminal justice procedures. In accordance with the constitution and international standards, pre-trial detention is the exception under the CCP and freedom while awaiting trial is the principle.

This is clearly articulated in Art 107 of the CCP, the cornerstone of the pre-trial detention regime in Lebanon. The law imposes limits on the issuing of arrest warrants to conditions related to the severity of the offences, the defendants' criminal history, and to the necessity of pre-trial detention. An arrest warrant may only be issued if the "provisional detention is the only way" to achieve a specific purpose set out in the law.

Furthermore, the arbitrary deprivation of liberty by a public agent is established as an offence in Art 367 of the Criminal Code, punishable by temporary hard labour, in addition to disciplinary measures.

II. Procedural Process for Criminal Lawsuits

The study sample included different types of rulings related to the start and end of the pre-trial detention period. An overview of the procedural process is therefore necessary prior to assessing these rulings.

Pre-trial detention in a criminal lawsuit often starts with **custody** ordered by Prosecutors during the preliminary investigation phase. Following the closure of preliminary investigation, the Prosecutor may bring charges against the suspect, who then becomes a defendant. In cases of misdemeanours, referral to trial may follow two possible courses (Art 49)[14], both of which were represented in the study sample:

1) The first course is for the Prosecutor to refer the defendant to the **Investigating**

Judge (IJ) – also referred to as the Examining Magistrate – for further investigations. This course was followed by Prosecutors for 52% of the defendants included in the sample (25 defendants, including those who were not held in custody during preliminary investigation). The Prosecutor brings charges before the IJ if they find that the offence is a felony or a misdemeanour necessitating further investigation (Art 36 & 49 & 62). The IJ must question the defendant immediately and rule on their pre-trial detention (Art 107). At this stage, the authority to rule on pre-trial detention is transferred from the Prosecutor to the IJ and the IJ rulings can be appealed before the Indictment Chamber. After the closure of judicial investigations, the IJ issues an indictment and refers the defendant to trial before the trial judge.

2) The second course is for the Prosecutor to refer the defendant directly to trial before the **Single Judge (SJ) –** also referred to as the trial judge - who hears all cases concerning misdemeanours and petty offences (Art 2-a & 150). This course was followed by Prosecutors for 48% of the defendants in the sample (23 defendants including those who were not held in custody during the preliminary investigation). The Prosecutor brings charges directly before the SJ if the investigation of a misdemeanour proves to be sufficient and can issue an arrest warrant against the defendant (Art 49 & Art 152). Following referral to trial, the detained defendant must be tried on the same day or on the following day (Art 153). At this stage, the authority to rule on pre-trial detention is transferred from the Prosecutor to the SJ and the SJ rulings can be appealed before the Court of Appeal (Art 154).

Defendants can be released at all stages of the criminal lawsuit process by the judicial authority in charge of ruling on pre-trial detention: they can be released from custody or have their detention substituted with judicial supervision if no arrest warrant is issued against them after the custody period. They can also be released on bail after an arrest warrant is issued against them or they can be kept in pre-trial detention until the end of their trial.

Table 5: Type of Rulings on Pre-Trial Detention

Ruling on End of PTD / Ruling on Start of PTD	Release from Custody	Substitution of Detention	Release on Bail	Detained at Judgment	Total
Prosecutor arrest warrant	-	-	9	12	**21**
Investigating Judge arrest warrant	-		8		**8**
Execution of Prosecutor search and investigation notice	1		1		**2**
Execution of Investigating Judge *in absentia* arrest warrant			9	4	**13**
No decision of arrest after custody	1	3			**4**
Total	**2**	**3**	**27**	**16**	**48**

Compliance with Legal Deadlines Related to Pre-trial Detention

The CCP sets out legal deadlines for the processing of pre-trial detention cases. Compliance with these deadlines is essential not only to reduce the period of pre-trial detention, but also to guarantee protection from ill-treatment and torture and fair criminal procedures.

A closer look at the cases included in the sample reveals that the judicial authorities failed to comply with the time limits provided by the law. The most important deadlines prescribed in the CCP are the following:

1) The 48-hour period for custody

This is the period specified in Art 32, 42 & 47 CCP during which the suspect is held based on the Prosecutors' instructions, often provided verbally to law enforcement agents. The prosecutor may detain the suspects for a period of 48 hours that can be renewed. However, the sample showed that prosecutors don't tend to extend the custody period automatically.

The custody period starts at the moment of arrest and ends when Prosecutors bring charges against the suspects. In cases where the Prosecutor refers the defendant directly to trial before the SJ, the custody period ends when the Prosecutor issues an arrest warrant. In the sample, this period lasted an average of 5.8 days and ranged from two to 18 days.

In cases where the Prosecutor referred the defendants to the IJ for further investigations, the custody period ends when the IJ issues a ruling on the pre-trial detention. In the sample, this period lasted an average of 6.5 days and ranged from one to 19 days.

Therefore, the average custody period for both procedural paths was six days, with 47% of defendants in the sample held for more than the legally prescribed period of four days (16 out of 33 defendants held in custody).

2) The prompt appearance before the Investigating Judge:

Art 106 and 107 CCP guarantees the prompt appearance of detained defendants – i.e. within 24 hours - before a judge in order to question them and assess the legality and necessity of their pre-trial detention. The assessment of the promptness looks at the duration between the Prosecutors' referral to the IJ and the defendants' first appearance before IJ, bearing in mind that international standards recommend that this delay does not exceed 48 hours.

In the sample, the average delay for appearance before an IJ was five days, ranging between one day to 14 days, with 66% of defendants delayed for more than 48 hours (eight out 12 defendants). These delays are due to the fact that the IJs delayed scheduling the first hearing. It is worth noting that the defendants who recorded the longest delays had not been transported to their initial hearing (three defendants), increasing the delays by an average of three days.

3) Immediate Trial by the Single Judge

Art 153 of the CCP guarantees an immediate trial for defendants charged with an *in flagrante* misdemeanour that is punishable by imprisonment. The law specifically says that defendants should be tried on the same day or the following day from the Prosecutors' arrest warrant and referral to trial.

In the sample, the average duration between the Prosecutors' referral and the first scheduled court hearing was over nine days, ranging from three to twenty days. As such, none of the detained defendants were tried within the prescribed time limits. These delays are due to the fact that trial judges delayed scheduling the first court hearing, thereby denying defendants the right to an immediate trial.

Furthermore, defendants who were arrested on the basis of *in absentia* arrest warrants had their first court hearing scheduled after an average of 13 days from the execution of the warrant, in contradiction with their right to a prompt appearance before a judge set out in Art 83 & 109 of the CCP. One detainee's court appearance was delayed by seven days due to the failure of the detention authorities to transport him to the first scheduled hearing. It should be noted that the notification of trial judges of the execution of the warrant for these defendants took an average of 4.4 days.

Therefore, it is clear that the delays in ensuring detainees' appearance before a judge, whether for the IJ to rule on pre-trial detention or for the SJ to start their

trial, were primarily due to the failure by judges in scheduling prompt hearings, in addition to the failure by detention authorities in transporting detainees to their hearings. This indicates that the limited institutional capacity and inefficient management of available judicial resources, particularly in the departments of Investigating Judges and of Trial Judges, have a direct impact on the failure to comply with the legally prescribed deadlines related to pre-trial detention.

Table 6: Average duration of pre-trial detention phases (in days)

	Detained Defendants referred to IJ		Detained Defendants referred to SJ	
Phases	**Sub-Phase**	**Days**	**Sub-Phase**	**Days**
Custody	Arrest to Prosecutor referral	6.5	Arrest to Prosecutor arrest warrant	5.8
	Prosecutor referral to first scheduled IJ hearing	4		
	Prosecutor referral to IJ ruling	5		
Investigation	IJ arrest warrant to IJ release	9.6		
	IJ arrest warrant to IJ indictment	7.5		
Trial	IJ indictment to SJ release	9	Prosecutor arrest warrant to first scheduled court hearing	9.2
			Prosecutor arrest warrant to first court appearance	9.8
			Execution of *in absentia* arrest warrant to first scheduled court hearing	12.75
			Execution of *in absentia* arrest warrant to first court appearance	13.6
			Prosecutor arrest warrant to SJ Release	13.5
	IJ indictment to Judgment	-	Prosecutor arrest warrant to Judgment	15

Rulings on Start of the Pre-trial Detention Period

Pre-trial detention often starts with custody ordered by Prosecutors during the preliminary investigation phase. If the Prosecutors bring charges against the defendants following the preliminary investigation, the defendant's detention may follow two different paths: The Prosecutor may refer the detained defendant to an Investigating Judge, who has to rule on their pre-trial detention, or the Prosecutor may issue an arrest warrant against the defendant and refer them directly to the trial judge who has jurisdiction over their release. In addition, some defendants may be arrested on the basis of judicial decisions taken in their absence.

All these different pre-trial detention rulings were represented in the sample and will be assessed separately as their legal requirements vary. After looking at the legal requirements for the different rulings on the start of the pre-trial detention period and then comparing them with the sample cases, a gap between legislation and practice becomes obvious.

Before assessing these rulings, it is important to note that judicial files do not contain sufficient information related to the defendants' socio-economic and medical conditions and whether they could be a flight risk. Specifically, for example, there was little information on defendant's mental health conditions, that could be exacerbated by the detention conditions, or whether the defendants had vulnerable dependents who rely on them as providers. We also found little information about the defendants' livelihoods and how it would be affected by the pre-trial detention.

Table 7: Rulings on Start of the Pre-trial Detention Period

Type of Arrest Decision	Beirut	Baabda	Total
Prosecutor arrest warrant	11	10	**21**
Investigating Judge arrest warrant	4	4	**8**
Investigating Judge substitution of detention	-	3	**3**
Investigation Judge release from custody	-	1	**1**
Execution of Prosecutor search and investigation notice	-	2	**2**
Execution of Investigating Judge arrest warrant issued *in absentia*	8	5	**13**
Total	**23**	**25**	**48**

I. Custody for the purpose of investigations

1. Legal Requirements for custody

Defendants may be held in custody during preliminary investigation prior to being charged and issued with an arrest warrant. It is beyond the scope of this study to assess the legal compliance of decisions to hold suspects in custody. Yet it is necessary to understand the legal requirements for custody decisions in order to assess the rulings to keep defendants in detention after the end of the custody period.

During the preliminary investigation by the Judicial Police (JP), the **Public Prosecutor Office** at the Court of Appeal (Prosecutor or Attorney General) may order the detention of an individual suspected of having committed a misdemeanour for a maximum duration of 48 hours renewable once (Art 32, 42 & 47). Throughout the preliminary investigation phase, the Prosecutor may release the suspect if the investigation does not require that they be held in custody. It is important to note that, in Lebanon, unlike other countries, Prosecutors are judges who receive similar training to bench judges.

The custody requirements vary depending on whether the offence is considered a felony or a misdemeanour at this stage, and whether or not it is discovered *in flagrante.*

When an offence is discovered *in flagrante*, it grants authorities extended prerogatives for investigation, including broader authority to apprehend the suspects and hold them in custody. The main criteria for such an offence is related to the period of time between the commission of the crime and its discovery. The law considers a 24 hour period between the crime and discovery to be an *in flagrante offence.* According to Article 29, an offence discovered *in flagrante* is:

> "(a) An offence witnessed as it occurs;
>
> (b) An offence where the perpetrator is apprehended during or immediately after its commission;
>
> (c) An offence following which the suspect is chased by hue and cry;
>
> (d) An offence detected immediately after being committed, within a time where traces of its commission are clearly discernible;
>
> (e) An offence where a person is caught in possession of objects, weapons or documents indicating that he is the perpetrator, within twenty-four hours of the occurrence of the offence."

As such, the CCP allows holding a person in custody for the purpose of the preliminary investigation in a misdemeanour under the following conditions:

- **A misdemeanour discovered *in flagrante*:** Article 46 allows the JP to apprehend the suspect only if the misdemeanour discovered *in flagrante* is punishable by imprisonment of at least one year. While the law does not specify the maximum custody period, nor does it require a reasoned decision in writing justifying the arrest, it requires the Public Prosecutor who is taking the arrest decision "*to bring him forthwith before the Single Judge so that he may stand trial (…).*" It follows that a person suspected of a misdemeanour punishable by

imprisonment for less than one year cannot be held in pre-trial detention, even if the offence is discovered *in flagrante*.

- **An offence not discovered *in flagrante*:** Article 47 regulates custody for offences not discovered in flagrante whether they are considered felonies or misdemeanours: *"Judicial Police officers may not detain a suspect in police custody without a decision by the Public Prosecution Office and the period of detention shall not exceed forty-eight hours. This period may be extended by a similar period only with the consent of the Public Prosecution Office."* While the JP's authority to apprehend suspects is limited for offences not discovered i*n flagrante*, the Prosecutor's authority to maintain the suspect in custody is wider than in cases where felonies are discovered *in flagrante*. Custody here is not limited to more severe crimes (such as those punished by an imprisonment term), nor are Prosecutors required to issue a reasoned decision in writing justifying the renewal of the custody period as in the case of felony discovered *in flagrante*.

The Law does not clearly state that the suspects or their lawyers must be notified of Prosecutors' custody orders or their renewal. In practice, custody orders are usually issued verbally by the Prosecutors, recorded in the police report by the Judicial Police, and verbally notified to the suspects.

2. Sample Compliance

Around 70% of the defendants in the sample were initially held in custody for the purpose of investigation. The duration of the custody period, starting from the arrest to the Prosecutor bringing charges against them, lasted an average of six days, thereby exceeding the maximum legal custody period of 48 hours renewable once.

The sample showed that the prosecutors don't automatically renew the detention period after 48 hours but they rather wait until being consulted by the judicial police in charge of the investigation to issue an arrest or release order. This unlawful practice opens the door widely to the arbitrariness of the judicial police in prolonging the custody period and weakens judicial supervision on this detention.

In addition, some of the defendants in the sample were questioned by several bodies (police stations, judicial police, Anti-Drugs Bureau, Moral Protection Bureau at ISF; the Investigation and Procedure Unit and the Information Branch at the General Security; the Military Intelligence and the Military Police). A number of them were therefore referred from one investigation office to another. For example, defendants suspected of drug use were referred from one of the ISF police stations to the Anti-

Drugs Bureau. This practice lead to a longer period of custody, and the prosecutors did not renew the arrest order during the referral process. These practices allow the Judicial Police to effectively control the custody period, without the judicial authorities countering them.

II. Referral to Investigating Judge

Following the preliminary investigation into a misdemeanour, the Prosecutor can bring charges against the suspects and refer them to the Investigating Judge for further investigations. The IJ must immediately question the defendant and rule on their pre-trial detention. In the sample, 25% of defendants were referred by the Prosecutor to the Investigating Judge (12 defendants) after an average of 6.5 days of being held in custody. This section focuses on assessing the legal compliance of the IJ rulings on pre-trial detention, beginning by outlining the legal requirements and then comparing it to the findings of the sample.

1. Legal Requirements for Investigating Judge's Pre-trial Detention Rulings

The defendants must be brought before the IJ promptly in order to be questioned and receive a ruling on their pre-trial detention. While the law does not clarify the time limit for this judicial appearance, we can conclude that it is 24 hours, based on articles 106 and 107 that state that defendants who are summoned by the IJ must be questioned promptly or within 24 hours of the execution of an enforceable summons. If the IJ is unable to question them within 24 hours, the Prosecutor should order their immediate release. If the police fail to notify the Prosecutor, they can be prosecuted for arbitrary deprivation of liberty.

After questioning the detained defendant and consulting with the Prosecutor, the IJ may take one of three decisions (Art 107):

1) The IJ may issue an **arrest warrant** *(Muzakarat Tawquif Wijahiyya)* (Art 107). In the sample, 66.6% of defendants were arrested on the basis of IJ arrest warrants issued in person (eight out of 12 defendants).

2) The IJ may decide to **substitute the detention** by placing the defendant under judicial supervision as an alternative to detention *(al-isti'ada 'an al-tawqif)* and impose conditions (obligations) on the defendant that they may consider necessary, most notably to deposit surety (*kafala*) (Art 111). In the sample, three defendants were released from custody as an alternative to detention under Art 111.

3) The IJ may **release** the defendant from custody *(Tark)*. In the sample, one defendant was released from custody by the IJ.

The law sets the legal requirements for arrest warrants and substitution of detention decisions. If none of these requirements are met, the IJ must release the defendant from custody. Article 107 is considered the cornerstone of the pre-trial detention regime in Lebanon. It clearly establishes that pre-trial detention is an exceptional measure and regulates the conditions under which the IJ may issue an arrest warrant after questioning the defendant. It also follows that the Prosecutor must abide by these conditions when they decide to refer a detained defendant to the IJ.

