Beirut, 5/1/2004

To the Conseil d'Etat

Action to Declare the Inexistence of an Administrative Decision With a Demand for the Application of Summary Procedure and For Compensation

Petitioner: Dr. Muhamad Mugraby, attorney at law, Beirut, represented by lawyers Willem van Manen, Leo Spigt, Phon van den Biesen, , Antoine Mkarzel, Mohamad Fakih, and Jihad Bou Nader, by attached powers of attorney.

Respondent: The State of Lebanon, Ministry of Justice, Presidency of the Higher Judiciary Council, represented by the Chief of the Litigation Bureau at the Ministry of Justice.

Decision Challenged: That decision issued implicitly by the president of the Higher Judiciary Council in response to the memorandum by Petitioner notified to him on September 16, 2003, rejecting the request to withdraw his circular of September 4, 2003, No. 147, further to the letter by the former President of the Bar Association at Beirut ("BAB") dated September 3, 2003, for its violation of the law.

We hereby submit as follows:

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YƦɯNjDŽllɛ üNjTŬɛ 5ĭĠƯɨ f ɨƯNj

Ŏ5 ƨĠljƒklŬĠu ŎdžĠơdž!f Ü Ŏhƨƨdž ƥdžơdž ƨĂkɨƥ!f : ĬYqɨƨDŽllɛ ƚĂƨöhu

ÜLJlöhu LJƥ LJĠ5 LJĂ5 Ü ƚɨhlĂö! Ü LJljĠdž LJĠ5 Dž!Ă LJĂdžĠơdž!f ljdŭɨĂ ƚŬĠɨĂ YηĂdžhu Ü ƨƥĠlj Ăhu ƥĠnjη Ü Nö15 ƥdžơdž Ü ýƨƨɨdž LJfĂƱljf · "ĠƱhƨ ɨ15ƨdž

Σllηdž ɨlĠƒƨ Ü ýƥz!f lƨfƨĂ Ü ɨöljĠljhll!f ɨ!Ăƥ!f : Fljqʈ ĂYqɨƨDŽllɛ · ýƥz!f lƨfƨĂ Ŏ5 ĠöĠư!!f ɨƒöNj Σöƒƨhu ɨllĂdždž Ü ĬllZŰf CĠư!!f

Σöƒƨ LJZ "Ġljdžư ƨƥĠʈ!f ĂNj : LjDŽɛqyďɛ DžűYɛ f Nj‡UDŽllɛ ƥɛƥsllɛ NLjdž ɨƨllhdž!f Yfƨlj!f Ʊhƨƨhƨ lƨ‡ƦdŽ ĬllZ "ĠhfĂη ĬllZŰf CĠư!!f Σllηdž NLjZ ƨƥĠʈ!f Dždžzk!f LJZ YĂηƨ!f NhllƱ Ư5ƨhu ĎČČď/ě/čĒ Ŏ5 ƚĂƨöhu Ŏ5 LJödžĠơdž!f YöIlj YĠk‡! CĠLjhu čĐē Dzpƨ ĎČČď/ě/Đ qöƨĠkhu · LJĂLjĠllll! ɨ5!ĠPdž LJdž Nö65 Ġdž! ĎČČď/ě/đ qöƨĠk ƨhĠlj!f

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Part One

The Facts

1. On September 3, 2003, the former president of BAB addressed a letter to the "first president of the Higher Judiciary Council" in which he alleged that Petitioner "was stricken off from the roll of the Bar Association and is prohibited from practicing law". He requested that his letter be circulated to "all courts". The letter was registered in the offices of the Higher Judiciary Council under No. 147.

2. On the following day, i.e. September 4, 2003, the president of the Higher Judiciary Council, in this capacity, and without having the authority to do so, ordered the circulation of the said letter to all Lebanese courts, by noting in his handwriting on the bottom of the said letter the following phrase:

> "Mr. First President of the Court of Appeal at …..
> Kindly take note and circulate the above mentioned decision to all the courts under you."
>
> Beirut 4/9/2003"

We attach a copy of the said letter and circular.

Exhibit No. 1

3. In fact the above mentioned letter, with the circulation note of the President of the Higher Judiciary Council, was circulated to all courts, judges, chief clerks, clerks and other clerical staff and bailiffs. They signed for the same, one by one, to confirm that they were notified thereof.

