

## TRANSLATION

Republic of Lebanon  
Military Court of Cassation  
Case No. 34/2006  
Decision No.31/2006

### **In the Name of the People of Lebanon**

The Military Court of Cassation,  
After review and deliberation,

It is evident that the Applicant for cassation Muhamad Abdullah Mugarby, represented by his attorneys Willem van Mannen, Fouad Sfeir, Muhamad Fakih and Jihad Bou Nader, filed on March 27, 2006, an application, registered under No. 97/2006, to crush the decision of the Permanent Military Tribunal on March 20, 2006, rejecting the exceptions he had submitted and rejecting his petition to nullify the summons for the trial, and to go forward with the case against him for having defamed the military establishment and its officers.

It is evident that Applicant submitted his application on the following grounds:

1. Lack of jurisdiction and violation of Articles 23 and 24 of the Code on Military Justice ("CMJ").
2. Violation of his constitutional and human rights which require that his case be heard by a court constituted in accordance with the constitution and the Universal declaration of Human Rights.
3. Abuse of the power of the military justice system to violate Applicant's constitutional and human rights in freedom of opinion and expression.

Whereupon,

#### In Form:

Whereas the application in cassation has been made within the legal period and satisfies all the legal conditions, it must be admitted in form.

#### On the Merits:

Whereas Applicant submits in his application dated March 27, 2006, that the military justice system lacks jurisdiction over the criminal acts he is accused of because such jurisdiction is merely territorial and does not apply to acts committed outside Lebanese territory and foreign territories occupied by the Lebanese Army.

Whereas Article 60 CMJ permits a Defendant to plead the defense of lack of jurisdiction as soon as the papers are read, and Article 74 CMJ provides that an application in

cassation may not be heard before a final judgment is reached in the case with the exception of decisions related to jurisdiction.

Whereas the matter of jurisdiction before criminal courts, including military justice, are connected to public policy, a court must, when it receives a case as a result of charges by the public prosecutors, review as a necessary precondition its qualitative, territorial and personal jurisdiction before proceeding with the trial.

Whereas an examination by a court of its own jurisdiction results from an objective exercise in qualification by virtue of the provisions of the law, the criminal acts that gave rise to the case and the conformity thereof with the law. In this regard a court is not bound by the charges of the prosecution or the demands of the defendant.

Whereas we must firstly recognize that military courts are exceptions and that the rules of jurisdiction related thereto must be interpreted narrowly and restrictively.

Whereas it is evident from the charges made by the public military prosecution which placed this case before the permanent military court that the defendant, Applicant in cassation, that he did, on Lebanese territory, and on a date not yet subject to limitation, defame the military establishment and its officers, a crime penalized under Article 157 CMJ.

Whereas it is evident from reviewing the papers attached to the charge sheet and more particularly the report by the Lebanese Embassy in Belgium related to the minutes of a “meeting to exchange views” held at the Mashrek Committee of the Committee of External Relations of the European Parliament that Defendant Muhamad Mugarby was heard. Mugarby made two main titles to his presentation: Firstly criticism of the judiciary and what he called the “Regime” and secondly the condition of prisons in Lebanon.

Whereas it is evident from the content of the said report that the Defendant detailed in the meeting his activities related to the campaign to restore integrity to the judiciary and the difficulties he faced in practicing his profession as a lawyer and his experience when he was detained in jail. In this framework he related facts he alleges to have taken place relative to the sentencing by military officers who were given the power to issue judgments of persons who were distributing flyers criticizing the Regime or the Syrian presence, who were tried before military courts. The Defendant added that all the suspects were subjected to torture and that the military courts were still functioning and that military prosecutors were also sitting on civil courts. Defendant also mentioned the matter of the closing down of MTV and his prosecution by the bar association and how he confronted it.

Whereas it is evident from the foregoing that what was contained in the Defendant’s sayings and his presentation before the Mashrek Committee of the External Affairs Committee of the European Parliament consist of criticisms and accusations, general and comprehensive, that did not spare any of the state authorities or agencies and are,

consequently, were not aimed in particular against the military justice or its officers, having been made within the said general framework.

Whereas Article 157 CMJ falls within Chapter Three related to crimes against military discipline and said Article 157 must be interpreted within the framework it was included in.

Whereas it is not evident that the criticisms and accusations by Defendant, which he considers as falling within his right of free expression, constitute defamation as meant by said Article 157 connected to Articles 383 and 209 Penal Code.

Whereas in the light of the foregoing military courts cannot have jurisdiction over the present action, and hence the application to crush must be allowed on the merits, and the challenged decision must be voided in accordance with Article 74 CMJ.

Therefore,

And after reviewing the opinion of the Government's commissioner,

The application to crush the challenged decision is hereby admitted in form and on the merits, the challenged decision is hereby voided, and the lack of jurisdiction of military justice over this case is declared. The file shall be returned to the permanent military tribunal. Decision issued in chambers on 15/4/ 2006.

Chief Sergeant  
Ahmad Mishbik

Brigadier General  
Hanna Makdesi

Brigadier General  
Nader Farjallah

Chief  
Judge Joseph Kazzi