CASE ANALYSIS

Nidaa Al Watan newspaper company & Others vs. public prosecutor

**Summary and Outcome**

On November 21, 2019, the Publications Court of Appeal in Beirut (the Court) decided to revoke the proceedings against Nidaa Al Watan Newspaper and Others upon its consideration that freedom of the press is fundamental and crucial for the functioning of a healthy democratic society.

The Acting Public Prosecutor before the Court of Cassation opened an investigation on the opening of Nidaa Al Watan’s newspaper titled “New Ambassadors in Baabda …Welcome to the Republic of Khamnei”. After closing the investigation, he referred it to the Public Prosecutor who initiated the proceedings against the Newspaper before the Court.

The Court justified its decision by outlining Lebanon’s obligations to the United Nations’ instruments specifically the Universal Declaration of Human Rights, and the embodiment of the rights and principles in all fields without exceptions as provided in the Preamble of the Lebanese Constitution paragraph (B). In addition, to Article 13 of the Constitution that enshrined the right to freedom of expression and opinion verbally and in writing, and freedom of publication.

**Facts**

The Public Prosecutor considered that a journalist should master the art of writing by avoiding the committing of a penal crime, which violates the feelings and dignity of others. The Public Prosecutor considered that the Director of the newspaper and the author journalist who wrote the article titled “New Ambassadors in Baabda …Welcome to the Republic of Khamnei” shows the biased views of the journalist who shouldn’t denunciate the status of the Lebanese Presidency, and the abstinence of double standards, and follow an objective criteria to conduct a journalistic criticism.

This led the Public Prosecutor to issue proceedings to prosecute the defendants; Nidaa Al Watan Newspaper s.a.l. represented by its Authorized Signatory, Bechara Halem Charbel and George Mansour Berberi, based on Article 26 in conjunction with Article 23 of the Legislative Decree No. (104/1977), and in conjunction with Article 210 of the Penal Code with respect to the sued company concerning the article written by Bechara Charbel on 12/9/2019; for denunciating the Lebanese President and degrading his dignity, in addition to the crime of libel, slander and debasement while stipulating that the Lebanese President has no authority and no power, but the authority and power resides with Khamenei, instigating that the real president is Khamenei along with the responsibility of George Berberi of what is published by the newspaper in his capacity as Director.

The defendant, represented by George Berberi, stated that the newspaper did not use any expressions of defamation or denunciation, nor did it insult the person or status of the Lebanese President, having only mentioned him once where the title "His Excellency the President" showed an indication of respect for the presidency. This article contains a criticism of the stance of the Secretary-General of “Hezbollah” party and the silence of state’s officials in this regard, and it did not include any expression or any word of contempt against the person or status of the President of the Lebanese Republic. As part of looking out for the interest of their country, the Newspaper regretted the announcement made by Secretary-General of “Hezbollah” party Hassan Nasrallah declaring his obedience to Iran’s Supreme Leader instead of declaring his obedience to the Head of the Lebanese State. This reflects the opinion of a large segment of Lebanese society, as well as many local and foreign newspapers. The intent behind the use of the phrase "a state within a state" is a political description of “Hezbollah” that has become stronger than the Lebanese state, and that the use of the term " Republic of Khamenei" is taken from a previous statement by the head of a Lebanese party represented in the Lebanese government, so it is no longer possible to blame the newspaper for citing an illustration by a politician represented in one of the state’s institutions.

The charges of which the defendants were accused are libel, slander and degrading of the Lebanese President’s dignity, based on the following articles;

Article 26 of Legislative Decree 104/77 stating;

“1- The penalties imposed for crimes committed by press publications are the responsibility of its manager and the author as original actors. In this regard, the provisions of the Penal Code related to participation or criminal interference are applied.

2- As for the owner of the publication, he will be civilly liable in solidarity for personal rights and trial expenses, and he will not be subject to criminal liability unless his actual involvement in the crime is proven…”,

Article 23 of the same Legislative Decree stating that;

 “1- If a publication states what is considered as an affront to the dignity or defamatory, insulting or denigrating to the personality to the Head of the State or against the Head of a foreign country, the action of the public right is moved without complaint of the aggrieved.