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Ɨhć lLj! ɬ hć ʅ!f LJǒdžĠơdž!f Ɣǒ lLj NJŋĂ ĎČČď/ě/ď ɑǒƧĠƙu ù č CĠ ư l!f Σ ǐŋdž! ýĂŬf Σ ǒƑƧ!f'' Ĭ!ʒ "ĠhĠƙ ɨ ƚĂƧǒu Ǒ5 LJǒdžĠơdž!f Ɨhć lLj ýĂƥŋ LJdž ƴƱT ƥp'' ǑƵƥkʅdž!f LJD Nö5 DžƵɔ ''ĬǐƵŪf lĠdžĠơdž!f Ɨljnjdž Ɨʅ ƧĠdždž LJƵ "ĠƵĂljdždž Oh ƬfĂ LJǒdžĠơdž!f ýŋʅ5 Ü ''Dž ɨĠơdž!f Ɨ5Ġ ɨ ĬǐƵ '' NJhĠƙ ɨ LJĂdž ư dž ''DǒǒdžƵk''ƴǐƱƱĂ · čĐē Dƥp Ƨ!f Ƚơk ĬǐƵŪf CĠ ư l!f Σ ǐŋdž Dǐǐƥ Ǒ5 ƴĠƙ ɨ!f fƦNj

Σ ǐŋdž Σ ǒƑƧ DždžƵ Ü ĎČČď/ě/Đ ĭ f Ü Ǒ!ĠƙƧ!f DžĂǒ!f Ǒ5Ă ùĎ Ü ll !Ʀ! Ɨǒơǔ Ʈ NJ! LJĂ ɨ k LJf LJĂƥĂ Ü ljƦNj NJƙs Ʈ hu Ü ĬǐƵŪf CĠ ư l!f ýǒƦ Ǒ5 ĠnjLjĂƥ lƧĠhuƵhu ÜƗǒLjĠLjhuǐǐ!f Dž ɨĠơdž!f Ɨ5Ġ ɨ ĬǐƵ ƧĂ ɨƦdž!f ƴĠƙ ɨ!f : ǑNj ljƥǒ ƱPhu ƧĂ ɨƦdž!f ƴĠƙ ɨ!f

Ǒ5 ƨĠljFkʅŬf Ɨdž ɨơdž! ýĂŬf Σ ǒƑƧ!f lƧ ư ơ''

Dž ɨĠơdž!f yǒdžŋ ĬǐƵ DǒǒdžƵk!fĂ YŭƱŬĠu ý ư ɔkǐǐ!

·ljŭƵf NJljƵ ljĂljdž!f ƨ/Ƨ l!f Dž ɨ! ƗƵhĠƙ!f

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NJljƵ ljĂljdž!f DǒǒdžƵk!f NJǐǐǒƦ Ǒ5Ă ƧĂ ɨƦdž!f ƴĠƙ ɨ!f LJƵ lƧĂƬ ɔƧhuljĂ · "ĠƱhuƧ

Č !ɔƥ ɑǐdƗɔDŽllε

Σ ǒƑƧ ƱƧT NJǐǐǒƦhuĂ ƧĂ ɨƦdž!f ƴĠƙ ɨ!f DǒǒdžƵk ăƧŋ ƥl5 Ü ýƵɔ!ĠhuĂ ùď Ü LJǒƥƧɔljdž!f lĠ ư l!fĂ Dž ɨĠơdž!f Ɨ5Ġ ɨ ĬǐƵ Ü ĬǐƵŪf CĠ ư l!f Σ ǐŋdž ƧƑfĂƥĂ Ü DžŭpŪf ǑɔUĂdž ƧƑĠʅĂ ƴĠƙ ɨ!fĂ Ü DžŭpŪf CĠʅdƧĂ ƥǒ ɨ ăk! "fƥƧ5 "fƥƧ5 Ndžŭkʅƒ ĬǐƵ "Ƶǒdžŋ fĂƵpĂĂ ÜƗ5Ġ ɨ LJǒƧTĠhudž!f · NJ! Dznjƴǐǐhuk

4. On September 13, 2003, Petitioner became aware of the letter by the former president of BAB and its circulation by the president of the Higher Judiciary Council. Thereupon, he addressed, that same day, a memorandum to the latter, in the form of a registered letter with acknowledgement of receipt. In this letter, Petitioner explained to him that he had no power to issue the said circular which will inflict on him severe damage because it would be understood as an endorsement of the position of the former BAB president which is in violation of the law. Moreover, the former BAB president is the adversary of Petitioner in a number of actions with respect to the same conflict. A schedule of those actions was enclosed. Petitioner requested the president of the Higher Judiciary Council to promptly rescind the said circular and provide him with a copy of the rescission letter under his signature. We attach a copy of the said memorandum and its attachments.