Article 107

After questioning the defendant and consulting the Public Prosecution Office, the Investigating Judge may issue an arrest order if the offence with which the defendant is charged is punishable by more than one year's imprisonment or if he has a previous criminal conviction or has been sentenced to more than three months' imprisonment without suspension.

The arrest order shall be reasoned and the Investigating Judge shall state the factual and material grounds supporting his decision to issue it, whether the reason is that provisional detention is the only way to preserve evidence or incriminating material traces, to prevent the coercion of witnesses or victims, or to prevent the defendant from communicating with co-perpetrators, accomplices or instigators, or whether the purpose of the arrest is to protect the defendant himself, to terminate the effect of the offence or to prevent its recurrence, to prevent the defendant from absconding or to preclude any breach of public order arising from the offence. (…)

As such, the cumulative conditions for an IJ to issue an arrest warrant are the following:

1) **Conditions related to the severity of the offence or to the defendant's criminal history:** The IJ may issue an arrest warrant if one of the following conditions are met:

   i. The offence is punishable by imprisonment of not less than one year.

   ii. The defendant has a previous felony conviction, or was previously sentenced to imprisonment of not less than three months without suspension. This condition assumes the threat posed by the defendant, based on the severity of his criminal record.

2) **Condition related to the purpose of the detention:** This requirement was introduced by the 2001 reform of the criminal procedures and ensures that the

principle of necessity is respected in pre-trial detention decisions. The IJ may issue an arrest warrant only if the pre-trial detention meets one of the following purposes:

iii. prevent interference with the course of justice: preserve evidence or incriminating material traces, prevent the coercion of witnesses or victims, prevent the defendant from communicating with co-perpetrators, accomplices or instigators,

iv. terminate the effect of the offence or prevent its recurrence;

v. protect the defendant himself,

vi. prevent the defendant from absconding,

vii. preclude any breach of public order arising from the offence.

Contrary to the conditions imposed on the Prosecutor's arrest warrant, which will be detailed below, these conditions are subject to the IJs own appreciation. They will therefore vary depending on the specificities of each case and the judge's individual understanding and appreciation of the case. As such, the IJ is required to issue a **reasoned decision in writing** justifying the reasons for their arrest. This reasoning requirement is the most important guarantee to limit the use of pre-trial detention.

As a second option, the IJ may decide to **substitute the detention** by placing the defendant under judicial supervision as an alternative to detention and impose specific obligations on the defendant, notably those listed under Art 111. The substitution to detention was also introduced with the 2001 reform in order to meet international standards related to the availability of alternatives to detention.

Article 111

After consulting the Public Prosecution Office, the Investigating Judge may, irrespective of the nature of the offence, decide to place the defendant under judicial supervision as an alternative to detention, with one or more of the following conditions that he may consider necessary, notably:

(a) To reside in a specified town, borough or village, not to leave it and to elect a domicile therein;

(b) Not to frequent certain locations or places;

(c) To deposit his passport with the registry of the Investigation Department and to notify the Sûreté Générale thereof;

(d) To undertake not to move outside the area of supervision and to report regularly to the supervisory office;

(e) Not to engage in certain professional activities which the Investigating Judge has prohibited during the period of supervision;

(f) To undergo regular medical examinations and laboratory analyses during a period specified by the Investigating Judge;

(g) To deposit surety, the amount of which shall be determined by the Investigating Judge.

The Investigating Judge may amend the supervisory obligations he imposes as he sees fit.

If the defendant breaches one of the supervisory obligations imposed on him, the Investigating Judge may decide, after consulting the Public Prosecution Office, to issue an arrest warrant against him and to forfeit the surety to the Treasury.

The substitution obligations include the obligation to deposit surety, a travel ban and an obligation to undergo regular medical examinations and laboratory analysis, which are often used by judicial authorities. Other obligations, particularly those related to the obligation of residence, bans from certain areas and the obligation to report regularly to the "supervisory office" are rarely used due to lack of a clear implementation mechanism.

It is understood that the IJ may only have recourse to a substitution of detention if the requirements for an arrest warrant are fulfilled. In this instance, the IJ has the discretionary authority to decide between an arrest warrant or substitution of detention. There are therefore no conditions imposed on judges in order to have recourse to alternatives to detention as they may do so based on their own appreciation, provided the legal requirements for an arrest warrant are met. If none of these requirements are met, the IJ must release the defendant from custody.

The arrest warrant issued by the IJ can be challenged before the Indictment Chamber. The defendant also has the right to request that the judicial supervision is lifted and may only appeal a decision of rejection in this regard before the Indictment Chamber as per Art 112:

Article 112

A defendant placed under judicial supervision may request that it be lifted. The Investigating Judge shall rule on his request, after consulting the Public Prosecution Office, within a period not exceeding three days from the date on which it was recorded by the registry of the Investigation Department. His decision may be appealed before the Indictment Chamber, in accordance with the rules applicable to appeals against decisions by the Investigating Judge.

On completing the investigation, the IJ issues an **indictment decision**, based on which the Prosecutor shall refer the case to the trial judge (who is in our case the Single Judge) within three days (Art 123 & 158). At this point, the authority to rule on pre-trial detention is transferred from the IJ to the trial judge.

2. Sample Compliance: What justifies arrest?

In the sample, IJ rulings on pre-trial detention occurred after an average of 11.5 days of custody and of five days after the Prosecutor's referral. This indicates that detainees are not promptly brought to the IJ.

The IJ issued eight arrest warrants and three decisions substituting the detention. One defendant was released from custody by the IJ. The basis of these rulings are thus explored in order to determine if they were in compliance with the legal requirements. After examining these rulings, it becomes clear that they failed to justify the purpose of the pre-trial detention.

Arrest Warrants

Template IJ Arrest Warrant

The IJ relies on a template form to issue their arrest warrants. The same template is used for warrants issued in person or in the defendant's absence (See Annex 1). The template entitled "Arrest Warrant" (Template No. J-6) includes the following information:

- Defendant's bio data, profession, place of residence and physical description;
- The type of crime and relevant law;
- Instructions on the procedures related to the notification and execution of the arrest warrant, which includes the obligation to bring the defendant before the Prosecutor within 24 hours.

Although Art 107 clearly states that the IJ must issue a reasoned decision, the lack of such a section in the template indicates that the authorities do not consider the reasoning to be an integral part of the decision.

Despite, the lack of reasoning in the template arrest warrant, the IJ grounds for issuing an arrest warrant can be found in the IJ's Initial Record *(mahdar ta'sisi)* where all investigation actions are recorded. Based on the sample, it appears that most decisions are limited to a reasoning that can be summarised as follows:

"In light of the essence of the crime and the content of the investigation, as per the [Prosecutor's] request and on the basis of the charges brought by the Prosecution, we decide to issue an arrest warrant in person against the defendant…"

It therefore appears that the IJ reasoning for issuing arrest warrants includes broad terms such as the "essence of the crime" and "the content of the investigation" without clearly specifying whether the legal requirements of Art 107 are met. While the requirement

related to the severity of the sanction is implicit in its reference to the charges brought by the Prosecutors, we found no clear reference to the defendant's criminal history. Most importantly, none of the decisions provided reasoning related to the purpose of the pre-trial detention nor its necessity for the investigation or public order.

Annex 1: Template of Investigating Judge Arrest Warrant

الجمهورية اللبنانية
وزارة العدل

(ج - ٦)

مذكرة توقيـــف

رقم الأوراق ..... صادرة عن .....

إسم الشخص المطلوب توقيفه وشهرته.....

مهنته .....

تابعيته .....

محل ولادته .....

محل إقامته.....

أوصافه المميزة.....

نوع الجرم وماهيته.....

المادة القانونية.....

كل مأمور قوة مسلحة مكلف بتوقيف الشخص المدرجة هويته أعلاه وسوقه بلا إبطاء

إلى دائرة .....

ويمكن عند الإقتضاء الاستعانة بالقوة المسلحة الموجودة في الموقع الأقرب لمحل إنفاذ هذه المذكرة التي هي نافذة في جميع الأراضـــي اللبنانية، وعلى قائد هذا الموقع اســـتجابة الطلب، وذلك عملاً بأحكام المادتين ١٠٧ و١٠٩ من قانون أصول المحاكمات الجزائية، وعلى من ينفذ هذه المذكرة، إحضـــار الموقوف بمهلة أقصاها ٢٤ ساعة إلى النائب العام المختص تحت طائلة المسؤولية.

التوقيع والخاتم

ملاحظة :
١- يبلغ المدعى عليه مذكرة التوقيف ويترك له صورة عنها (المادة ١٠٧ أصول جزائية)
٢- إذا تعذر القبض على المطلوب فتبلغ مذكرة التوقيف إلى محل سكنه الأخير وينظم بذلك محضر بحضور المختار أو شاهدين من الجيران (المادة ١٠٧).....

Compliance with conditions related to severity of the offences or to the defendant's criminal history

All of the IJ arrest warrants issued in person against detained defendants were taken in cases where the defendants were charged with a misdemeanour punishable by up to three years of imprisonment, therefore meeting the requirement related to the severity of the offence.

In determining the severity of the offence, the IJ relies on the offences identified in the Prosecutor's charging, which may sometimes differ from the offences that will later be identified by the IJ in the indictment decision. Prosecutors may sometimes charge defendants with more severe offences, which allows them and the IJ to issue an arrest warrant until further investigations are conducted. One case illustrates the impact of prosecutorial overcharging on the length of pre-trial detention in a very flagrant way:

> The defendant, a 50-year-old Lebanese man, was referred by the Prosecutor to the IJ on charges of fraud (Art 655 of the Criminal Code sanctions fraud with up to three years of imprisonment) and violation of administrative regulations (Art 770 of the Criminal Code sanctions this violation with up to three months on imprisonment). The defendant was accused of receiving payments in return for providing a pledge of responsibility (similar to a sponsorship) for Syrian nationals in need of obtaining resident status following the introduction of new entry and residency regulations in 2015. The IJ issued an arrest warrant against the defendant, which was justified by the sanctions attached to the fraud offence. The IJ released him two weeks later in return for a financial surety amounting to USD 200, bringing the total duration of his pre-trial detention to 20 days. However, he later charged the defendant in the indictment decision for violation of administrative regulations only, which cannot constitute a ground for the arrest, after he found there was no sufficient evidence to charge him with fraud. The defendant was later sentenced by the trial judge to time served and a fine.[15]

None of the IJ arrest warrants included in the sample referred to the defendants' criminal history. It is also important to note that the IJ may not always have access to the history of the defendants at the time when they must rule on pre-trial detention. According to judicial clerks at IJs offices, they are required to request the defendant's criminal record immediately upon referral of the detainee to their offices. In practice, criminal history records need a couple of days to reach their offices, unless they are obtained directly by the defendants' lawyers or family members. During their questioning, defendants are asked about their criminal history. Their response is recorded as a yes/no answer without any details about their conviction. Given that the IJ must rule on the pre-trial detention promptly, it is often the case that the defendants' criminal records are delivered to judges after they have questioned them and made a ruling on their pre-trial detention. This means that the legal requirement related to the defendant's criminal history is not always taken into consideration in the IJ rulings on pre-trial detention.

Lack of reasoning on the purpose of pre-trial detention

As aforementioned, none of the sample arrest warrants clarified the purpose of the decision to subject the defendant to pre-trial detention, thereby violating the obligation to provide reasoning as to its necessity.

The lack of reasoning in IJ arrest warrants is often justified by the Lebanese judiciary's belief that a reasoned decision of arrest would indicate a judge's prior opinion on the extent to which the defendant is proven guilty, and must therefore be avoided.[16] However, the requirements of Art 107 are mostly related to procedural issues that do not necessarily entail an opinion of the defendant's guilt, such as the necessity to prevent interference in the course of justice, to prevent absconding or the continuation of the offence, or to protect the defendant or public order. Instead, they are limited to ensuring that arrest warrants comply with the principles of legality and necessity. Specifically, the reasoning of the purpose of pre-trial detention is necessary to limit abuse as it is a form of self-regulation for judges and ensures that pre-trial detention is used as an exceptional measure. By failing to clearly identify the purpose of pre-trial detention, judicial authorities are undoubtedly violating the law. This violation amounts to an infringement of a constitutional freedom and opens the door for arbitrariness in the pre-trial detention rulings.

Moreover, 75% of defendants against whom an arrest warrant was issued were later released by the IJ after a short period of time, averaging 9.6 days (six out of eight defendants) without any new legal or factual elements occurring between the decision to issue the arrest warrant and the decision to release the defendant, as will be further detailed below. Indeed, investigations conducted by the IJ in the sample were often limited to questioning the defendants and plaintiffs (if available). As such, the key element that changed between both decisions is the duration of the pre-trial detention. This indicates that the IJ decision to issue the arrest warrant, was mainly motivated by the wish to maintain the defendant in pre-trial detention for a longer period of time.

As mentioned above, legal standards prohibit ordering pre-trial detention based on the potential sentence of the crime without a determination of necessity. The examination of the IJ rulings on pre-trial detention in the sample, however, indicate a tendency to have recourse to pre-trial detention as a tool for discipline or punishment prior to a conviction, rather than as an exceptional tool to be used only if necessary for a specific purpose determined by law.

Substitution of Detention Decisions

Three defendants included in the sample benefited from the IJ decision to substitute their detention on the basis of Art 111. All these decisions went contrary to the Prosecutor's request to issue an arrest warrant and decided to substitute the detention in return for a financial surety.[17] These decisions were issued by three different IJs in Mount Lebanon. No similar decisions were found in the sample of cases selected from judges in Beirut.

It is worth noting that none of these decisions referred to the term "judicial supervision." Instead, they used the term "to substitute the detention" which refers to having recourse to an alternative to detention. This may indicate that judges do not necessarily differentiate between a release on bail based on Art 114 and a release under judicial supervision based on Art 111. The recourse to a financial surety as the only condition among those specified in Art 111 confirms this initial reading. Indeed, the three decisions imposed on the defendant to pay a surety of USD 133.33 and USD 200.

As aforementioned, a decision to substitute the defendant's detention may only be issued if the arrest warrant requirements are met. All three of these defendants were charged with offences punishable by up to three years of imprisonment (theft, drug use, forgery and immigration violations), which meet the requirement related to the severity of the offences.

However, none of the decisions provided a reasoning related to the purpose of the substitution, similarly to our finding on the issuance of IJ arrest warrants. The decisions referred to the duration of the pre-trial detention as the main justification for having recourse to alternatives to detention on the basis of Art 111.

The period of custody for these three defendants ranged from 15 to 24 days at the time when the IJ ruled to substitute the detention with an alternative measure. The custody period of these three defendants, two Lebanese and one Syrian, was the longest custody period. The average custody duration in the sample for defendants against whom an arrest warrant had been issued was 8.5 days.

Two different issues were identified regarding the reasons behind the delay in bringing the three detainees before the IJ, which were:

- In two cases, we noticed long waits between the Prosecutor's instruction to the judicial police to close the preliminary investigation and the Prosecutor's decision to refer the two defendants to the IJ. The delay was 12 days for a 43-year old Lebanese man accused of theft[18] and 18 days for a 25-year old

Syrian man accused of forgery, use of false documents and illegal stay.[19] We could not find any justification for these long delays, indicating that in these two cases, external factors related to the functioning of the judicial police and the Prosecutors' offices had a direct impact on prolonging pre-trial detention.

- The third defendant, a 22-year old Lebanese man accused of drug use, was not brought to several hearings before the IJ, which delayed the IJ ruling on his pre-trial detention.[20]

This later case clearly illustrates how the failure to transport detainees to judicial hearings prolongs pre-trial detention. At least seven defendants in the sample were not brought to their first hearing before the competent judge to consider their case (whether the IJ or SJ) due to a failure to transport them from the detention facility to the courthouse. Indeed, this endemic problem affects the good functioning of the criminal justice system in Lebanon. The overcrowding of the courthouse's detention facility resulted in maintaining detainees held in police stations. This hinders the possibility of their prompt appearance before a judge, unless the holding authority, mainly the Internal Security Forces (ISF), transports them to the courthouse. In 2013, half of the judicial requests to transport detainees from ISF prisons to courthouses were not executed, knowing that this number does not include transporting detainees from all detention facilities but only from prisons.[21] In the first half of 2017, no more than 16% of these requests were executed[22]. According to the Ministry of Justice, the main reasons for this failure is the insufficient number of transport vehicles available to the ISF. The long pre-trial detention period is also caused by the judiciary's failure to notify the holding authority of the judicial hearing, either due to a clerical omission or due to the lack of knowledge about the detainee's location, which prolongs the notification process.

The sample therefore suggests that the IJs decided to have recourse to alternatives to detention only when the duration of pre-trial detention had been prolonged as a tool to ensure the immediate release of defendants. Here again, it appears that pre-trial detention rulings are linked to the duration of the detention, rather than to their necessity.