2- The Appeal Public Prosecutor can confiscate the publication and refer it to the competent judiciary, which, based on a trial, can order imprisonment from two months to two years and a fine of / 50 / fifty million to / 100 / one hundred million Lebanese Pounds or one of these two penalties. In any case, the imprisonment cannot be less than two months nor the fine can be less than the minimum…”

Article 210 of the Penal Code for the company stating;

“1- No one shall be sentenced to a penalty unless he consciously and willingly committed the act.

2- Legal persons shall be criminally responsible for the actions of their directors, members of the administration, representatives and employees when such actions are undertaken on behalf of or using the means provided by such legal persons.

3- They may be sentenced only to a fine, confiscation and publication of the judgement

4- If the law provides for a primary penalty other than a fine, that penalty shall be replaced by the fine and shall be imposed on the legal persons within the limits set by Articles 53, 60 and 63”.

**Decision Overview**

The Publications Court of Appeal in Beirut consisting of Judge Hiba Abdallah as President, and Nadia Jadayel and Manal Fares as Judge Consultants, issued a decision in regards to the case brought before it by the Public Prosecutor against Nidaa Al Watan Newspaper and Others in response to the opening of the newspaper on 12/09/2019, which the Public Prosecutor considered to have denunciated the Lebanese President and degraded his dignity, while the defendants argued that they were expressing the opinion of a large number of the Lebanese population who believe that the Secretary-General of “Hezbollah” party, who pledged his loyalty to Khamenei, the Supreme Leader of Iran, is the one calling the shots in Lebanon while politicians remain silent, and that the opening statement was nothing but a criticism to the way the Political system in Lebanon has surrendered the fate of Lebanon to Khamenei, an opinion anyone has the right to express in any form possible including the opening of a newspaper.

The Court saw that “the crime of defamation is achieved as a result of using words that include insults and contempt, and reasons that may violate the honor and consideration of a natural or legal person. However, it is necessary to refer directly to the fact that the material element that constitutes the crime of defamation consists of assigning an order to any show of a somewhat doubtful fact without assuming personal responsibility for it, and that attributing a fact or the existence of a specific fact is what distinguishes defamation from insult. Whereas if these restrictions would limit the freedom of the press to express opinions and convey information regarding ordinary people, then positive law surrounded the President of the Republic with the privilege of making him immune to criticism in general.”

The Court indicated that despite the existence of Article 387 of the Penal Code “the exception of defamation against the Head of State, where suspects are discharged if the defamation subject is job related and is proven to be correct.” While this article clearly protects the Lebanese President by differentiating him from any natural or legal person who unlike the president have no immunity to criticism from the media.

However, the Court considered that “this extraordinary privilege that positive law has granted to the President of the Republic due to his position, should not limit the press from directing political criticism at him as the first statesman and symbol of the nation’s unity in his capacity to draw the country's guiding policy to ensure its unity.” The Court added that “the role of the press in general and in democratic countries specifically is essential to provide the public and citizens with the most effective way to judge the acts and positions of their leaders, in addition to giving politicians an opportunity to think and comment on the concerns of public opinion and allow everyone to participate freely in the political debate that lies at the heart of the idea of ​​a democratic society like Lebanon”.

According to the Court, after having analyzed the writings and phrases chosen from the article it showed that “despite the severity of his expressions, the author did not go beyond the limits of permissible criticism.” In saying this, The Court prioritized the good and benefit of the public over the image and position of one individual, by implying that no position, not even that of the Lebanese Presidency, should be above the good of the country and its people.

The Court concluded that “the opening of this article departs from the scope of freedom of expression preserved in the country's constitution, laws and traditions, thus reflecting the reality of intellectual pluralism, which is indispensable in a democratic society such as the one present in Lebanon.” This made it clear that the sanctity of freedom of expression has been guaranteed by the Country’s Constitution and laws which gave the country its democratic nature and preserved it.

The Court also considered that “What paragraph (B) of the Preamble of the Constitution referred to was devoted in Article 13 of the Constitution; freedom of opinion and expression both verbal and written in addition to the freedom of the press within the scope of the law, is a reference to the importance of freedom of expression as a human right and a fundamental principle that holds democratic societies, in addition to its prominent position it holds in such a society where it is considered one of its main pillars”. In these words, the Court reminded everyone that freedom of expression is not only a tool for democracy, but also a sacred Human Right.