Exhibit No. 2

5. The president of the Higher Judiciary Council was personally notified of the petitioner's memorandum on September 16, 2003. We attach copy of the acknowledgement receipt.

Exhibit No. 3

6. On that same day, Petitioner addressed to the Minister of Justice a similar memorandum on the same subject in which he stated the same facts and requested a decision to promptly withdraw the circular or to rescind it. Otherwise Petitioner would hold the Lebanese Government responsible for all damages. The said memorandum was registered at the Ministry of justice on the above mentioned date under No. 5791/3/2003. We attach a copy of the said memorandum and its registration receipt.

Exhibits 4 and 5

7. As a matter of fact, a number of judges, chief clerks and other court staff members, who were notified of the above mentioned letter and circular, understood the same to mean a decision by the president of the Higher Judiciary Council, or were afraid of the consequence of non-complying therewith, so they commenced to enforce it by refusing to accept any papers submitted by Petitioner on behalf of his clients in pending actions, as well as by denying Petitioner the standing of lawyer whether on his own behalf or on behalf of his clients. On November 24, 2003, Petitioner filed a complaint with the Judiciary Inspection Bureau which was registered under No. 76/2003 and so far has been without any result.

8. Among those judges and other employees, by way of illustration only, are: Judges Elias Bou Nacif, Khairia Maysam Nouwairi, Rached Takkoush, Habib Rizkallah, Yahia Wardeh, Zaher Hamadeh, Najah Itani, Bassam Al Haj, and Mohamad Berri, and Chief Clerks Kalim Haddad and Fadl Jouma.

9. The former BAB president had, during the month of May, 2002, convinced the former President of the Higher Judiciary Council to issue a verbal order to the chief clerk of the court of cassation to refrain from accepting any papers submitted by Petitioner. He later retracted his order when he realized that he had made a mistake and authorized the chief clerk to receive all the papers submitted by Petitioner.

10. The president of the Higher Judiciary Council received Petitioner's memorandum, without making an explicit decision within the legal period in respect thereof, and is held to have issued an implicit decision to reject Petitioner's requests stated therein.

LJõR!f LJõ5UĂdž!fĂ Dižŭ̆pŬ̆f CĞ̆ľdSĂ lĞ̆ư!!f LJdž "fþþZ LJ35 ýz5!ĞhĂ ùē LJdžư̆fkõ NLjf Ľ̆ĺZ Dižõdžzk!f fĂdžnj5 ĞdžnjLjZ ljĂLjdž!f Dižõdžzk!fĂ YĞ̆k‡!f fĂz̆ĺhk fĂTP Ăf Ľ̆ĺZŬ̆f CĞ̆ư!!f Σĺ̆ηdž ΣõfS LJZ "fSpĞ̆Ţ "fR5Ğj "fSfSp Łõf ýĂhup LJZ YĞ̆ljkdžŬ̆Ğh ljRõ5ljkh fĂSTĞh5 Ü N! ýĞ̆ĂkdžŬ̆f DižpZ ŁhupĞ̆Z DižĞ̆džf Ł!!Ğz!f ăĂĞ̆Zþ!f Õ5 Nõĺ‡Ădž LJZ ŎZpkľdž!f Ğ̆njdžplõ ŝfSĂf LJZ ŎdžĞ̆ơdž!f Ł5Ţ YsLjh Ksfsfsp SpŢD LJdž DznjLjdžĂ ÜDi‡Ğ̆ơdž!f ăĂ‡Th ŎZpkľdž!f Dižplk5 · Nõĺ‡Ădž! Ăf Nľ5Lj! NĺõĂdžk Ư5ShĂ ŎZpkľdž!f DižpS Kơk Ğ̆njĺõηľk Dik ĎČČď/čč/ĎĐ Õ5 ŎJĞ̆ư!!f ţ ŏk5k!f ŁJõNj Ľ!ę · NľPõSĞ̆k Ľkơ Łηõklj LJĂþ KõlhĂ ĎČČď/ēĒ