Release from Custody Decision

The sample included one case where the IJ decided to release one defendant from custody without issuing an arrest warrant or substituting the detention with an alternative measure.[23]

The decision was not reasoned but it appears that two elements may have impacted the decision:

- The first is the duration of the custody period which lasted 13 days and thus had

greatly exceeded the four days maximum custody period. Hence illustrating again that pre-trial detention rulings are linked to the duration of the detention, rather than to their necessity.

- The second is the civil party plaintiffs declared that they dropped the claim prior to the IJ considering the pre-trial detention. The defendant, a stateless man, had been charged with fraud, forgery and use of a forged check to the amount of USD 800. The plaintiff in this case was a Lebanese bank whose checks were forged, and their lawyer stated during the defendant's questioning that the bank decided to drop its claim against the defendant. Yet, it appears that this was not reflected in the Judgment, as the defendant - who failed to appear in court after his release – was sentenced to pay damages to the Bank.
- It should also be noted that during his detention, the defendant faced another prosecution for different charges.

III. Referral to Trial before the Single Judge

Following the preliminary investigation into a misdemeanour, the Prosecutors can bring charges against the suspects and refer them to trial before the trial judge (SJ). They must also rule on whether the defendant should be tried while detained or released pending trial. It is outside the scope of this study to determine the proportion under which Prosecutors are ruling one way or another. If the Prosecutor decides to detain the defendant, they must issue an **arrest warrant** *(Muzakarat Tawqif)*, which is immediately enforced, and refer the defendant for immediate trial before the trial judge (Art 153).

In the sample, 44% of defendants were arrested on the basis of the Prosecutor's arrest warrants (21 defendants) and were referred directly to be tried while detained before the trial judge. These arrest warrants did not meet the legal requirements for pre-trial detention, particularly as prosecutors disregarded the *in flagrante* requirement in many cases.

1. Legal Requirements for Prosecutor's Arrest Warrants

The CCP contains contradictory provisions in Art 46 and Art 153 regarding the conditions under which the Prosecutors are authorised to issue an arrest warrant against the suspect before referring them to trial:

Article 46

If the offence discovered in flagrante is a misdemeanour punishable by imprisonment of at least one year, the Judicial Police officer may apprehend the suspect and

investigate the misdemeanour under the supervision of the Public Prosecutor. The Public Prosecutor may decide to detain a person charged with a misdemeanour and to bring him forthwith before the Single Judge so that he may stand trial in accordance with the rules laid down in this Code.

Under Art 46, the Prosecutor's arrest warrant is subjected to two cumulative conditions:

1) the misdemeanour is discovered *in flagrante,* a requirement that ensures that the principle of necessity is respected in decisions to subject defendants to pre-trial detention;

2) the misdemeanour is punishable by imprisonment of at least one year, a requirement that ensures that the principle of proportionality is respected in decisions to subject defendants to pre-trial detention.

Article 153

If a person is apprehended in the act of committing a misdemeanour that is punishable with imprisonment, he shall be brought before the Public Prosecutor, who shall question him, charge him and refer him to the Single Judge before whom he will be tried either immediately or on the following day, while respecting Article 108 of this Code. Before referring the case to the Single Judge, the Public Prosecutor may issue an arrest warrant, which shall be enforced forthwith."

Under Art 153, the arrest warrant is subject to two cumulative conditions that differ from those prescribed by Art 46 above:

1) the suspect is apprehended in the act of committing a misdemeanour *in flagrante;*

2) the misdemeanour is punishable by imprisonment; however, Art 153 does not specify the limit of the imprisonment sanction contrary to Art 46.

This contradiction regarding the conditions required for the Prosecutors' arrest warrant creates contradictory and inconsistent practices among different Prosecutors. Theoretically, such a contradiction should be interpreted in favour of the defendant and the principle of personal freedom. Prosecutors should therefore limit arrest warrants to cases of *in flagrante* misdemeanours punishable by imprisonment of at least one year. Nonetheless, it follows that Prosecutors may not issue arrest warrants in cases where the misdemeanour was not discovered *in flagrante* and where it is not punishable by imprisonment of at least one year.

Unlike arrest warrants issued by the IJ, Prosecutors are not required to issue a reasoned decision justifying the arrest warrant. Further, the Prosecutor's arrest warrant cannot be challenged.

2. Sample Compliance: Extensive Definition of *In Flagrante* Offences?

Template Prosecutor Arrest Warrant

Prosecutors rely on one template form to question the defendant, bring charges against them, refer them to the single judge and issue the arrest warrant (See Annex 2). The two-page template entitled "Interrogation Report in cases of Misdemeanours *in Flagrante"* (Template No. 40-70) includes the following information:

- **Interrogation:** the template includes questions addressed to the defendants related to the following:
    - bio-data, profession and place of residence. In practice, many of those forms did not include the defendants' profession or place of residence.
    - criminal history: whether they have been convicted before.
    - how they respond to the acts attributed to them. In practice, most of the forms limit the answer to "I repeat my preliminary statement" in reference to the statements provided to the judicial police during the preliminary investigation.

It is worth noting that this interrogation is not usually conducted by the Prosecutor but is administered by one of the clerks, often without meeting the detainee in person.

- **Arrest Warrant:** the form does not require the Prosecutor to justify their reasoning for ordering pre-trial detention. It simply states the following:

"On this basis, we have issued a temporary arrest warrant against the aforementioned defendant and have informed him that he shall be tried before … (name of court) at a hearing which shall take place on … (date of hearing)

He thus stated that he will appear for trial without being served with an enforceable summons [waraqat jalb] and signed this report after it was read to him."

In practice, this section of the form is often left blank and the detained defendant is not notified in advance of the date of their first court appearance before the trial judge. In the sample, the duration between the Prosecutor's arrest warrant and the defendants' first court appearance was on average 10 days. Three detainees did not appear at their initial hearing given that they were not transported from the detention facility to the courthouse as detailed earlier.

In addition, the Prosecutors have added a pre-set section that is stamped on this template addressed to the single judge whereby they declare that they charge the defendant, specify the offences for which they are charged and ask for a conviction.

Compliance with condition related to the severity of the offence

All the offences included in the sample are punishable by imprisonment, but they don't all comply with the legal requirement of Art 46 that the punishment shall be imprisonment of at least one year. Of the 21 arrest warrants issued by the Prosecutor, 76% were issued for offences punishable by imprisonment not exceeding three years (16 defendants), 9.5% for offences punishable by imprisonment not exceeding two years (two defendants), 9.5% for offences punishable by imprisonment not exceeding one year (two defendants), and 5% for offences punishable by imprisonment for less than one year, specifically by a maximum term of six months imprisonment (one defendant).

Certain key factors may have contributed to the issuing of an arrest warrant in this last case:

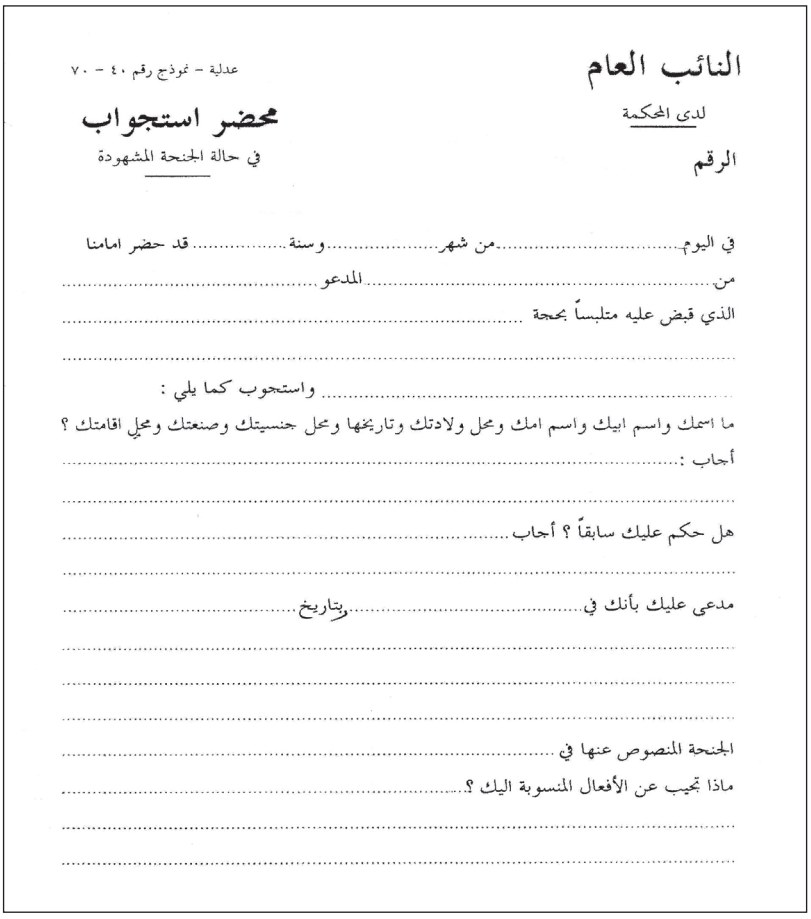
> The defendant is a 60 year old Lebanese man charged with assault (Art 554 Criminal Code), threats with the use of arms (Art 573 Criminal Code) and carrying an illegal non-firearm weapon (Art 73 Arms and Ammunitions Law). In this case, the circumstances of the offence may have had an impact on the decision to issue an arrest warrant: the assault occurred in a public place because of a traffic dispute.[24] The proliferation of such random acts of violence in recent years, often resulting from traffic disputes and sometimes leading to the death of victims, has caused a public outcry that may have influenced the Prosecutor's decision, in an attempt to reflect its toughness in combating it. The defendant was subsequently released by the single judge after he submitted a request for his release.[25]

Compliance with the in flagrante condition

The Prosecutor considered that all the defendants issued with an arrest warrant were suspected of committing an offence discovered *in flagrante.* Given that the *in flagrante* condition allows for exceptional procedures to be followed and extends the judicial authorities' prerogatives in apprehending suspects and investigating the crime, it follows that the definition of an *in flagrante* offence prescribed in Art 29 must be interpreted in a restrictive manner.

Upon review of available information related to the circumstances of the commission of the offence and its discovery, we found that several defendants were arrested for an offence that does not qualify as an *in flagrante* offence given that they were not discovered within 24 hours of their commission nor was the defendant apprehended within 24 hours after its commission.

Annex 2: Template of Prosecutor's Arrest Warrant



النائب العام

لدى المحكمة

الرقم

عدلية – نموذج رقم ٤٠ – ٧٠

محضر استجواب

في حالة الجنحة المشهودة

في اليوم.....من شهر.....وسنة.....قد حضر امامنا

من.....المدعو.....

الذي قبض عليه متلبساً بجحة .....

.....

.....واستجوب كما يلي :

ما اسمك واسم ابيك واسم امك ومحل ولادتك وتاريخها ومحل جنسيتك وصنعتك ومحل اقامتك ؟

أجاب :.....

.....

هل حكم عليك سابقاً ؟ أجاب.....

.....

مدعى عليك بأنك في.....وبتاريخ.....

.....

.....

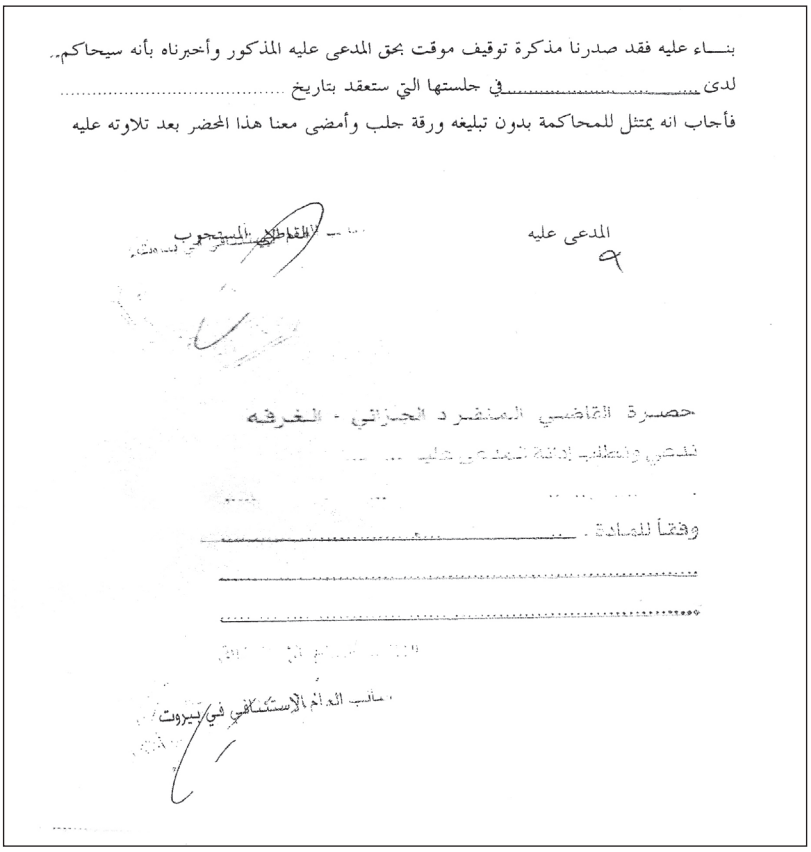
.....

الجنحة المنصوص عنها في.....

ماذا تجيب عن الأفعال المنسوبة اليك ؟.....

.....

.....



بنـــاء عليه فقد صدرنا مذكرة توقيف موقت بحق المدعى عليه المذكور وأخبرناه بأنه سيحاكم.

لدى.....في جلستها التي ستعقد بتاريخ.....

فأجاب انه يمتثل للمحاكمة بدون تبليغه ورقة جلب وأمضى معنا هذا المحضر بعد تلاوته عليه

المدعى عليه

المستجوب

حضرة القاضي المنفرد الجزائي - الغرفة

للنص وبطلب إدانة المدعى عليه

وفقاً للمادة

مساعد النائب الإستئنافي في بيروت

The offences leading to arrest that do not appear to meet the *in flagrante* requirement include:

- drug use offences that were discovered after defendants were subjected to a urine test;[26]
- offences of illegal entry and stay committed by Syrian defendants and discovered more than 24 hours after their entry to Lebanon or after expiry of their residency;[27]
- the offence of facilitating prostitution against a Syrian defendant who was arrested based on anonymous information received by the judicial police.[28]

In light of the above, it appears that the Prosecutors are interpreting the *in flagrante* requirements in a broad manner, especially in immigration and drug offences, which allows them to have recourse to pre-trial detention.

Finally, it should be noted that in one case the Prosecutor issued two contradictory decisions regarding the pre-trial detention of a Syrian woman charged with two offences (prostitution and illegal entry):

While she was questioned on suspicion of theft, the defendant admitted that she engaged in illegal prostitution and that she had entered Lebanon illegally four months prior to her arrest.[29] The Prosecutor issued an arrest warrant on both charges and a decision of release from custody on the prostitution charges on the same day. It would appear that the Prosecutor intended to hold the defendant in pre-trial detention only for the illegal entry charges, bearing in mind that the prostitution charge is less severely sanctioned than the illegal entry charge (a maximum penalty of one year for prostitution and of three years for illegal entry) and that both offences were not discovered *in flagrante.*

In conclusion, we found that arrest warrants issued by the Prosecutors in the sample were not all in compliance with the legal requirements for pre-trial detention. One of them was issued in a case where the offences were punishable by imprisonment of up to one year. Most importantly, several warrants were issued in cases where the offences were not discovered *in flagrante,* indicating that Prosecutors are extending the category of *in flagrante* offences and are having recourse to pre-trial detention contrary to the law.

IV. Arrests in Execution of *in absentia* Decisions

When a defendant is not arrested during the preliminary investigation phase, they may be arrested at a later stage of the criminal procedure based on judicial decisions issued *in absentia* (in their absence).

