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Press Release

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Dr. Mugraby Brings Action Against the State for
The Gross Errors of 13 Judges Connected with his
Prosecution and Detention In the Summer of 2003

This morning, Thursday April 15, 2004, attorney Dr. Muhamad Mugraby filed action against the state before the general panel of the court of cassation under the chapter in the code of civil procedure allowing such actions for the acts and errors of regular judges. The action comprised all the acts related to Dr. Mugraby's detention and prosecution in August of 2003. The gross errors were attributed to thirteen judges, namely (1) Mr. Adnan Addoum, the chief prosecutor before the court of cassation, (2) Mr. Joseph Maamari, public prosecutor at Beirut, (3) Dr. Majed Muzaihem, investigating judge, (4) Mr. Samir Hammoud, assistant pulic prosecutor, (5) Mr. Ghassan Khouri, assistant public prosecutor, (6) Mr. Malek Saaibi, investigating judge, (7) Afif Hakim, assistant public prosecutor, (8) Mr. Samir Alia, presiding appellate judge, (9) Dr. Sami Mansour, presiding appellate judge, (10) Mrs. Kairiah Maysam Noueiri, presiding appellate judge, (11) Mr. Mohamad Masri, appellate judge, (12) Mrs. Terese Allawi, appellate judge, (13) Mr. Hatem Madi, first investigating judge, Beirut.

The action memorandum consisted of 82 pages. 44 documents were attached thereto comprising 137 pages, commencing with the decision issued by the higher judiciary council on April 25, 2000, with respect to Dr. Mugraby's public positions advocating the integrity of the judiciary.

After filing the petition, Dr. Mugraby made the following statement:” I always dealt with judges on the basis that they exercise, in the name of the people of Lebanon, the judicial power provided in the constitution. Thus I look at them as a constitutional power not as individuals. So I always defend the legal rights of my clients, and my rights, in accordance with the legal process, not with regard to the personality of the judge or judges hearing the case. In so doing I always hoped that they will discharge their constitutional duties with honesty and integrity. Hence if a judge commits a gross error, he must account therefore in accordance with the law. This would apply from the lowest ranking judge to the highest ranking judges in this republic which I strive, together with other activists, to recover the rights of its people in sovereignty and democracy under the rule of law and with full respect for human rights. Such a goal makes it a top national priority to establish a qualified and independent judiciary characterized with integrity.”

Dr. Mugraby asked in the action that the acts complained about be set aside in to and that the indictment decision of 23/9/2003 be partially vacated with respect to indicting him under articles 391 and 393 Penal Code. That decision had declined to indict him under article 111 COLP but the indictment chamber (headed by Mr. Jamil Bayram who has already been named in an independent action) reversed it in this respect and indicted Dr. Mugraby under the said article. The court of cassation's decision of 10/3/2004, however, declined to indict him under article 111.

The argument advanced in the action asserted that the above mentioned decision of the court of cassation is res judicata pursuant to article 303 CCP, and was conclusive from two standpoints:

Firstly, it distinguished, as to effectiveness, between decisions of the president or council of the bar association and disciplinary decisions, in that the effectiveness of a disciplinary decision depends on its becoming irrevocable as stipulated under article 111 COLP.

Secondly, it ruled that if a lawyer continues to practice law, despite a disciplinary decision he may not be prosecuted under article 111 unless the decision becomes irrevocable.

Quote:

[his] continuing to use his professional standing and practicing his professional work despite the disciplinary decision precluding him from that does not constitute the crime provided by Article 111 until an irrevocable decision is issued confirming the disciplinary decision...

Whereas the foregoing does not conflict either with the prior decisions of the court of cassation with respect to the decisions by the president of the bar association and its council pursuant to Articles 79 and 94 COLP relative to the permission to the prosecution of a lawyer or bringing personal action against him. These decisions were considered to be in force from the date they were issued regardless of the filing of appeals challenging them. For COLP did not require, with respect thereto, that the decision becomes irrevocable as it did for the decision by the disciplinary council for applying the provisions of Article 111.

Whereas the challenged decision, by finding in favor of indicting Petitioner for the misdemeanor under Article 111 COLP, without ascertaining that the disciplinary decision became irrevocable, violated the provisions of said article; thus its reversal is mandatory with respect to the foregoing.

Unquote

Dr. Mugraby submitted in the action that to consider disciplinary decisions to be in “effect” (just that) from the date it is issued does not mean that it is effective by itself (de plein droit) nor that it may be compulsorily enforced by the authorities, otherwise the court of cassation would have so stated clearly. Such enforceability cannot be recognized irrespective of notification and time delays, otherwise we would have another MTV case, but depends on whether the law requires notification or not, and whether there are time delays that must first lapse. Clearly, the plain text of article 79 COLP establishes a time delay for appealing the decisions of the bar association council which does not commence until service is perfected. Further, the plain text of article 108 COLP stipulates delays for opposition and appeal that do not start to run until the attorney is served personally. Hence it is uncontestable that the lack of service means that the decision and the time delays are not binding on the subject.

The dictum of the court of cassation applies to individual decisions only, and does not include regulatory decisions such as the purported internal bylaws which are subject to the obligation of publishing in accordance with Legislative Decree No. 9/1939.