LJdž :SŢơ!f Ŭ ýĞ̆ldž!f ýõhľ Ľ̆ĺZ LJõ5UĂdž!fĂ lĞ̆ư!!f CŬ̆dNj LJdžĂ ùĚ Ü ţ Ălŏ ßTfSĂ Üĭ SõĂLj!f Dižľõdž ŁõSõPĂ Ü Ş õŢĞ̆j Ăh ΣĞõ!f lĞ̆ư!!f ÜŎLjĞ̆kõZ ΘĞ̆ηLjĂ Ü ljßĞ̆džơ SNjfsĂ Ü lßSĂ ŎơõĂ Ü Ÿf ŝsS Yõhơ̆Ă ýư5Ă Ü ßfßơ Dižõĺ‡ Dižŭ̆pŬ̆f CĞ̆ľdS LJdžĂ ĭSh ßdžơ̆džĂ Ü ШĞ̆ơ!f DižĞ̆ľhĂ · Łzdžη Ÿf

Σĺ̆ηdž ΣõfS yĞ̆pD ŝhĞ̆ľ!f KĂSõh Õ5 LJõdžĞ̆ơdž!f Yõ!Lj LJĞ̆‡Ă ùě Ŏnj5T SdžD CĞ̆ŏZĞ̆h ĎČČĎ SĞ̆õf SnjT ýŭ̆P ŝhĞ̆ľ!f Ľ̆ĺZŬ̆f CĞ̆ư!!f LJdž Łdžpldž ŝfSĂD Łõf Dižŭ̆kľf LJZ YĞ̆ljkdžŬ̆Ğh sõõdžk!f Łdž‡ơdž Dižĺp Łľõ̆fS! sĞ̆ηf Ü ljdŏP ‖Spf GdžLjZĂ Ü SõPŬ̆f fRNj LJ‡!Ă DižĞ̆ơdž NĺK5Ţh ŎZpkľdž!f · ŎZpkľdž!f Ğ̆njdžplõ Ŏk!f ŝfSĂŬ̆f ý‡ Dižŭ̆kľf Dižĺ!!f Łľõ̆fS!

Yfsljf ŏhS lS‡Rdž Ğĺ̆hk Ľ̆ĺZŬ̆f CĞ̆ư!!f Σĺ̆ηdž ΣõfS LJf GdžhĂ ùčČ Shkzõ NLj35 ÜŁõljĂLjĞ̆!!f Łĺ̆njdž!f ýŭ̆P ĞnjLjĞ̆Th OõS Ţ SfSp ĭD SpŢõ Dižl!Ă · ĞnjZĂư̆Ădž ŎZpkľdž!f KĞ̆hĺŏ Ư5Sh "ĞõLjdžư̆ "fSfSp SpŢD NLjf

Part Two
In Form

A. The Decision May be Challenged

1. The Statute of the Conseil d'Etat (the"Statute") provides that individuals may bring action in administrative justice in the form of recourse against an effective and harmful administrative decision.

2. What matters is the characterization of the decision and not the standing of the official that made it. As long as its subject is administrative it will be considered of an administrative character regardless of the authority that issued it.
(Decision No. 1816 dated 12/12/1967, The Administrative Collection, 1968, P. 3. Decision No. 606/98-99, dated 17/6/1999, Administrative Justice Journal, Volume 2, Issue 14, P. 657).

3. The decision being challenged has nothing to do with the administration of justice, but is an administrative decision issued without any authority having been provided by law to the person who issued it, and aimed at preventing a lawyer from practicing before all courts and unlawfully depriving him of the standing of a lawyer.

4. It is undeniable that the said decision has inflicted serious damage on Petitioner.

5. It is undisputable that the challenged decision is administrative, effective and damaging, and hence the action must be admitted in form.

B. Action Satisfies All Other Conditions of Form

1. The decision being challenged is inexistent due to the incompetence defect.

2. An administrative act that suffers from such defect is inexistent and it is the duty of administrative justice is to declare such inexistence effective from inception.

3. In the event of inexistence, an action is not restricted to any time delay.
(Yousuf Saadallah Al Khouri, Public Administrative law, V. 2, P. 142)

4. Alternatively, Article 69 of the Statute provides that the time delay is two months. In the event that the decision is implicit, resulting from the silence of the administration, the delay commences from the end of the two months time delay provided under Article 68 of the Statute.

5. The president of the Higher Judiciary Council did not respond to Petitioner's memorandum which he received on September 16, 2003. Hence, he is deemed to have issued an implicit decision at the end of two months from that date, i.e. November 16, 2003, rejecting the said memorandum.