There are three main types of such decisions:

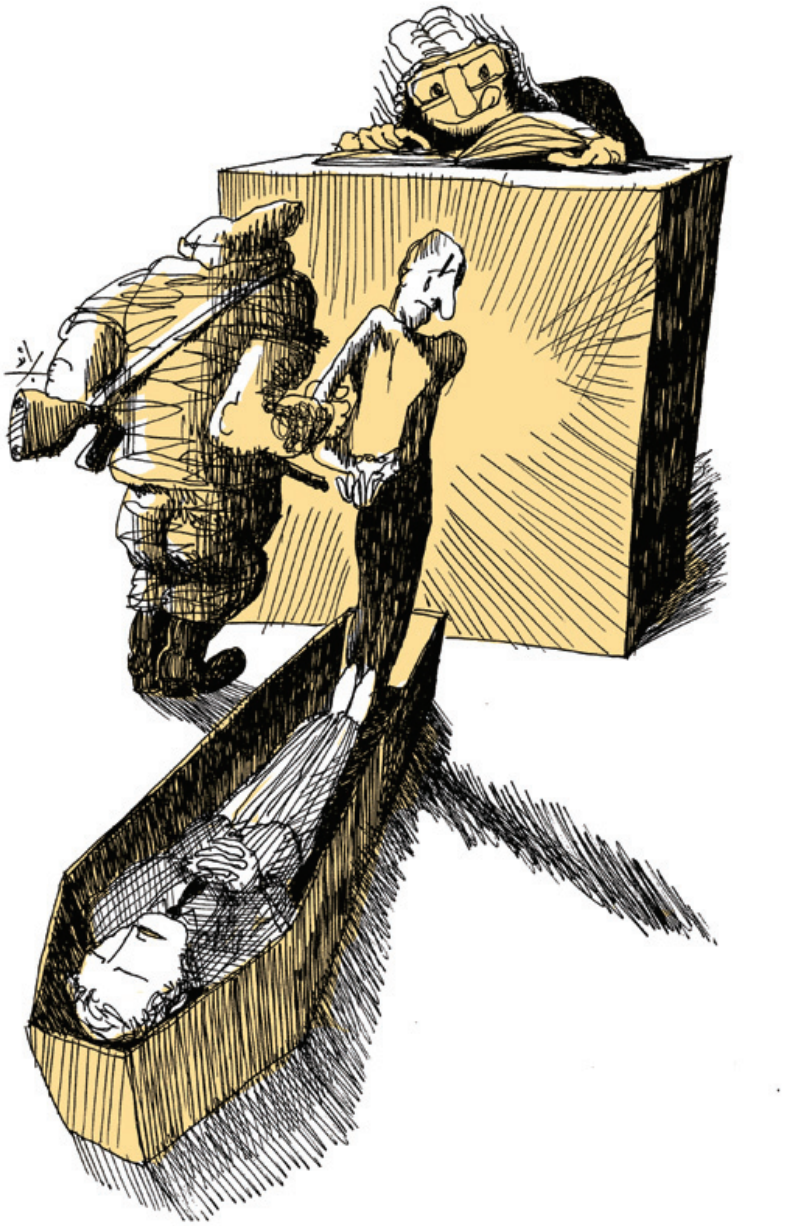
1) **Search and Investigation Notice** *(Balagh bahth wa taharri)*: A suspect or defendant may be arrested in execution of a temporary search and investigation notice issued by the Prosecutor (Art 24). Such notices are issued when the Prosecutor is unable to reach a suspect for the purpose of investigations. They should expire ten days after their date of issue, unless the Prosecutor decides to extend them for thirty days, following which they shall expire *ipso jure.* Upon execution of the notice, the Prosecutor shall be immediately informed in order to take the appropriate action. If charges were brought against them after the notice was issued, the authority to rule on their pre-trial detention will fall to the judicial authority in charge of the lawsuit at the time of arrest. Two defendants included in the sample were arrested based on such notices and were referred to the trial judge to rule on their release.

2) ***In Absentia Arrest Warrant*** *(muzakarat tawquif ghiyabiya)*: A defendant may be arrested in execution of an arrest warrant issued *in absentia* by the IJ if they could not be found when summoned (Art 107). Upon informing the IJ of the execution of the warrant, the IJ must summon the detained defendant and question him immediately (Art 83 & 109). The authority to rule on their release will be the judicial authority examining the lawsuit at the time of arrest. In the sample, 26% of defendants were arrested on the basis of *in absentia* arrest warrants (13 defendants). All of them were arrested after the IJ had issued the indictment decision and the case was transferred to the trial judge. They were therefore referred to the trial judge to rule on their release.

3) ***In Absentia* Judgment**: Defendants convicted *in absentia* for an imprisonment term for a misdemeanour may also be arrested on the basis of the Judgment. If the defendant successfully objects to the Judgment delivered *in absentia*, the SJ annuls the Judgment and the defendant is granted a re-trial (Art 173). The defendant may be held in pre-trial detention during the re-trial if the trial judge does not grant them a release. None of the defendants included in the sample were arrested on the basis of a Judgment issued *in absentia,* but eight defendants in the sample were sentenced *in absentia* following their release from pre-trial detention.

Rulings on The End of The Pre-trial Detention Period

Reviewing the rulings on the end of the pre-trial detention period allows uncovering the reasoning behind the use of pre-trial detention and the relevant factors affecting release decisions or decisions to keep defendants in detention until the trial is completed.



I. End of The Pre-trial Detention Period: Release or Judgment?

Pre-trial detention may end either when the trial is completed, and a Judgment is issued against the defendant, or when the defendant is released prior to the issuing of the Judgment. In the sample, 67% of defendants were released while their trial was on-going (32 defendants) while 33% remained in pre-trial detention until the final Judgment was issued (16 defendants).The sample study revealed that factors such as nationality of the defendants and type of offence often play a role in this regard.

The sample shows that trial judges in Baabda resorted to releases prior to Judgment more than judges in Beirut: only three out the 25 defendants tried in Baabda were held in pre-trial detention until their Judgment, while 13 out of the 23 defendants tried in Beirut were held in pre-trial detention until then. While this notable difference may be related to the methodology followed by clerks in selecting the sample study, further attention is required to identify whether specific considerations related to Baabda's courts (such as caseload and available judicial resources) may have an impact on pre-trial detention rulings.

Looking at the nationality of the defendants, 69% of those who were detained until judgment were non-Lebanese nationals (11 out 16 defendants) while 65% of those who were released prior to the Judgment were Lebanese nationals (21 out of 32 defendants). This indicates that nationality may be a determining factor in rulings on pre-trial detention, whereby Lebanese nationals are provided with more favourable treatment than non-nationals despite the fact that none of these rulings explicitly referred to nationality. According to the Human Rights Committee, a defendant's foreign nationality must not be treated as a sufficient factor to establish that the defendant may flee the jurisdiction.[30]

Most Palestinians and Stateless persons were released prior to Judgment (six out of nine defendants). While the Palestinians included in the sample are legal permanent residents in Lebanon, the Stateless persons are unregistered and are *de facto* permanent residents in Lebanon: most of them are of Lebanese origins and unable to access the Lebanese nationality due to lack of registration for administrative or historical reasons. Despite the difficulty for judicial authorities to notify individuals residing in some of Lebanon's Palestinian refugee camps, four out of seven Palestinian refugees in the sample were released prior to the Judgment, including at least one resident of the Baddawi camp in the North of Lebanon. Half of the released Palestinians appeared in court after their release.

However, most Syrian nationals remained in detention until the Judgment (seven

out 12 defendants), bearing in mind that the majority were charged with immigration offences (nine out 12 defendants). Despite the fact that most Syrian nationals are refugees residing in Lebanon due to their inability to return to Syria, many have lost their legal status following tough residencies restrictions imposed in 2015 (all Syrians charged with immigration offences in the sample were arrested after 2015) and are subjected to severe legal and social restrictions during their stay in Lebanon. This indicates that residency status rather than nationality may be a factor in pre-trial detention rulings: it appears that the rulings may be more favourable towards the residing stateless population in Lebanon – similar to Lebanese nationals - but more severe towards the Syrians denied residency status.

This is further proved by the treatment of women defendants: while the Lebanese and stateless women were released prior to the Judgment, the Syrian and Ethiopian women were detained until the Judgment and were both charged with immigration offences. The Ethiopian defendant entered Lebanon on a domestic worker contract and was charged with theft and violating immigration and work regulations. The Legal Agenda's research on the treatment of domestic workers by judicial authorities showed that most of them are tried *in absentia* after their release due to being deported by the immigration authorities (the General Security). Indeed, domestic workers lose their legal status and their place of residence immediately following the end of their work contract. Those who are not tried *in absentia* generally remain in detention until the Judgment.

Table 8: End of The Pre-trial Detention Period by Nationality

End of PTD / Nationality	Released prior to Judgment	Detained till Judgment	Total
Lebanese	21	5	**26**
Syrian	5	7	**12**
Palestinian	4	3	**7**
Ethiopian	-	1	**1**
Stateless	2	-	**2**
Total	**32**	**16**	**48**

By examining the type of offences, it appears that certain offences yield harsher treatment. 62% of those who were detained until the Judgment were charged with immigration and drug offences (10 out 16 defendants) indicating a greater tendency towards detention for these offences. 55% of defendants charged with these types of offences remained in pre-trial detention until the Judgment (10 out of 18 defendants). While the tougher stance on immigration violations may be motivated by the difficulty in securing the court appearance of non-nationals without resident status, this stance is not in accordance with the laws regulating drug offences.

The 1998 Drugs Law is based on the principle of "treatment as an alternative to punishment". It allows drug users to benefit from medical and psychological treatment as an alternative to conviction or punishment, which should require therefore a less severe treatment. However, the judicial authorities failed to implement the Law and guarantee the protection of drug users from pre-trial detention. A 2010 study found that 90% of drug users were subject to pre-trial detention: their custody period was an average of 6.5 days, while their pre-trial detention period was an average of 50 days.[31] In 2014, the General Prosecutor at the Court of Cassation issued a circular instructing all Prosecutors to refrain from subjecting drug users to pre-trial detention,[32] but this circular was not consistently implemented and drug users continued to be subjected to pre-trial detention. This is confirmed by the sample as all nine defendants charged with drug offences were arrested between 2015 and 2017. A new circular issued in 2018 re-iterates the instruction to refrain from keeping drug users in pre-trial detention and instructs all Prosecutors to refer them to the Ministry of Justice's Anti-Addiction Committee in charge of overseeing treatments.[33] It remains to be seen whether this new circular will have a direct impact on Lebanon's pre-trial detention policies in drug use offences.

Table 9: End of Pre-trial Detention by Type of Offences

End of PTD / Type of Charges	Released prior to Judgment	Detained till Judgment	Total
Offences against goods	13	6	**19**
Drugs offences	4	4	**8**
Offences against persons & arms offences	5	-	**5**
Offences against public morality & immigration offences	2	2	**4**
Offences against goods & against public trust	3	-	**3**
Offences against public trust & immigration offences	2	1	**3**
Offences against goods & immigration offences	-	2	**2**
Offences against persons	1	-	**1**
Offences against public trust	1	-	**1**
Drugs & immigration offences	-	1	**1**
Petty offences	1	-	**1**
Total	**32**	**16**	**48**

II. Speedy Trials for Detained Defendants

Most of the defendants who were held in pre-trial detention until the Judgment were granted a speedy trial. They were tried in one single hearing (13 out 16 defendants) and the Judgments in their cases were issued between one to 10 days after the hearing. The average duration of the trial from the time of their arrest to the Judgment was 22 days. This indicates that their trial was completed within a reasonable time, in conformity with international standards.

It is beyond the scope of this study to assess how these speedy trials affected the defendants' right to adequately defend themselves. It is worth noting that only six out of these 16 defendants were represented by a lawyer during their trial.

III. Releases Prior to Judgment

In order to fully comprehend the use of pre-trial detention during criminal trials, it is important to assess the rationale for decisions to release a defendant from pre-trial detention. What are the different types of release stipulated for in the Law and how were they represented in the sample? At which stage of the criminal trial are defendants released? What is the reasoning behind rulings on release requests, including approval and initial rejections before approval? Upon closer inspection, it appears that rulings on releases, similarly to rulings on the start of the detention period, appear to be motivated by factors unrelated to the necessity condition.

1. Forms and Conditions of Releases

Both the IJ and SJ have the authority to release the defendant *de jure (ikhla' sabil bi haq)* or on bail *(ikhla' sabil)* prior or during the trial. Defendants can also be mandatorily released upon the expiry of the maximum pre-trial detention period set in Art 108 (*ikhla' sabil hukmi).*

In the sample, the majority of defendants were released by the trial judge (22 out 32) while the IJs released the majority of the detained defendants who were referred to them for further investigations (10 out of 12). Defendants were released on the basis of different types of decisions that we will discuss below but most of them were released on condition of payment of a financial surety (22 out of 32), including the three defendants who were released by the IJ as a substitute to detention.

Table 10: Type of Release Decisions by Authority and Court Location

Authority Deciding on the Release	Type of Release Decision	Beirut	Baabda	Total
IJ	Release from custody	-	1	**1**
	Substitution of detention with surety	-	3	**3**
	Release with surety	4	1	**5**
	Release with surety and other condition	1	-	**1**
	Released by the IJ	***5***	***5***	***10***
SJ	Release from custody	-	1	**1**
	Release without surety	5	-	**5**
	Release with surety	3	13	**16**
	Released by the SJ	***8***	***14***	***22***
Detained at time of Judgment		13	3	**16**
Total		**26**	**22**	**48**

Release from Custody

When the requirements for the issuing of an arrest warrant by the Prosecutor or the IJ are not met, defendants against whom charges are brought must be released from custody.

The sample includes two cases of release from custody. The first case was a defendant released from custody by the IJ at the time of the ruling on pre-trial detention. This case was discussed earlier as it appears the main motivation for such a decision was the prolonged period of custody (13 days), beyond the maximum four-day period prescribed by the law.

In addition, the trial judge released another defendant from custody:

> The 46-year old Lebanese man charged with a theft offence punishable by up to three years of imprisonment had been arrested on the basis of a Prosecutor's search and investigation notice. The SJ decided to release him from custody *(Tark)* at the first hearing after 18 days of pre-trial detention.(34) The decision to release him from custody was taken automatically by the SJ without consulting the Prosecutor, and without questioning the defendant, given that no arrest warrant had been issued against him. It is worth noting that the Prosecutor did not notify the SJ of the defendant's arrest until two weeks later, and the SJ decided to release him four days after the notification. The delay in notifying the SJ therefore affected the length of the pre-trial detention.

Contrary to this case, the sample included another defendant who was arrested on the basis of a Prosecutor's search and investigation notice but who was released on bail without benefiting from a release from custody, indicating that the judge in this case considered the notice to be a valid arrest warrant.(35).

Right to De Jure Release

There are situations where the defendant is entitled to benefit from an automatic release under the conditions stipulated in Art 113:

Article 113

Where an offence is a misdemeanour carrying a maximum penalty of two years' imprisonment and the defendant is Lebanese and resident in Lebanon, he is automatically entitled to be released five days after the date of his arrest provided that he has not previously been convicted of an infamous offence or sentenced to imprisonment for at least one year.

The released defendant shall undertake to attend all proceedings pertaining to the investigation and to the trial, as well as the enforcement of the judgement.

As such, a defendant is entitled to automatic release under Art 113 after five days of

their arrest under the following cumulative conditions:

1) The offence is a misdemeanour carrying a maximum penalty of two years' imprisonment;
2) The defendant is Lebanese and resides in Lebanon;
3) The defendant has not been previously convicted of an infamous offence.[36]
4) The defendant has not been previously sentenced to up to one year of imprisonment.

These releases are a right and are not subject to judicial appreciation. Contrary to releases on bail, which will be detailed further below, these releases do not require a request for release, nor consultation with the Prosecutor or the plaintiff, nor can they be conditioned to any obligation including financial sureties.

Yet, none of the defendants included in the sample were released *de jure.* At least two Lebanese defendants were eligible for such a release five days after their arrests, but did not benefit from this mechanism, despite the fact that one of them had explicitly requested to be released *de jure.* In both cases, the defendants were released in return for a financial surety after the procedures of release on bail were followed. Neither the Prosecutor nor the trial judge took any steps to ensure that these defendants could benefit from the right to automatic release:

> The first defendant was charged with assault, threats and carrying an unlicensed weapon. The Prosecutor issued an arrest warrant against him six days after his arrest, despite his eligibility for a *de jure* release. The trial judge scheduled the first court hearing 12 days after the Prosecutor's referral, contrary to the requirements of Art 153 of an immediate trial. Moreover, the trial judge did not release him *de jure* but accepted his release request in return for a surety of LL 200,000 (USD 133.33), bearing in mind that the plaintiff had not objected to his release and that the Prosecutor had left the matter to the judge's consideration. His pre-trial detention period was 18 days.[37]
>
> The second defendant was charged with embezzlement and breach of trust. He had been arrested on the basis of an IJ arrest warrant issued *in absentia* and his case was referred to the trial judge. Following the execution of the warrant, he was brought before the single judge 22 days after his arrest, contrary to the requirement of a prompt appearance before a judge. After he requested his release during the hearing, the SJ consulted with the General Prosecutor (who left the matter to the judge) and the plaintiff was notified of the request. The judge then decided to release him in return for a financial surety before questioning him and after a pre-trial detention period of 29 days.[38]

However, the defendant did not pay the surety and requested that he be released *de jure.* The financial surety had been set at LL 3 million (equivalent to USD 2000) as a guarantee for the plaintiff's personal damages. The plaintiff in this case was an international car rental company. Around three months after the initial decision

of release in return for a surety, the defendant requested his release *de jure* but the trial judge denied his request despite the fact that he met the legal requirements of Art 113. One month later, as the defendant was still held in pre-trial detention, the judge decided to reduce the surety amount to LL 1.5 million (equivalent to USD 1000). The defendant did not pay the surety even after its reduction and was still detained at the date of the Judgment. While the legal pre-trial detention period amounted to 29 days, his effective pre-trial detention period lasted 7.5 months. The judge later sentenced him to nine months of imprisonment and to pay a fine of LL 9 million (USD 6000) without ruling on the personal claim because the plaintiff did not appear before the court.