Apart from the Lebanese constitution and national laws, The Court also referred to international standards relating to freedom of expression by referencing the country’s commitments to the Universal Declaration of Human Rights which embody the rights and principles of freedom of expression. Of these, were:

Article 19 of the United Nations Universal Declaration of Human Rights of 10 December 1948 stating “Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers”;

Article 11 of the Declaration of the Rights of Man and of the Citizen of 1789 stating “The free communication of ideas and of opinions is one of the most precious rights of man. Any citizen may therefore speak, write and publish freely, except what is tantamount to the abuse of this liberty in the cases determined by Law”;

Article 10 of the European Convention on Human Rights of 4 November 1950 stating “Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers”.

By referencing these instruments, the Court gave Freedom of the Press and Expression a “universal value which cannot be undermined except to the extent needed to protect human dignity and maintain respect”.

The Court also relied on international jurisprudence when it mentioned that “it has become established in international jurisprudence that the field of politics leaves little room for imposing restrictions on freedom of expression, and that the limits of permitted criticism are greater sacrifice in matters of public concern or issues related to the positions of politicians and public law persons.”

The Court specifically cited two legal precedents; the cases of Bathold v. Federal Republic of Germany, judgment of 25 March 1985, series A, n: 90, and Oberschilck v. Austria, judgment of 23 May 1991, series A no 204, p 26-27, where the judgements considered, as stipulated by the Court, that “the limits of admissible criticism are broader with regard to a politician, targeted in this capacity, than a normal individual: unlike the second, the first is inevitably and consciously exposed to careful control of his actions and gestures both by journalists and by the mass of citizens, he must therefore show greater tolerance (…). He certainly has the right to have his reputation protected, even outside the framework of his private life, but the imperatives of this protection must be weighed against the interests of the free discussion of political questions, the exceptions to freedom of expression calling for to a narrow interpretation”.

Reference made to the above, the Court revoked the proceedings attributed to the defendants, and judged in maintaining all legal expenses.

**Decision Direction**

The decision made bythe Court is a clear expansion of Freedom of Expression. The Court did not only acquit the defendants based on the absence of moral and material elements of the crime mentioned in Articles 26 and 23 of the Legislative Decree No. (104/1977) but went further to assure the Lebanese public that their country is a democracy which protects freedom of expression even when criticizing the political stance of persons in the most important positions in the state. This was shown by the reference made to international standards rather than settling for the country’s constitution and laws. The judgement goes beyond national standards to broaden the scope of freedom of expression in Lebanon instead of limiting political criticism to ancient national laws.

It is also important to note that the timing of the decision (November 21, 2019) comes during the country’s largest known revolution (since October 17, 2019), which sets forth the principle of freedom of expression especially when many activists have been summoned for investigation and even unlawfully arrested for criticizing politicians on social media and other media outlets.

**Global Perspective**

**Table of Authorities**

**Related International and/or regional laws**

* Universal Declaration of Human Rights, Article 19.
* Declaration of the Rights of Man and of the Citizen, Article 11.
* European Convention on Human Rights, Article 10.
* Bathold v. Federal Republic of Germany, judgment of 25 March 1985, series A, n: 90.
* Oberschilck v. Austria, judgment of 23 May 1991, series A no 204, p 26-27.

**National standards, laws, or jurisprudence**

* Lebanese Constitution, Paragraph (B) of the Preamble and Article 13

*International Commitments of the Lebanese Government and Freedom of Expression.*

* Leb. Penal Code Art. 387

*The exception of defamation against the head of the state.*

* Leb. Penal Code Art. 210

*No one shall be sentenced to a penalty unless he consciously and willingly committed the act.*

* Leb. Legislative Decree 104/77 Art. 26

*The penalties imposed for crimes committed by press publications are the responsibility of its manager and the author as original actors.*

* Leb. Legislative Decree 104/77 Art. 23

*the movement of without complaint of the aggrieved if a publication states what is considered as an affront to the dignity or defamatory, insulting or denigrating to the personality to the Head of the State*

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