6. The present action is filed within the two months time delay provided by Article 69, ending on January 16, 2004, and is admissible for satisfying all the conditions of form.

Part Three

The Merits and Legal Grounds for the Action

The Decision Being Challenged is Inexistent For the Defect of Incompetence and Violation of the Judiciary Law

1. Article 108 of the Statute requires the Conseil to annul acts that are defective by reason that they are issued by an incompetent authority.

2. This defect is serious and requires a sanction equally serious by holding the act inexistent ab initio and leading to the frustration of its consequences.
(Decision No. 606/98 dated 17/6/1999, Journal of Administrative Justice, V. 2, Issue 14, P. 658)

3. The Higher Judiciary Council is an administrative body regulated by the Judiciary Law enacted by Legislative Decree No. 150/83. This law defined in a Chapter 1 thereof the competence of this council. It is evident that this body has no judicial character and does not at all exercise judicial power pursuant to Article 20 of the Lebanese Constitution.

4. It is also evident from the said law that it does not grant the president of the council any power to issue orders or circulars to license lawyers or prevent them from the practice of law, to execute the decisions of the Bar Association, or to circulate to courts decisions issued thereby. Thus any decision issued by him in this respect is inexistent.

5. Furthermore, Article 9 of the said law provides that decisions of the council must be forwarded to the Minister of Justice as soon as they are adopted. It does not mention any decisions issued by the president of the said council. In the case at hand the president of the Higher Judiciary Council did not send his above mentioned circular to the Minister of Justice who is his immediate superior.

6. The president of the said council has no power to issue such decisions or circulars. Therefore, the implicit decision being challenged has its origin in an incompetent authority and is inexistent, or, alternatively, constitutes an excess of authority.

Part Four
Compensation for Damages

1. The Statute provides the Conseil, in the event of an action in comprehensive jurisdiction, the power to order compensation for damages arising from unlawful administrative acts.

2. That is, it is possible to combine in one action a recourse for nullity with a recourse in comprehensive jurisdiction if they are directly connected and are based on the same grounds.
(Conseil d'Etat, March 21, 1973, Administrative Collection, 1973, P. 16; Khouri, V. 2, P. 331)

3. Petitioner has been heavily damaged materially and morally by the decision being challenged by the obstruction of the business of his firm, preventing it from representing his numerous clients in courts, and the negative impact on his reputation as a lawyer.

4. The amount of damage inflicted on Petitioner, as a result of the decision being challenged, until the day of filing this action, is estimated at fifty thousand US Dollars, to which must be added five thousand US dollars per week until final judgment is issued in the present action.

Part Five

Application of Summary Procedure

1.Article 102 of the Statute allows the application of summary procedure in actions mentioned in its Article 63, which include actions in nullity for exceeding authority.

2. The present action seeks a declaration of the inexistence of the challenged decision because it was issued by an incompetent authority and, alternatively, for the exceeding of authority. Hence, summary procedure should be applied hereto.

THEREFORE,

We request that this action be registered and, after the decision is made to apply summary procedures, to notify the same to, and to direct, Respondent to file its answer within a prescribed short period, and to rule as follows:

Firstly: To admit the action in form because it is submitted within the legal delay and satisfies all formal conditions.

Secondly: To admit the action on the merits, and to declare as inexistent the implicit decision issued by the president of the Higher Judiciary Council refusing to withdraw his circular No. 147 dated September 4, 2003, of the letter of the former president of BAB dated September 3, 2003, or, alternatively, declaring it null and void for the exceeding of authority.

Thirdly: To order Respondent to pay Petitioner the amount of fifty thousand US dollars as compensation for his damages arising from the decision being challenged up to the day of the filing of this action, to which there must be added compensation for damages that will be inflicted hereafter, until the judgment is issued and executed, equal to five thousand US dollars per week.

Fourthly: To order the publication of the judgment in the journal “Al Adl” at the expense of Respondent and to circulate a copy thereof to all judges and clerks by the Ministry of Justice within a period not to exceed 10 days from the date it is handed.

Fifthly: To direct Respondent to pay all court fees and costs and attorneys fees.

Please accept our high regards.

Without prejudice,

By power of attorney,

Lawyers

Willem van Manen

Leo Spigt

Phon van den Biesen

Antoine MKarzel

Mohamade Fakih

Jihad bou Nader