As such, the trial judge's recourse to a release on bail despite the defendants' eligibility for a *de jure* release had a direct impact on extending the effective pre-trial detention period in both cases, revealing the consequences of such a recourse contrary to the law.

Release on Bail

If the defendant is not eligible for automatic release, the IJ or SJ may decide to release them, with or without surety:

Article 114

In the case of all other offences, if the conditions automatically entitling the defendant to be released have not been met, the Investigating Judge may decide, after consulting the Public Prosecution Office, to release him from detention, with or without surety, if he files a request and undertakes therein to attend all proceedings pertaining to the investigation, the trial and enforcement of the judgement.

– The surety shall include:

(a) Attendance by the defendant at all proceedings pertaining to the investigation, the trial and enforcement of the judgement;

(b) Fines and court fees;

(c) The costs advanced by the civil party;

(d) A portion of the personal damages.

The Investigating Judge shall specify the amount and type of surety and the sum payable for each constituent part. He may modify the amount or type if necessary.

The majority of the defendants were released on bail (27 out of 32), most of them on condition of payment of a financial surety (22 out of 27).

Sureties were imposed by both the IJs and the trial judges. The sureties ranged from LL 200,000 (equivalent to USD 134) to LL 3 million (equivalent to USD 2000). The three decisions of 'alternative to detention' issued by the IJ also included sureties amounting to LL 200,000 and LL 300,000 (equivalent to USD 200). The purpose of the sureties was not always specified in the release decision, but some decisions specified that they were imposed to ensure the defendants court appearances after release, to guarantee court expenses and fines, as well as the plaintiff's compensations when applicable.

As previously mentioned, a defendant whose bail was set at a LL 3 million (USD 2000) surety, requested that he be exempted from the surety and released *de jure* instead. The request was rejected but later the surety was reduced to LL 1.5 million (USD 1000).(39)

Additionally,, one of these defendants, a 32-year Lebanese man charged with drug use, was released on bail and required to submit drug tests every 15 days for a period of two months, along with a financial surety.(40) This is the only case in the sample where a judge had recourse to one of the conditions prescribed in Art 111 (to undergo regular medical examinations and laboratory analyses) other than a financial surety. The IJ appeared to have relied here on an alternative to detention limited in time, without referring to it as such. Yet, we found no evidence in the file that the IJ had exercised the judicial supervision for this defendant: we found no evidence that the defendant complied with the conditions set by the IJ, nor that the IJ acted upon the defendant's failure to comply, such as summoning him or re-issuing an arrest warrant based on Art 111.

No other conditions, such as travel bans or regular police reporting, were found in the sample.

At least five decisions of release on bail did not include any conditions. All of them were issued by the same judge in Beirut, indicating a pattern specific to this judge. (41) All of these defendants were released after the civil action against them was dropped, which could justify the absence of a surety that would guarantee the plaintiff's financial rights.

Table 11: Financial Surety Amounts

Plaintiff / Surety Amount	Public Prosecution		Civil Party Plaintiff		Total
Release Authority	IJ	SJ	IJ	SJ	
USD 134 to USD 334	7	3	2	5	**17**
USD 400 to USD 667	-	2	-	4	**6**
USD 2000	-	1	-	1	**2**
No surety	-	-	-	5	**5**
Release from custody		-	1	1	**2**
Detained till Judgment	8		8		**16**
Total	**21**		**27**		**48**

Mandatory Release

Art 108 sets out the maximum duration allowed for pre-trial detention. This duration varies depending on whether the offence is a felony or a misdemeanour:

Article 108

With the exception of a person previously sentenced to at least one year's imprisonment, the period of detention for a misdemeanour may not exceed two months. This period may be extended by, at a maximum, a similar period where absolutely necessary.

With the exception of homicide, felonies involving drugs and attacks against State security, felonies which represent a global danger and offences of terrorism, and cases of detained persons with a previous criminal conviction, the period of detention may not exceed six months for a felony. This period may be renewed once on the basis of a reasoned decision.

The Investigating Judge may decide to prohibit the defendant from travelling for a period not exceeding two months for a misdemeanour and a year for a felony, from the date of being released or set at liberty.

As such, the duration of pre-trial detention for a misdemeanour may not exceed two months. This period may be renewed where absolutely necessary, but the law does not require the renewal decision to be reasoned or in writing. The law also includes one exception where pre-trial detention may exceed the maximum four-month duration: if the defendant was previously sentenced to at least one year imprisonment. These conditions apply to all detained defendants irrespective of whether the arrest was ordered by the Prosecutor or the IJ (Art 153 & 192).

As the scope of this research is limited to a pre-trial detention period that does not exceed one month, none of the defendants included in the sample were eligible for a mandatory release.

2. Stages of Release

Out of the 32 released defendants, 81% were released prior to the start of the trial (26 out of 32) while six defendants were released during the course of the trial. These releases were issued by the IJ prior to the issuing of the indictment decision or by the SJ at the start of the trial. The trial judges' releases prior to the start of the trial came either before the first court appearance or following an initial hearing that was re-scheduled without questioning the defendant or submission of motions. It is also worth noting that 47% of released defendants (15 out of 32) were not questioned by a judge prior to their release. This indicates that pre-trial detention in the sample was not generally used for the purpose of guaranteeing court appearance or judicial questioning of the defendant.

Table 12: Stages of Release vs Stages of Arrest

Stage of Arrest / Stage of Release	Arrested during preliminary investigation		Arrested during trial before SJ	Total
	Referred to IJ	Referred to SJ		
Released prior to referral to trial	10	-	-	**10**
Released at start of trial	1	5	10	**16**
Released during trial	1	4	1	**6**
Detained at Judgment	-	12	4	**16**
Total	**12**	**21**	**15**	**48**

Looking at the pre-trial detention period of those who were released prior to the start of the trial, it appears that the majority (65%) were detained between two weeks and one month (17 out of 26 defendants were detained between 15 and 29 days). This indicates that their detention period was not justified for the purpose of the trial. Most of them were referred to the Investigating Judge for further investigations where the duration of detention for the purpose of the investigation was an average of nine days, in addition to a custody period that was an average of 5.7 days.

Table 13: Stages of Release vs. Duration of Pre-trial Detention

End of PTD \ PTD Duration	5-10 days	11-15 days	16-20 days	21-25 days	26-31 days	Total
Released prior to referral to trial	-	3	6	-	1	**10**
Released at start of trial	7	1	3	4	1	**16**
Released during trial	1	-	2	1	2	**6**
Detained till Judgment	-	4	1	6	5	**16**
Total	**8**	**8**	**12**	**11**	**9**	**48**

3. Rulings on Requests for Releases

Defendants can submit requests for their release during pre-trial detention. This obligates the judicial authorities to review the legality and necessity of the pre-trial detention. Their rulings on these release requests offer important insight into the use of pre-trial detention and its purpose.

Legal Process for Release on Bail

The process for a release on bail is detailed in Art 114 to 117 with regards to the IJ and in Art 154 and 192 with regard to the SJ:

- The detained defendant or their attorney must submit an application or request for release to the IJ or SJ. If there is no civil action in a misdemeanour discovered in flagrante, the SJ may release the defendant of **their own motion** if they decide to defer the trial and find there is no need to keep the defendant in detention.(42)
- If a civil party is involved, they must be notified of the request and make their observations within 24 hours of their notification; plaintiffs are expected to clarify whether they object to the release and for what reasons.
- The Prosecutor must be consulted for the request, but the IJ and SJ may rule contrary to the Prosecutor's opinion.
- The judge should decide on the request within 24 hours of the Prosecutor returning the file or of the deadline for the plaintiff to make observations.
- The detained defendant, the Prosecutor and the civil party may file an appeal against the decision on the release or against the part of the release decision related to the surety, within 24 hours of the date of notification. The appeal

against the IJ decision is brought before the Indictment Chamber, and the appeal against the SJ decision is brought before the Court of Appeal.

- In case of release, the defendant must elect a domicile in the area in which the IJ or SJ's offices are located.
- The judge may issue a travel ban, if they consider it necessary, for a period not exceeding two months.

According to the law, release requests must be submitted in order to be granted a release, except in cases where the defendant is eligible for a release *de jure* and in cases of *in flagrante* misdemeanours without a civil action that are referred to the trial judge. This condition contradicts the exceptional nature of pre-trial detention given that it requires an explicit expression of the defendant's intention or will to be released, instead of assuming in favour of the right to personal freedom. Two parties must also be consulted on release requests: the prosecutor and the plaintiff.

These conditions increase the administrative and bureaucratic burden of pre-trial detention on the detained defendants and judicial clerks who are required to process these requests. This is further exacerbated by the fact that detained defendants are not automatically informed of the necessity to submit a release request nor of the process for such requests. It also makes detainees dependent on the external support of relatives, acquaintances and lawyers to secure a faster release. Indeed, while detained defendants can submit requests through the detention authorities, these requests will not reach the judicial authorities immediately and will require follow-up to ensure they are processed and executed in a prompt manner.

Requests for Releases

The majority of defendants (31 out of 48) submitted requests for their release while 12 defendants arrested on the basis of arrest warrants did not submit any requests for their release during the trial. At least 48% of the defendants in the sample had lawyers representing them during their pre-trial detention period (23 out of 48). Half of those who requested their release had a lawyer representing them, signifying the crucial role a lawyer plays in securing a speedy release.

Table 14: Number of Release Requests vs Authority of Release

No. of Release Request	IJ Release	SJ Release	No Release	Total
One request	6	13	4	**23**
Two requests	-	7		**7**
Three requests	-	1		**1**
No requests (arrest warrants)	-		12	**12**
No requests (release from custody or alternative to detention)	4	1	-	**5**
Total	**10**	**22**	**16**	**48**

Absence of Release Requests

The defendants who did not request their release were all maintained in pre-trial detention until the end of their trial (12 defendants). Most of them were foreign nationals from Syria and Ethiopia whilst five of them were Lebanese nationals.

Five of these detainees had lawyers representing them (three Syrian defendants and two Lebanese defendants), yet it appears that the lawyers did not request their release.(43) This indicates that lawyers may be avoiding requesting release on behalf of their clients for various reasons including negligence, a belief that defendants will not be released during their trial or a preference for a speedy trial over a lengthy trial after release.

None of these detainees had their pre-trial detention reviewed during the trial. At least one of these defendants could have been released by the SJ of their own motion despite the absence of a release request in accordance with Art 154. His trial did not include a civil party and had been deferred once because the detainee had not been transported from the detention facility to the courthouse.(44) Yet, the trial judge did not take the initiative to release him of their own motion.

Submission of Release Requests

Most of the release requests were submitted in writing, with or without the assistance of lawyers. Only a small number of requests were recorded in the judicial records based on the defendants' verbal statement during their hearings (11 requests for six defendants).

In many of the cases, the lawyers who submitted requests for release on behalf of their clients articulated arguments related to their client's innocence, socio-economic situation or medical conditions rather than arguments related to the pre-trial detention requirements. This indicates a lack of awareness of such requirements among legal professionals, most notably the requirements related to the purpose of the pre-trial detention.

Most of the defendants submitted only one request for release (23 defendants): the majority were granted a release, while four defendants had their single request rejected and were maintained in pre-trial detention until the end of the trial. Eight defendants were released after submitting two (seven defendants) or three requests (one defendant) following the rejection of their previous request(s).

Table 15: Rulings on Release Requests: Initial Ruling vs Final Ruling

Initial Ruling \ Final Ruling	IJ Release	SJ Release	No Release	Total
IJ Rejection of release	-	2	-	**2**
SJ Rejection of release	N/A	5	4	**9**
Release Accepted	6	14	-	**20**
No release requests submitted	-	-	12	**12**
Not applicable (no arrest decision)	4	1	-	**5**
Total	**10**	**22**	**16**	**48**

The law stipulates that judges should decide on the release requests within 24 hours of the notification of the plaintiff and/or the prosecution. In fact, the administrative processing of release requests and ruling on them take several days. In the sample, the period between the submission of the request and the decision lasted an average of 2.7 days and ranged from one day to 12 days. The main reasons for these delays included: the referral of the request to the prosecution to give its opinion was delayed; the trial judges awaited till the date of the next hearing to rule on the requests, the request coincided with the file referral to the Public Prosecutor›s Office to present its submissions with respect to the merits of the case, and the investigating judges delayed ruling on the release until they issued the indictment decision rather than ruling on it immediately after the Public Prosecution presented its opinion.

Rejection of Release Requests

Investigating Judge Release Rejections

Two out of 12 defendants had their request for release rejected by the IJ. As such, they were referred to trial while still in detention, only to be later released on bail by the trial judge, following their second release request. This raises questions pertaining to the IJ's rationale in rejecting these requests and what changed in order to justify the subsequent release by the trial judge.

In both cases, the IJ justified the rejection by the same broad terms used to justify the arrest warrants, such as the essence of the crime, the content of the investigation and the duration of the pre-trial detention:

> The first defendant is a 46-year old Lebanese woman charged with theft, forgery and embezzlement related to her attempt to cash a forged check for the amount of USD 5000. The IJ rejected her release request after she had been detained for 16 days. Following her referral to trial and the submission of a second release request, the SJ decided to release her prior to her first court hearing. The trial judge release decision was taken in light of the dropping of the civil action against her, although it had been registered prior to the issuance of the arrest warrant and the IJ release rejection. The trial judge also justified her release due to the length of her pre-trial detention, which was 25 days.[45] It is also worth noting that her lawyer argued before the trial judge that she had a medical condition without providing any evidence. It appears from this case that the IJ had the same factual and legal elements that were available to the SJ, yet they went in opposite directions, thereby extending her pre-trial detention for nine additional days.
>
> The second defendant is 33-year old Lebanese man charged with drug use. The IJ rejected his release request after he had been detained for 11 days. The rejection was also motivated by the fact that the defendant had a criminal history. While the IJ rejection decision referred to "prior prosecutions" *('asbaqiyat)*, it appears that the defendant had been previously convicted for drug use and was only sentenced to pay a fine. Following his referral to trial and the submission of a second release request, the SJ decided to release him after questioning him without providing any reasoning. His pre-trial detention period lasted 25 days.[46] Here, the main development that occurred between the initial IJ release rejection and the subsequent SJ release was the questioning of the defendant by the SJ, bearing in mind that he had already been questioned by the IJ. As mentioned earlier, the pre-trial detention of drug users contradicts the principle of prioritising treatment for drug addiction over prosecution and punishment.

Single Judge Initial Release Rejections

The trial judges initially rejected the release requests in five cases, only to accept the second request (four defendants) or the third one (one defendant) submitted by the defendants. As discussed above regarding the IJ, the justification for these initial rejections and the circumstances or factors that arose that rationalise the

subsequent release must also be scrutinised.

Some rejections did not provide any reasoning, while others were limited to the usual broad reasons related to the nature of the crime, the information available in the file and the duration of the pre-trial detention. At least one trial judge in Beirut relied on a template to reject release requests, which includes the following information:[47]

> *After consideration,*
>
> *And after examining the request for release submitted by the defendant,*
>
> *And the position of the plaintiff [who objected / did not object / dropped the charges]*
>
> *And [in conformity /contrary to] the opinion of the Prosecutor at the Court of Appeal in Beirut,*
>
> *And in light of the essence of the offence attributed to the defendant and the duration of their pre-trial detention,*
>
> *And of all other information in the file,*
>
> *We decide:*
>
> *To reject the request for the release of the aforementioned defendant.*

The template indicates the main elements upon which trial judges rely to rule on to request for release, these include: the type of offences, the duration of the detention, the position of the Prosecutor and the position of the plaintiff.

In the cases of the defendants who received an initial rejection by the trial judge, the SJ referred to two main elements in the decisions, which were taken into consideration in the rulings: the position of the plaintiffs and whether or not the trial judge had questioned the defendants.