All the above would presume the existence of a valid decision the validity of which is unquestioned. In the case at hand there is a strong and serious challenge to the valid existence of the disciplinary acts and decisions in question, which Dr. Mugraby considers to be non-existent for strong and valid reasons.

Hence the judges who are being held responsible for the cause of action had several choices. The first and most obvious choice is the non-fulfillment of the conditions of article 111 COLP which substituted article 393 Penal Code. Among the other choices which the judges may not ignore, which would compel them to decline to indict Dr. Mugraby on all charges, are the following:

- A) To recognize the lack of seriousness of the two purported disciplinary decisions and their waiver by the bar association, either implicitly in maintaining normal dealings with Dr. Mugraby, or explicitly in accepting his payment of his annual membership and pension plan charges, most notably on April 1, 2003.
- B) To recognize that the process prior to the purported disciplinary decisions is flawed and is being challenged for forgery and nullity, and that no proper service thereof took place, and that the purported decisions are in absentia and were never served on Dr. Mugraby, which would certainly bar any indictment of Dr. Mugraby.
- C) After reviewing the arguments submitted by Dr. Mugraby in support of his procedural exceptions, and investigating the substance thereof, to recognize that the disciplinary council does not exist and, consequently, the two disciplinary decisions, which would bar any indictment against Dr. Mugraby.

- D) Without reviewing the merits of the said arguments, to assess their seriousness and the effect of the civil action. The indictment would then be declined for the absence of any criminal intent.
- E) In all events, all those judges who are required by law to recuse themselves from the case should have done so.

The complaint brought by the former president of the bar association should have been rejected in toto because the association had no standing or interest to bring action and did not duly take the position of personal plaintiff.

The action mentioned the following judges as the lead judges to which the disputed acts are attributed. They participated in the acts leading to the prosecution of Dr. Mugraby and his unlawful detention without cause and to prolonging the detention. They are:

1) Mr. Adnan Addoum, the chief prosecutor before the court of cassation, and one of the members, ex officio, of the higher judiciary council who signed the decision of 225/4/2000. He committed gross errors by his advance and subsequent approval of the complaint by the bar association, by giving instructions, to the secret police section under his control, to have Dr. Mugraby prosecuted and detained in the detention center at the palace of justice, and to initiate public action against him, despite the availability of all the facts and documents before him which constitute irrefutable evidence the absence of incrimination elements, the conditions for prosecution and the conditions for provisional detention.

2) Mr. Joseph Maamari, the public prosecutor at Beirut, and the brother of judge Muhib Maamari, one of the signatories on the decision of 25/4/2000 by the high judiciary council. He demanded that the investigating judge issue an arrest for Dr. Mugraby despite his full knowledge of the facts of the case, both materially and legally (The bar association had timely notified him of the two purported disciplinary decisions adopted in absentia without finding any cause for initiating a public action at the time). He was fully aware that the conditions for prosecution and arrest and the elements for incrimination did not exist.

3) Dr. Majed Muzaihim, investigating judge at Beirut, and a university professor, who knows the law too well. He easily grasped all the material and legal angles of the case, supported by evidence, when Dr. Mugraby submitted his argument for procedural exceptions. Despite the fact that he could not interrogate Dr. Mugraby on the merits of the case, due to the procedural exceptions, and despite his full knowledge that the conditions for prosecution and detention were not there, and that there was no crime, he submitted to the will of the public prosecutor before the court of cassation who was determined, unlawfully, to have Dr. Mugraby prosecute and arrest him.

4) Mr. Samir Alia, presiding judge of the second appellate panel at Beirut, who seized the appeal against the arrest decision against Dr. Mugraby three days after his summer duty had commenced. He then issued a decision allowing the bar association 24 hours to reply, while the association had no legal standing in the action. After the association filed its reply, he recused himself from the case. He should have recused himself earlier because the grounds for recusal had been known to him. He thus committed a gross error. His decision to notify the association and to invite its reply, which is not required and violates the law, resulted in unreasonably prolonging the detention of Dr. Mugraby, which also constitutes a gross error.

5) Mrs. Terese Allawi and Mr. Mohamad el Masri, both appellate judges, who ruled that the detention and prosecution process is an adversarial proceeding requiring that appeals by the defendant be directed against the public prosecutor. They dismissed the appeal in form for not being directed against the public prosecutor, despite the clarity of article 115 CPP in that petitions for release are presented in the form of a simple letter, that its notification to a personal plaintiff is for making comments thereon and not presenting a reply, and that the original petition itself is referred to the public prosecutor, and not notified thereto, to state his opinion thereon. Hence when the appealed decision is made in accordance with the expressed opinion of the public prosecutor, there is no need to solicit a new opinion from him, as presiding judge Nouwairi asserted in her dissent. Thus the majority decision written by the two judges rejecting the appeal in form constituted a gross error.

The judges named in Dr. Mugraby's action against the state, by totally ignoring the prominent facts evident from the documents and arguments submitted, and avoiding any review thereof, and by not rejecting the association's complaint in toto for the absence of standing and interest and its lack of seriousness, and by not adopting any of the options raised by the above mentioned procedural exceptions and arguments, committed gross errors that they would not have made had they attended to their duties with normal diligence.