- **Position of the plaintiffs:** two elements related to the plaintiffs were taken into consideration in the SJ rulings on release requests: the first is whether or not the plaintiff had objected to the release of the defendant; the second is whether the plaintiff had dropped the claim against the defendant. In the sample, the four plaintiffs who were the subject of a civil action received an initial rejection despite the fact that the civil action had been dropped prior to the request for release. This indicates that the duration of pre-trial detention was the main factor in maintaining them in detention. In all these cases, the public prosecution action continues despite the plaintiff dropping the civil action.
- **Trial Judge Questioning:** Trial judges appear to delay some releases until they can easily question the defendants. At least two initial rejections of

release requests cited elements related to the defendants' questioning. One rejection decision clearly referred to the fact that the defendant had not yet been questioned by the trial judge; he was subsequently released after the questioning.[48] Another decision referred to the fact that the next hearing was scheduled to take place soon (the request for release was submitted four days prior to the hearing but was rejected on the day of the hearing). The defendant was later released following his third request for release, four days after the hearing without being questioned.[49] It is worth noting that both defendants had been arrested in execution of in absentia arrest warrant issued by the IJ without being questioned for their offences by a judge prior to their trial. Yet, as aforementioned, 68% of defendants who were released by the trial judges had not been questioned by a judge prior to their release (15 out of 22 defendants).

- None of these initial rejections referred to the defendants' criminal history, despite the fact that at least two of them had been previously convicted.

It therefore appears that the trial judges' pre-trial detention rulings, similarly to IJs' rulings, are ordering the detention based on the potential sentence for the charged offence, without giving any consideration to the legal requirements that justify arrest.

In one case that merits attention, the processing of the defendant's release request appears to indicate a case of judicial negligence:

> The defendant, a 31-year-old Palestinian man accused of criminal threats and using a firearm in a residential area, had his first release request ignored, his second request rejected, but was later released despite the absence of a release decision in the judicial documents.[50] We were unable to identify the reasons why his first release request was ignored, but it appears to be related to the failure to notify the plaintiff. Two weeks later, the defendant submitted a second request, which was rejected by the trial judge in conformity with the Prosecutor's opinion. The rejection was motivated by the "nature of the crime and the duration of the pre-trial detention". Despite this rejection, the judicial documents show that a surety of LL 300,000 (USD 200) was paid to the court three days later, which secured the defendant's release, without any evidence in the documents that the trial judge issued a release decision. The defendant was detained for a total pre-trial detention period of 26 days. It is important to note that prior to the ruling on the release request, a witness had testified that he was afraid of being harmed as a result of his testimony given that unknown people were inquiring about him in his area of residence.

Single Judge Final Release Rejections: Pre-trial Detention until The End of The Trial

In four cases, it turned out that the defendants submitted a single release request that was rejected by the trial judges. These defendants remained in pre-trial detention until the Judgment. All of them were non-nationals (three Palestinians and one

Syrian) and only the Syrian defendant was represented by a lawyer. The defendants had only one trial hearing while they were detained, and their final Judgment was issued a week after rejecting their release request.

The trial judges' rejection decisions were in conformity with the Prosecutor's opinion but did not provide sufficient reasoning to justify these rejections. Three Palestinian defendants who were charged with offences against goods (fraud and theft), had their release requests denied despite the plaintiffs dropping claims against them, bearing in mind that the public prosecution lawsuit continues on the basis of these offences despite dropping of the civil action:

- The single judge rejected the release request of a Palestinian defendant charged with aggravated theft after 18 days of pre-trial detention. The plaintiff was the defendant's employer and accused him of appropriating internet subscription fees collected from clients for the approximate amount of USD 1,600. The defendant had been previously convicted of minor misdemeanours and sentenced to pay fines without imprisonment. However, the plaintiff dropped the complaint and the defendant was questioned during his first trial hearing. Despite all these developments, the single judge decided to keep the defendant in detention until the Judgment, which was issued a week later and sentenced him to time served, bringing the total period of pre-trial detention to 25 days.[51] In this case, the rejection of his release request does not appear to be justified in light of the dropping of the civil action.
- The single judge rejected the release request of a Palestinian defendant charged with fraud after one week of pre-trial detention. It is worth noting that the defendant was arrested during the trial in execution of an IJ arrest warrant issued *in absentia*. Prior to his arrest, he had appeared for his initial trial hearing before the single judge, had been questioned and had agreed to a settlement agreement with the plaintiff. Yet, his *in absentia* arrest warrant continued to be valid despite his court appearance, as it appears the single judge neither executed nor annulled the warrant, nor did the defendant request that the warrant's execution be suspended based on Art 157, which highlights the importance of informing defendants of their rights. Moreover, the plaintiff dropped the personal claims immediately after the defendant's arrest. Despite all these elements and the settlement agreement, the single judge kept the defendant in detention until the Judgment, which was issued a week after the rejection of his release, bringing the total period of pre-trial detention to 14 days.[52] The Judgment then discontinued the proceedings and discharged the defendant after the judge considered that his offence amounted to a breach of

trust (instead of fraud), whereby the public action lapses when the civil action lapses. In light of all these elements, the rejection of his release request does not appear to be justified.

- The single judge rejected the release request of a third Palestinian defendant charged with theft after one week of pre-trial detention despite the fact that he had a medical condition and that the plaintiff had not brought a civil action against him. The defendant was charged for stealing a bottle of perfume from a pharmacy and was arrested after being hit by a car while attempting to run away from the pharmacy. He suffered from a broken shoulder and internal bleeding. The owners of the pharmacy refused to file any complaint against him. The defendant argued for his release for medical reasons as he needed to undergo a surgery. Yet, the single judge denied his request without providing any justification. The defendant had also been previously fined for drug use. The Judgment was issued a week later and sentenced him to time served and ordered him to pay a fine, bringing the total period of his pre-trial detention to 13 days.(53) In light of the victim's position, the value of the stolen goods and the defendant's medical situation, the rejection of his release request appears unjustified.

Unlike the cases of the three above-mentioned Palestinian defendants, the fourth defendant was a Syrian man accused of inappropriate contact with a minor and illegal stay:

The plaintiff, the minor's mother, had objected to his release and refused to drop the claims against him. The single judge rejected his release request after 19 days of his arrest citing the plaintiff's position. The Judgment was issued a week later, bringing the total period of his pre-trial detention to 26 days. He was sentenced with six months' imprisonment, ordered to pay a fine and to pay damages.(54) Here, the rejection appears to be motivated by the nature of the offence, the victim's age and the plaintiff's position.

Acceptance of Release Requests

What motivated the IJs release decisions after issuing an arrest warrant?

As mentioned earlier, the IJs decided to release six defendants after an average of 9.6 days after issuing arrest warrants against them, bringing their total pre-trial detention period to an average of 15 days. Half of these defendants were represented by lawyers. The Prosecutor objected to the release in most of these cases and left the matter to the discretion of the IJ in the other cases. This section thus focuses on examining what factual and legal elements occurred during this

period and motivated the IJ release decisions.

According to the reasoning provided by the IJs, these release decisions were motivated partly by the same broad terms that were included in the reasoning of arrest warrants, such as “the essence of the crime, the content of the investigation and the duration of the detention”. Additional factors were also included in the release decisions, such as the plaintiff dropping the civil action against the defendant, the end of the investigation and the fact that “there were no reasons warranting keeping the defendant under arrest.”

However, in most of these cases, we were unable to identify any new information discovered between the IJ arrest warrant and the release decision that he issued days later, which could justify a change of circumstances affecting the purpose of pre-trial detention. In almost most of the cases, the investigations were limited to questioning the defendant.(55) In the release decision where the dropping of the civil action was cited in the reasoning, the dropping had been registered with the IJ prior to the issuing of the arrest warrant.(56) In the release decision where the end of the investigation was cited, the IJ did not take any additional investigation steps between the arrest warrant and the release decision.(57)

It therefore appears that the IJs had the same information available at the time they issued the arrest warrants and the release decisions and that they did not conduct any further investigations after questioning the defendants. The only change that occurred between the arrest warrants and the release decisions was either the submission of the release request, which is an administrative procedure that does not impact the necessity of arrest, or the submissions of the Public Prosecution Office on the merits of the case, knowing that it is consulted anyway on the release and that it has the right to appeal against the IJ decisions on pre-trial detention. As such, the length of the pre-trial detention appears to be a main element in these release decisions.

This finding thus confirms that the detention of these defendants was not decided for the purpose of investigations nor for a purpose specified in Art 107, but rather as a form of punishment prior to their conviction. Detention during the judicial investigation phase increased the duration of pre-trial detention in the sample by an average of nine days, in addition to a custody period that reached an average of 5.7 days. In addition to raising questions related to the justifications of pre-trial detention, the limited investigations conducted by the IJ also challenges the necessity of Prosecutor referrals to the IJ in cases of misdemeanours, rather than directly referring for trial before the SJ.

What reasons did the trial judges give for their release decisions?

After consulting with Prosecutors who rarely recommended the approval of release requests, trial judges issued release decisions that were not sufficiently motivated or detailed. Similar to the IJ rulings on pre-trial detention, most decisions of release issued by the trial judges were based on the essence of the crime, information available in the file, and duration of detention.

As mentioned earlier, most of these releases occurred prior to the start of the trial and without questioning the defendants, indicating that the trial judge did not find sufficient justifications for the arrest warrants issued by Prosecutors or IJs. Some release decisions were however delayed due to the need to notify civil party plaintiffs or because the detainees were not brought to their first trial hearings. The average period between the Prosecutor's referral to the single judge and the first court appearance for detained defendants lasted 10 days, contrary to Art 153, which requires that detained defendants be tried immediately or on the following day unless a deferral is warranted.

In cases where a civil party had brought the lawsuit, the trial judge decided to release the defendants based on the plaintiff's approval or lack of objection regarding the release, or based on the dropping of the civil action. Indeed, nine out 12 defendants who benefited from the dropping of the civil action were released by the single judges after the civil action was dropped. This was the case even for defendants against whom the public prosecution action continued after the civil action was dropped. In addition, two defendants were released due to the fact that the plaintiffs did not object to their release despite maintaining the civil action against them.

Table 16: Rulings on Release Requests vs Duration of Pre-trial Detention

Rulings on Releases		5-10 days	11-20 days	21-31 days	Total
Released pending trial	Released from custody	-	4	1	**5**
	First request accepted	8	9	3	**20**
	Initial request rejected		2	5	**7**
Detained during trial	Rejection of release requests	-	2	2	**4**
	No release requests	-	3	9	**12**
Total		**8**	**20**	**20**	**48**

4. Execution of Release Decisions

The effective duration of pre-trial detention sometimes exceeded its legal limit due to obstacles related to the execution of release decisions. Throughout this report, we have referred to the legal limit of the detention, rather than its effective duration given that the purpose is to assess judicial rulings on pre-trial detention.

More than half of the release decisions in the sample were sent for execution on the same day they were issued (at least 17 out of 33), while other decisions were sent for execution after an average of 2.5 days (at least 12 out 33). In most of the cases where the execution of the release was delayed, the release decision was conditional upon payment of a surety. Despite the fact that judicial authorities facilitate the payment of financial sureties after the end of the official working hours, this may indicate a difficulty for defendants in securing the surety amount.

At least two decisions of release on bail in the sample were not executed due to the non-payment of the financial sureties.[58] This may be indicative of situations where low-income defendants tend to serve time in detention instead of paying financial sums. Two Lebanese defendants were legally released in return for sureties amounting to LL 1.5 million [USD 1000] for the first one and LL 300,000 (USD 200) for the second but they remained in pre-trial detention at the time of the Judgment. The non-execution of the release decision for the defendant charged with threat and use of firearms extended his pre-trial detention by one week, bringing it to a total of 15 days.[59] The non-execution of the release decision for the defendant charged with breach of trust and embezzlement who was eligible for a *de jure* release, extended his pre-trial detention by 6.5 months, bringing it to a total of 7.5 months.[60]

It is also worth noting that the execution of release decisions for non-nationals do not result in their effective release given that they remain in detention until the immigration authority (the General Security) have reviewed their legal status. At least one released Syrian defendant in the sample was brought to the single judge while still held by the General Security after the judge released him.[61]

Challenges against Pre-trial Detention Rulings

The sample included two appeals against pre-trial detention rulings. The reasons for lack of challenges may vary: detainees may not be aware of their right to appeal these rulings; the absence of a lawyer representing the detainees can be obstacle to the submission of an appeal; defendants and lawyers may believe that IJs and trial judges will release them after a certain period time as evidenced by the examination of rulings.

> A Syrian defendant charged with facilitating prostitution and illegal stay challenged the single judge's decision to reject his first release request. At the time of the initial rejection, the defendant had been detained for one week and had already been questioned by the single judge. The Court of Appeal rejected his appeal after one week because it found that the decision was in conformity with the law without providing any further reasoning. One week later, the single judge accepted his second request for release, bringing his total pre-trial detention period to 22 days. No developments had occurred between the single judge's initial rejection, the Court of Appeal's rejection and finally the trial judge's decision of release two weeks later, indicating that the rulings may have been based on the potential sentencing. However, the defendant was later acquitted of facilitation of prostitution charges for lack of evidence and was only convicted for illegal stay. Furthermore, he continued to be detained by the General Security after the single judge's decision to release him on bail.(62)

Furthermore, the Prosecutor and the plaintiff challenged the IJ's decision to substitute the detention of one defendant charged with theft, but both their appeals were rejected by the Indictment Chamber:(63)

> The Indictment Chamber, who hears appeals against the IJ's decisions, rejected the two appeals but for different reasons: it rejected the Prosecutor's appeal because it found that the decision was in conformity with the law "in light of the facts of the investigation" without providing any further reasoning. On the other hand, the Chamber rejected the plaintiff's appeal because such a decision does not fall within the decisions that the plaintiff has the right to appeal.(64) While the Chamber gave no justification for this, its ruling is justified on the basis of Art 116 and Art 117 which limit the plaintiff's right to appeal a decision concerning release on bail either in objection to the release or to the amount of the bail. Notably, the plaintiff's appeal was directed against the IJ decision of "release on bail" rather than the decision to "substitute the detention". This indicates that the plaintiff's lawyer did not distinguish between both types of decisions. Finally, these appeals resulted in extending the defendant's pre-trial detention by an additional four days.

Pre-Trial Detention and Judgments

Analysing the outcomes of trials further illuminates whether the pre-trial detention period is a necessary and proportionate measure or whether it is a tool to punish defendants prior to sentencing. By studying this aspect of the trials, it becomes clear that pre-trial detention is used as a tool for punishment prior to conviction\.

I. Trial Outcomes: Judgments Forms and Results

By the time the Judgment was issued against the defendants included in the sample, 30 defendants had been effectively released, while 18 remained in pre-trial detention (including the two defendants for whom the release decision was not executed).

More than 71% of those who were released appeared for their court hearings after their release (20 out of 28 defendants who had court hearings after their release). Only eight defendants were sentenced *in absentia* given that they did not attend their trial hearings after their release; these could benefit from a re-trial following their objection of the *in absentia* Judgment. The high proportion of defendants who attended their trial following their release indicates that pre-trial release does not generally lead to the defendants' failure to appear in court.

The sample study revealed that 75% of defendants were found guilty (36 defendants) while 25% were found not guilty (12 defendants).

Convicted defendants were sentenced to either time served (22 defendants) or to an imprisonment term ranging from one to nine months (13 defendants). Most defendants were also sentenced to pay a fine ranging from LL 100,000 (USD 67) to LL 3 million (USD 2000) (28 defendants). Only one defendant was sentenced to pay a fine without being sentenced to imprisonment.

In addition, five defendants were sentenced to pay damages to the plaintiffs ranging from one to ten million LL (USD 667 to USD 6667). Furthermore, the Judgment decided to suspend the sanction against the defendant sentenced to the highest amount of damages if the civil action is dropped at a later stage. This provides an appropriate alternative to the use of pre-trial detention as a means to pressure defendants into a settlement with plaintiffs, given that the sentence provides a sufficient motive for the defendant to settle in order to avoid imprisonment. Two Syrians nationals who had entered Lebanon illegally were also sentenced to removal from Lebanon despite Lebanon's commitment to the principle of non-*refoulement* to Syria.

It is also worth noting that at least 17 defendants explicitly benefited from less severe sanctions based on the court's appreciation of the circumstances of the cases, such as the dropping of claims by plaintiffs, the lack of criminal history, the return of stolen goods, and the security situation in Syria in the case of a Syrian national who used false documents.

In some cases, trial judges convicted defendants on the basis of articles different from those brought by the Prosecution and on the basis of which pre-trial detention rulings were issued. One defendant was convicted for breach of trust while the Prosecutor

had filed theft charges against him. Eight defendants were acquitted of part of the charges brought by the Prosecution in cases that included two or four causes for prosecution against the defendants: at least three of them had been charged with offences more severe than those for which they were convicted, highlighting the consequences of prosecutorial overcharging. These include the Ethiopian domestic worker who was detained until the Judgment acquitted her of theft charges but convicted her for violating administrative regulations (failure to notify authorities of the change of employer). Her case follows a widespread pattern of maintaining domestic workers in pre-trial detention based on unsubstantiated theft charges brought against them after leaving their employers' households without their approval.

As for defendants who received not guilty verdicts, five defendants were acquitted for lack of evidence while seven defendants were discharged either because of the dropping of the civil action (five defendants) or for lack of *actus reus* (two defendants). Only one of them, a Palestinian man charged with fraud, had been kept in pre-trial detention until the verdict discharged him after the trial judge rejected his release request during the trial.

Table 17: Pre-trial Detention Status vs Judgments Results

Judgment Result / PTD Status	Acquitted	Discharged	Convicted	Total
Released pending trial	5	6	19	**30**
Detained during trial	-	1	17	**18**
Total	**5**	**7**	**36**	**48**

II. Pre-trial Detention Period and Imprisonment Sentences

Pre-trial detention duration is taken into account always when calculating the term of imprisonment (Art 117 of the Criminal Code). In addition, it should be noted that, since 2012, convicts will not effectively serve the full imprisonment period specified in their Judgment. Art 112 of the Criminal Code was amended in 2012 to shorten the execution period of imprisonment sentences due to prison overcrowding: when the sentence is less than a year of imprisonment, a sentence of one month is calculated as 20 days of effective imprisonment. When the sentence is longer than a year of imprisonment, one year is calculated as nine months of effective imprisonment.[65] As such, the imprisonment terms (ranging from one to nine months) imposed by the Judgments in the sample effectively range from 20 days to six months.

A comparison of the effective sentences and the effective pre-trial detention period reveal the following:

1) 46% of defendants received an imprisonment sentence equal to their pre-trial detention period

These 22 defendants were sentenced to time served with or without paying a fine. These sentences generally aim to legitimise the pre-trial detention period rather than impose a sentence that is the most appropriate and proportionate to the crime and its circumstances (which may be more or less than the pre-trial detention period). This finding also confirms that pre-trial detention was ordered based on the potential sentencing. Further, pre-trial detention may also affect the verdict, whereby judgments will tend to reach a conviction rather than an acquittal in order to legitimise prolonged pre-trial detention.[66]

Most of these defendants had been released prior to the Judgment while seven were still detained at the time of the Judgment and would be released when the fines are paid. It is also worth noting that if the defendants were unable to pay the fines, they would be kept in detention in replacement of the fine at the rate of one day of imprisonment for each LL 10,000 (USD 7) of the fine amount. Most of them were sentenced to pay fines ranging from LL 100,000 (USD 67) to LL 3 million (USD 2000), equivalent to 10 to 300 days of detention if fines were not paid. Therefore, sentences that settle for time served but impose high fines on the defendants, may lead to prolonging the period of detention in case of non-payment of the fine.

2) 33% of defendants did not receive an imprisonment sentence or received an imprisonment sentence less severe than their pre-trial detention period

The situation of these 16 defendants varies:

- ***Defendants detained at the Judgment*** (five defendants): these defendants were released based on the Judgment, including two defendants who did not carry out their release decision. Two of them were found not guilty and three of them were held for an effective pre-trial detention period that exceeded their imprisonment sentence by four days to one month and a half. It should be noted that if the fine imposed on two of them was not paid, the sentence would be harsher than the period of pre-trial detention.
- ***Defendants released prior to the Judgment*** (11 defendants): ten defendants were found not guilty after their average pre-trial detention period had reached 13.5 days prior to their release. Another defendant was not sentenced to an

imprisonment term after his effective pre-trial detention had reached 19 days prior to his release, but was sentenced to pay a fine of LL 2 million (USD 1334).

3) 21% of defendants were sentenced to an imprisonment term more severe than their effective pre-trial detention

The situation of these 10 defendants varies:

- ***Released defendants who would be re-arrested following the Judgment*** (three defendants): Three defendants who had been released during trial would be re-arrested following the issuance of the Judgment in person (in case they did not appeal the judgment). Their imprisonment term exceeded their effective pre-trial detention period by an average of 49 days.
- ***Released defendant sentenced in absentia:*** One defendant was sentenced *in absentia* to six months of imprisonment after his effective pre-trial detention period lasted 13 days and he failed to appear in court following his release. As this sentence could be annulled following his objection to the *in absentia* judgement, it is likely aimed at sanctioning his failure to appear court.
- ***Detained defendants who remained in detention after the Judgment*** (six defendants): as they were detained at the time of the Judgment, these defendants remained in detention until they have served their imprisonment term: their sentence exceeded the effective legal pre-trial detention period by an average of 56 days.

Table 18: Duration of pre-trial detention vs Judgment Sentences

Form of Judgment / Effective Sentence / Effective PTD period	In person Defendant is detained	In person Defendant was released	*In absentia* Defendant was released	Total
Imprisonment longer than PTD period	6	3	1	**10**
Imprisonment equal to PTD period	7	11	4	**22**
Imprisonment shorter than PTD period	3	-	-	**3**
Non-Guilty Verdict	2	8	2	**12**
No imprisonment sentence	-	-	1	**1**
Total	**18**	**22**	**8**	**48**

Table 19: Rulings on Pre-trial Detention vs Imprisonment sentences

Rulings on Releases		Not Guilty	Sentence Shorter than PTD	Sentence equal to PTD	Sentence longer than PTD	Total
Released pending trial	Released from custody	-	-	3	2	**5**
	First request accepted	8	2	8	2	**20**
	Initial request rejected	3	-	4	-	**7**
Detained during trial	Rejection of release requests	1	-	2	1	**4**
	No release requests	-	2	5	5	**12**
Total		**12**	**4**	**22**	**10**	**48**

Conclusions and Recommendations

Conclusions related to compliance with the legal deadlines of pre-trial detention

1) **Judicial authorities did not comply with the legal deadlines related to pre-trial detention prescribed in the law**. These time limits provide important guarantees to personal freedom and to the right to a prompt appearance before a judicial authority whilst also avoid prolonging the duration of pre-trial detention beyond what is strictly necessary. The reasons for such delays were primarily due to the failure of Public Prosecutors to bring charges against detainees within the legal time limit for custody and the failure of judges in scheduling prompt hearings, in addition to the failure of detention authorities in transporting detainees to their hearings. This indicates that the limited institutional capacity and inefficient management of available judicial resources is the main reason for the failure to comply with legally prescribed deadlines related to pre-trial detention.

The most important deadlines that were not respected in the sample are the following:

i. **The maximum period for custody**: the average custody period in the sample was six days where 47% of the defendants were detained longer than the four-day maximum period stipulated in Art 32, 42 & 47 of the Code of Criminal Procedures (CCP). This is the period in which defendants were held in custody before the Prosecutors charged them. The sample also showed that the Public Prosecutors do not automatically renew the detention period after 48 hours but they rather wait until being consulted by the judicial police in charge of the investigation. This unlawful practice opens the door widely to the arbitrariness of the judicial police in prolonging the custody period and weakens judicial supervision on this detention.

ii. **The prompt appearance before the Investigating Judge:** defendants waited an average of five days after the Prosecutors' referral before they appeared before the Investigating Judges in order to be questioned and have the legality and necessity of their pre-trial detention assessed, contrary to Art 106 & 107 CCP that guarantee the defendants' prompt appearance before the judge within 24 hours.

iii. **Immediate Trial by the Single Judge:** defendants waited an average of nine days before they appeared for their first court hearing following the Prosecutors' referral, contrary to Art 153 CCP that guarantees a trial hearing immediately or on the following day in the case of an *in flagrante* misdemeanor. Defendants arrested on the basis of *in absentia* arrest warrants waited an average of 13 days before their first trial hearing, contrary to Art 83 and 109 CCP that guarantee a prompt hearing before a judge.

iv. **24 hours to rule on release requests:** Many judges did not comply with the deadlines to rule on release requests. The delay in completing the administrative procedures related to consulting with the Public Prosecution and notifying the plaintiff resulted in prolonging this period.

v. **Delays in transferring detainees from places of detention to the courts:** At least seven of the defendants in the sample did not attend the first hearing before the competent judge, whether the Investigating Judge or the Single Judge, because they were not transferred them from their place of detention to the court building. According to the Prisons Directorate in the Justice Department, more than 16% of transfer requests from prisons to the courts were not executed in the first half of 2017. This number, however, does not include the failure to transfer detainees from places of detention. Pre-trial detention periods are prolonged when the defendants' appearance before the judicial authority competent to rule on their detention is delayed.

Conclusions related to compliance with the legal requirements of pre-trial detention

Judicial authorities did not comply with the legal requirements of pre-trial detention in many rulings reviewed in the sample:

2) **Investigating Judges issued arrest warrants without providing a reasoning as to the purpose of the pre-trial detention, in clear violation of Art 107 CCP**. The requirements related to the reasoning of arrest warrants and to the purpose of the pre-trial detention are the cornerstone of the legal regime of pre-trial detention following their introduction in the 2001 reform of the criminal procedures. They guarantee that pre-trial detention is the exception rather than the rule and is therefore used only when necessary when it is the only way to serve the purpose of the investigation, or to prevent interference with the course of justice, or for the protection of the victim or the defendant or the public order. By failing to clearly identify the purpose of pre-trial detention and to justify arrest warrants, judicial authorities are undoubtedly violating the law. This violation

amounts to an infringement of a constitutional freedom and opens the door for arbitrariness in the pre-trial detention rulings.

3) **Prosecutors issued arrest warrants in cases where the misdemeanour was not discovered *in flagrante* in violation of Art 46 and 153 of the CCP.** Given that the *in flagrante* condition allows for exceptional procedures to be followed and extends the judicial authorities' prerogatives in apprehending and detaining suspects, it follows that the definition of an *in flagrante* offence prescribed in Art 29 and 30 of the CCP must be interpreted in a restrictive manner. Prosecutors appear to be extending the category of *in flagrante* offences especially in immigration and drug offences, which allows them to have recourse to pre-trial detention contrary to the law. The trial judges did not correct this violation by promptly releasing the defendants.

4) **Prosecutors issued arrest warrants in cases where the offences were punishable by imprisonment of up to one year, contrary to Art 46 of the CCP.** While Art 153 of the CCP allows for such warrants to be issued in cases where the offence is punishable by an imprisonment term without specifying the limits of this term, it is our opinion that the apparent contradiction between Art 46 and Art 153 of the CPP should be interpreted in favour of the defendant and the principle of personal freedom.

5) **Recourse to *de jure* releases five days after the arrest as required by Art 113 CCP was limited** in the sample even when defendants were eligible for such a release and explicitly requested it. This article compels judges to release Lebanese nationals residing in Lebanon five days after their arrest if the offence is punishable by imprisonment of less than two years, and if they have not previously been convicted of an infamous offence or sentenced to imprisonment for at least one year.

6) **Defendants who were denied a release were granted a trial within a reasonable time in compliance with international standards:** 33% of the defendants in the sample were held in pre-trial detention throughout their trial. Most of them were tried in one single hearing and the average duration of the trial from the time of their arrest to the Judgment was 22 days.

Conclusions related to the purpose of pre-trial detention

7) **Pre-trial detention was used as a form of early punishment prior to a conviction** rather than an exceptional measure that is justified for a necessary purpose. The sample confirmed that pre-trial detention rulings are based on the

potential sentencing, rather than a determination of necessity as required by the law and international standards. This is evidenced by the following:

i. The failure to provide sufficient and clear reasoning to rulings on pre-trial detention, specifically arrest warrants and rejection of release requests;

ii. Rulings in the sample regarding the start and end of pre-trial detention were generally motivated by the duration of the detention rather than by its necessity. This is evidenced by the following:

- Recourse to alternatives to detention were generally limited to cases where the custody period had been prolonged to an average of 18.6 days. Consequently, this recourse to alternatives to detention was a means of ending detention only when its period exceeded the reasonable time limits and not as a useful mechanism that would prevent arrest,
- The high proportion of defendants whose releases were delayed for no identifiable reason. This was clearly evident in cases where defendants were released several days after a ruling confirming their detention, despite the absence of legal and factual developments that would remove the necessity of pre-trial detention. For example:
  - 75% of defendants against whom the Investigating Judges issued an arrest warrant were released by the same judge before referral to trial after an average of nine days, despite the fact that there were no developments after issuing the arrest warrant except for the release request or the Public Prosecution's submissions.
  - 75% of defendants whose release requests were initially rejected by trial judges were accepted by the same judge after several days despite the absence of new developments in the trial.

iii. Pre-trial detention was rarely used to guarantee defendants' court appearances, indicating that it was not used for the necessity of preventing absconding:

- 47% of released defendants were not questioned by a judge (whether investigating judge or trial judge) prior to their release.
- 71% of defendants who were released appeared for their court hearings after their release. This high proportion also indicates that a pre-trial release does not generally lead to the defendants' failure to appear in court.

iv. 79% of defendants were sentenced to an imprisonment term shorter or equal to their pre-trial detention. Most of them were sentenced to time served indicating that the pre-trial detention period was decided based on the potential sentencing, and that sentencing generally aimed to legitimise the pre-trial detention period rather than imposing a sentence that is the most appropriate and proportionate to the crime and its circumstances.

8) **Pre-trial detention was used as a means to solve conflicts of a civil and financial nature:** This was particularly the case for defendants charged with offences against goods, where 60% of the defendants in the sample were charged with offences against goods, many of them of a financial nature related to the execution of contracts and non-sufficient funds. 41% of these defendants were released after the civil action was dropped against them, indicating a trend in the use of criminal procedures and thus pre-trial detention as a means to pressure defendants to reach an outside court settlement with plaintiffs in order to secure their release.

9) **Rulings on pre-trial detention were taken without sufficient consideration for the medical and socio-economic situations of defendants which is necessary in order to balance the purpose of the detention with its impact on the defendants and society.** The lack of information related to these elements in the judicial files indicates that pre-trial detention rulings were taken without sufficient consideration to the impact of pre-trial detention on the defendant, their dependents, their livelihood and society. For instance, the rulings did not look into the risks on the defendants' physical and mental health, the risk of loss of their livelihood or housing, the risks on vulnerable dependents who rely on the defendants financially, and the risk of economic loss for household and businesses that rely on the defendant. In addition, a defendant who was in need of medical surgery had his request for release rejected.

Conclusions related to alternatives to pre-trial detention

10) **Recourse to alternatives to detention was limited** in the sample: Investigating Judges issued decisions to substitute the detention in only 6% of the cases in the sample. All of them were issued by IJs in the Baabda district, while no such rulings were issued by the judges in Beirut. The decisions to substitute the detention were mainly motivated by the prolonged duration of custody, regardless of the necessity of arrest or judicial supervision. This indicates a lack of conviction of the usefulness of such forms of alternatives to detention.

11) **Forms of judicial supervision were generally limited to financial sureties:** On the other hand, judicial authorities rarely had recourse to other forms of judicial supervision such as medical examinations, travel bans, or regular reporting to "the supervisory office". This indicates that the judicial supervision was perceived as a faster way of release in order to avoid issuing an arrest warrant and then deciding on the release on bail, rather than using it as an alternative form of detention.

Conclusions related to the procedural process for pre-trial detention

12) **Pre-trial detention periods were affected by administrative and bureaucratic reasons** as well as non-compliance to legal time limits**.** Among these reasons:

i. The delays in scheduling first judicial hearings, whether by Investigating Judges or Trial Judges, which led to non-compliance with the legally prescribed delays for pre-trial detention.

ii. The delays in receiving a record of the defendant's criminal history from the ISF, which therefore denies judicial authorities of important information when ruling on pre-trial detention.

iii. The requirement to receive release requests in order to rule on pre-trial detention and to notify the Public Prosecutor and the civil party plaintiff, which delayed ruling on releases. Trial judges did not rule on releases even in cases where they could do so by their own motion.

Recommendations

In light of the above, judicial authorities are recommended to take the following steps:

1. **Prioritise efforts to comply with the legally prescribed delays in the CCP** in order to reduce pre-trial detention periods. This requires, among others, efforts in the following directions:

i. **Increase human and financial resources available for the processing of pre-trial detention cases:** this requires the computerization of judicial work and the designation of judges and judicial clerks available on a daily basis solely for the purpose of processing detainees in the Prosecution offices, the Investigating Judges Departments and the trial judges' departments.

ii. **Speed up processing of detainees by Judicial Police:** Judicial Police should

increase efforts to refer detainees and their judicial files to the Prosecutors on the same day as when preliminary investigations are closed. Judicial Police should track and investigate any delays caused by any of its agents in order to sanction them when necessary.

iii. **Speed up processing of detainees in Prosecutors' offices:** Prosecutors' offices should increase efforts to refer detainees and their judicial files to the investigating or trial judges taking into account the maximum period for custody. Prosecutors should also be able to track delayed files, and investigate any delayed referral caused by judicial clerks to prevent them.

iv. **Revising the current organisation of Investigating Judges and Single Judges departments:** a revision of their organising structure can adopt a rotation system that enables the prompt appearance of detained defendants before them, thereby ensuring compliance with legal delays and reducing pre-trial detention periods. Single Judges' departments could consider designating a judge that screens detained defendants to rule on their pre-trial detention immediately following their referral by Prosecutors and prior to the start of the trial.

v. **Transferring prison management to the Ministry of Justice according to Decree 17315/1964**: Compliance with criminal procedures and legally prescribed delays will continue to face obstacles as long as the authority ruling legally on the detention is separate from the authority physically holding detainees.

vi. **Doubling efforts to ensure detainees' transportation to the courthouse:** Securing the necessary agents and vehicles to ensure the transfer of detainees, in respect of the right to a prompt appearance before a judge. A collaboration between judicial authorities and the ISF is needed to ensure prompt judicial appearance and reduce the period of pre-trial detention.

2. **Fully implement Art 107 of the CCP**: Arrest warrants issued by the Investigating Judges should be reasoned and the purpose of the pre-trial detention should be clearly identified and sufficiently explained. A modification of the current template for arrest warrants can ensure that such an important requirement is met. Judges should also provide clear reasons justifying the necessity of pre-trial detention in all pre-trial detention rulings, including arrest warrants issued by the Investigating Judges and Prosecutors, and the rulings on releases issued by Investigating Judges and Trial Judges.

3. **Restrict the interpretation of an offence discovered *in* flagrante** prescribed in Art 29 and 30 of the CPP. Public Prosecutors should refrain from issuing arrest warrants outside the category of *in flagrante* offences especially in immigration and drug offences.

4. **Implement Art 46 of the CPP** that limits the issuing of Prosecutors' arrest warrants to cases where the *in flagrante* misdemeanour is punishable by more than one year of imprisonment, instead of Art 153 of the CPP that allows issuing such arrest warrants in cases where the offence is punishable by imprisonment without specifying the term. Consider also the amendment of Art 153 to resolve the contradictions with Art 46 and strengthen guarantees for personal freedom and limit the recourse to pre-trial detention.

5. **Strictly and automatically implement *de jure* releases** in order to reduce pre-trial detention to a maximum of five days for eligible defendants based on Art 113 of the CCP that obligates judges to release the defendants who are Lebanese and resident in Lebanon five days after the date of their arrest, provided that they have not previously been convicted of an infamous offence or sentenced to imprisonment for at least one year.

6. **Issue release decisions by the trial judges' own motion** as stated in Art 154 of the CCP particularly in cases where no civil party is involved. Consider requesting the amendment of Art 115 and 154 of the CCP to remove the requirement for defendants to submit release requests, given that a defendant's wish to be released should be assumed based on the exceptional nature of pre-trial detention.

7. **Pre-trial detention should only be used as an exceptional measure when necessary**. The presumption should be in favour of a release prior to referral to trial. Develop clear policies for the use of pre-trial detention to ensure greater consistency in practice across the country and greater guarantees for personal freedoms. This should be done in parallel with the development of clear criminal justice policies that allow an efficient use of the limited available resources.

8. **Increase the recourse to alternatives to detention** and substitute detention with judicial supervision**,** when pre-trial detention requirements are met**.** This would limit cases of deprivation of liberty and would reduce costs assumed by judicial and detention authorities from pre-trial detention. Develop a plan to implement the obligations of substitution to detention set in Art 111 of the CCP and diversify the use of forms of judicial supervision beyond financial sureties to include, for instance, regular reporting to the ISF or the Public Prosecution. Such

a mechanism would need to be established in collaboration with the ISF and would help reduce the costs arising from maintaining defendants in detention. It would also increase the chances for low-income defendants to guarantee their release.

9. **Refrain from ordering pre-trial detention as an early punishment** even in cases where a later conviction will lead to the defendants' re-arrest. This allows detention authorities as well as convicted defendants, their relatives, colleagues and employers to plan in advance on ways to manage the detention and mitigate the social, economic and emotional losses resulting from the deprivation of liberty.

10. **Avoid using pre-trial detention as a means to solve conflicts of a civil nature** by pressuring defendants into settlements with the plaintiffs and rely instead on conviction and sentencing as a motive for settlements instead of pre-trial detention. Particular consideration should be given to low income defendants in cases where the offence relates to goods of low value.

11. **Assess the medical and socio-economic conditions of defendants** during pre-trial detention rulings in order to balance the purpose of the detention with its impact on defendants, their dependents, their livelihood and society. Consider that the impact of a pre-trial detention ruling is not limited to the defendant, but also to the judiciary, detention authorities, the defendants' relations and society as a whole.

12. **Improve judicial authorities swift access to criminal history records** in collaboration with the ISF in order to rule appropriately on the necessity of pre-trial detention.

(1) In 2017, the Ministry of Justice is granted 0.382% of the State Budget, a low rate compared to other countries. The Legal Agenda Policy Paper on the Reform of the Judiciary No. 11, *Budget of Judicial Authorities,* 5/12/2017, available at: http://legal-agenda.com/article.php?id=4087

(2) Website of Department of Prisons of the Ministry of Justice, available at: http://pa.justice.gov.lb/index.php [last accessed on 12 August 2018]

(3) Ministry of Justice, Department of Prisons, Statistical Report: Distribution of Inmates in Lebanese prisons by judicial status, 15/8/2017, available at: http://pa.justice.gov.lb/index.php?view=PDFViewer.default_cat&cid=2&m=3 [last accessed on 12 August 2018]

(4) Ministry of Justice, Department of Prisons, Statistical Report: Distribution of Detainees in Pre-Trial Detention by the duration of their stay in prison, 15/8/2017, available at: http://pa.justice.gov.lb/index.php?view=PDFViewer.default_cat&cid=2&m=3 [last accessed on 12 August 2018]

(5) Representative of the ISF, Legal Agenda's seminar of 15 March 2018. These numbers include detainees held at the new detention centre located under a bridge near the Beirut Courthouse and managed by the ISF since 2018. The General Directorate of the General Security previously managed it as an immigration detention centre.

(6) General Directorate of the General Security, *General Security Magazine*, Issue No. 59, August 2018, available at: http://www.general-security.gov.lb/uploads/magazines/59/24.pdf [last accessed on 12 August 2018]

(7) The Legal Agenda Policy Paper on the Reform of the Judiciary No. 13: *The Geographical and Functional Map of Judicial Authorities,* 9/2/2018, available at: http://legal-agenda.com/article.php?id=4216

(8) An estimate 1.5 million Lebanese are living in poverty (around 30% of the Lebanese population) and an estimate 300,000 persons are living in extreme poverty. In addition, out of one million registered Syrian refugees in Lebanon, 76% live in poverty and 50% in extreme poverty. Out of an estimate of 250,000 Palestinian refugees, more than 66% live in poverty and 6.6% in extreme poverty. Thousands of other refugees, migrant workers and domestic workers are also living in poverty.

(9) The Legal Agenda Policy Paper on the Reform of the Judiciary No. 13: *The Geographical and Functional Map of Judicial Authorities,* 9/2/2018, available at: http://legal-agenda.com/article.php?id=4216

(10) Paragraph (b) of the Preamble of the Constitution, Constitutional Court, Decision No. 2 of 1999 and Decision No. 4 of 2001.

(11) These include: United Nations General Assembly. (1988). A/RES/43/173. *Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment*. Available at: http://www.un.org/documents/ga/res/43/a43r173.htm [last accessed 6 July 2018], UN General Assembly, *United Nations Standard Minimum Rules for Non-Custodial Measures (The Tokyo Rules): resolution / adopted by the General Assembly*. 2 April 1991. A/RES/45/110, available at: http://www.refworld.org/docid/3b00f22117.html . [last accessed 17 July 2018]; United Nations. *Standard Minimum Rules for the Treatment of Prisoners*. 30 August 1955. Available at: http://www.refworld.org/docid/3ae6b36e8.html . [last accessed 19 July 2018]

(12) UN Human Rights Committee (HRC), *General comment no. 35, Article 9 (Liberty and security of*

person), 16 December 2014, CCPR/C/GC/35, available at: http://www.refworld.org/docid/553e0f984.html [accessed 19 July 2018], Para 32 to 34

(13) UN Human Rights Committee, General Comment No. 35, Para 38

(14) Unless otherwise specified, the legal articles included in this report are those of the Code of Criminal Procedures of 2001.

(15) Case No. 40

(16) Dignity Roundtable with Judges and Civil Society Organizations, May 2017. Judge Tanios SAGHBINI, *Pre-Trial Detention in Criminal Procedures,* 2017

(17) **Case No. 31**. IJ in Mount Lebanon (Sandra Mehtar) Decision of 16/10/2015: *"In light of the content of the investigation and the duration of arrest of the defendant (…) since 21/9/2015, we decide, contrary to the Prosecution's request, to substitute the arrest of the defendant based on the provisions of Art 111 CCP in return of a financial surety amounting to LL 300,000 [equivalent to USD 200]"*

Case No. 34. IJ in Mount Lebanon (Rabih Al-Houssami) Decision of 10/8/2015: *"Contrary to the request, and based on Art 111 CCP and to the content of the investigation and to the duration of arrest since 22/7/2015, we decide to substitute the arrest of the defendant (…) in return for a financial surety amounting to LL 300,000 [equivalent to USD 200] to guarantee their appearance."*

Case No. 36. IJ in Mount Lebanon (Rami Abdallah) Decision of 2/7/2015: *"In light of the essence of the crime and the content of the investigation and contrary to the opinion of the Prosecution to substitute the arrest of the defendant (…) by implementing the provisions of Art 111 CCP, in return of a financial surety amounting to LL 200,000 [equivalent to USD 134]*

(18) Case No. 31

(19) Case No. 34

(20) Case No. 36

(21) Judge Raja Abi Nader, Head of Prisons Department at the Ministry of Justice, Legal Agenda seminar on judiciary and security of 15 March 2018

(22) Ministry of Justice Prisons Department, Statistics on transport from prisons between 1/1/2017 and 30/6/2017

(23) Case No. 28

(24) Case No. 26

(25) Rania Hamzeh, *The Rise of Random Murders Reopens the Death Penalty Controversy,* Legal Agenda, 13 June 2017, [Arabic] available at: http://legal-agenda.com/article.php?id=3715

(26) Cases No. 58 and 59

(27) Cases No. 17, 42, 52

(28) Case No. 42

(29) Case No. 52

(30) UN Human Rights Committee, General Comment No. 35, Para 38

(31) Nizar Saghieh, *The Policeman, the Judge, and Drug Users*, 2011, Skoun Organization.

(32) Memo issued by the General Prosecutor at the Court of Cassation (Judge Samir Hammoud) to the Internal Security Forces, dated 17/2/2014

(33) Circular No. 40/□/2018 issued by the General Prosecutor at the Court of Cassation (Judge Samir Hammoud), dated 25/6/2018

(34) Case No. 24

(35) Case No. 48

(36) Such offences include for example theft, embezzlement, fraud, abuse of trust, bribery, forgery and use of forgery, offences against public morality and drug offences.

(37) Case No. 26

(38) Case No. 30

(39) Case No. 30. For further details, see section on Release *De Jure*

(40) Case No. 53

(41) Single Criminal Judge in Beirut Roula Sfeir, Cases No. 3, 7, 9-A, 9-B and 20.

(42) A deferral for maximum three days if the defendant's requests a deferral to appoint a lawyer, and a deferral of maximum ten days if the trial judge finds that the case is not ready for trial.

(43) Cases No. 1, 11, 17, 40 and 41

(44) Case No. 40

(45) Case No. 12

(46) Case No. 62

(47) Single Criminal Judge in Beirut Roula Sfeir.

(48) Case No. 20

(49) Case No. 22

(50) Case No. 15

(51) Case No. 14

(52) Case No. 2

(53) Case No. 55

(54) Case No. 10

(55) Case No. 32, 39, 43, 45 and 53

(56) Case No. 16

(57) Case No. 45

(58) These two defendants were considered to have been released in the sections analyzing rulings on release, while in the section analyzing Judgments, they were considered in pre-trial detention at the time of the Judgment.

(59) Case No. 35

(60) Case No. 30. For further details, see section on Release *De Jure*

(61) Case No. 42

(62) Case No. 42

(63) Case No. 31

(64) Case No. 31

(65) Art 112 of the Criminal Code as amended by Law No. 216 of 30/3/2012

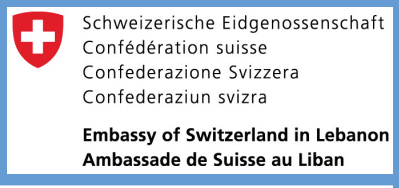
(66) Judge Tanios Saghbini, *Pre-trial Detention in Criminal Procedures*, Beirut 2017, page 250

Annex 3
Sample Court Cases

Case No.	Court	Court Case No.	Date of Judgment
1	Single Criminal Judge in Beirut (First Chamber)	1732/2015	12-01-2017
2	Single Criminal Judge in Beirut (First Chamber)	1229/2013	21-12-2017
3	Single Criminal Judge in Beirut (First Chamber)	2117/2016	26-01-2017
7	Single Criminal Judge in Beirut (First Chamber)	2335/2016	28-02-2017
8	Single Criminal Judge in Beirut (First Chamber)	5/2016	13-04-2017
9	Single Criminal Judge in Beirut (First Chamber)	1951/2015	30-05-2017
10	Single Criminal Judge in Beirut (First Chamber)	1664/2017	8-06-2017
11	Single Criminal Judge in Beirut (First Chamber)	1333/2017	8-06-2017
12	Single Criminal Judge in Beirut (First Chamber)	1153/2017	10-07-2017
14	Single Criminal Judge in Beirut (First Chamber)	3383/2017	12-10-2017
15	Single Criminal Judge in Beirut (First Chamber)	670/2011	31-10-2017
16	Single Criminal Judge in Beirut (First Chamber)	1185/2013	31-10-2017
17	Single Criminal Judge in Beirut (First Chamber)	2583/2017	31-10-2017
18	Single Criminal Judge in Beirut (First Chamber)	2581/2017	2-11-2017
20	Single Criminal Judge in Beirut (First Chamber)	2608/2017	28-11-2017
22	Single Criminal Judge in Baabda	1199/2016	19-09-2017
23	Single Criminal Judge in Baabda	305/2017	30-05-2017
24	Single Criminal Judge in Baabda	1269/2016	16-05-2017
26	Single Criminal Judge in Baabda	975/2017	5-06-2017

27	Single Criminal Judge in Baabda	993/2016	30-10-2017
28	Single Criminal Judge in Baabda	1154/2017	8-11-2017
29	Single Criminal Judge in Baabda	2788/2015	7-03-2017
30	Single Criminal Judge in Baabda	519/2015	30-05-2017
31	Single Criminal Judge in Baabda	2768/2015	3-06-2017
32	Single Criminal Judge in Baabda	318/2017	20-04-2017
34	Single Criminal Judge in Baabda	162/2016	28-02-2017
35	Single Criminal Judge in Baabda	326/2017	7-03-2017
36	Single Criminal Judge in Baabda	2672/2015	30-03-2017
39	Single Criminal Judge in Baabda	2035/2017	16-10-2017
40	Single Criminal Judge in Baabda	2059/2017	16-10-2017
41	Single Criminal Judge in Baabda	2060/2017	11-10-2017
42	Single Criminal Judge in Baabda	2684/2016	31-05-2017
43	Single Criminal Judge in Baabda	3250/2015	26-04-2017
44	Single Criminal Judge in Baabda	555/2017	19-04-2017
45	Single Criminal Judge in Baabda	2797/2014	7-11-2017
46	Single Criminal Judge in Baabda	1467/2016	7-11-2017
48	Single Criminal Judge in Baabda	2318/2016	20-06-2017
49	Single Criminal Judge in Baabda	3609/2016	20-06-2017
50	Single Criminal Judge in Baabda	511/2017	18-07-2017
51	Single Criminal Judge in Baabda	2/2017	28-06-2017
52	Single Criminal Judge in Beirut (Second Chamber)	1644/2017	11-08-2017
53	Single Criminal Judge in Beirut (Second Chamber)	1568/2016	27-02-2017

55	Single Criminal Judge in Beirut (Second Chamber)	175/2017	29-08-2017
57	Single Criminal Judge in Beirut (Second Chamber)	2070/2016	3-01-2017
58	Single Criminal Judge in Beirut (Second Chamber)	2017/2016	3-01-2017
59	Single Criminal Judge in Beirut (Second Chamber)	2018/2016	3-01-2017
62	Single Criminal Judge in Beirut (Second Chamber)	835/2016	28-03-2017



This study was issued under the project “Reducing the Use of Pretrial Detention in Lebanon” funded by The Federal Department of Foreign Affairs (FDFA)- Embassy of Switzerland in Lebanon and the Danish Ministry of Foreign Affairs (DMFA) and support from the Danish Institute Against Torture - DIGNITY. The content of this publication is the responsibility of Legal Agenda and does not necessarily reflect the opinion of the donors.