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**In the Name of God the
Most Gracious Most
Merciful**



*The Center for Trade Union and Workers
Services*

*Honored
The French Republic's Human Rights Prize*

To:

The Honorable Chancellor President of the Administrative Judiciary Court of the State Council.

Submitted by:

1. Kamal Ahmed Abbas Abd el Kader,
Borg el Rihaab, Mohamed Sayed Ahmed Street, Helwan.
2. El Sayed Saad el Din Mohamed Hassan,
Mashroa' Nassir, Zone 3, Entrance 9, Helwan, and
3. Mohamed Omar Mohamed Osman,
41, Sherif Street, Helwan, Cairo.

Against

1. The Head of the Egyptian Higher Military Council in his capacity,
2. The Prime Minister in his capacity, and
3. The Minister of Manpower and Immigration.

The Subject

Annul the negative decision issued by the respondents which did not decide the dissolution of the Egyptian Trade Union Federation together with all the related legal effects represented particularly in annulling its capacity as a representative of the Egyptian workers in all the councils, organizations and forums, dissolve and dismantle its present structures and put its funds under receivership in order to protect and manage them until the organization to which these funds will descend is decided,

And very urgently stop the implementation of the objected decision and act according to the draft sentence without service.

Facts of Objection

The objectors are of the workers of the Egyptian Company for Metal Structures and the Egyptian Iron and Steel Company who have the right and are supposed - together with their colleagues in all the waged workers in the industrial and commercial sectors- to form their trade unions to defend their rights, maintain their interests and improve their work terms and conditions. They have an ensured interest in the legality of these trade unions and their proper formation and structure which secure their proper performance of their trade union activities.

As the Egyptian Trade Union Federation – which was imposed on the workers as the sole trade union organization – monopolized the workers right to representation and denied their constitutional right to form their trade unions freely; and as it was in fact one of the tools of the former regime to subjugate and rule, it has wasted the right of the Egyptian workers, including the objectors, to express their interests and negotiate with other social parties on these interests. As a result, it has seriously jeopardized social balance and stability,

And as the leaders of the so called the Egyptian Trade Union Federation were mostly from the formerly “ruling” National Democratic Party which the High Administrative Court decided to eradicate have dedicated their “trade union” organization for the benefit of and put it under the service of the former regime and have used the organization as a tool to realize the benefits of the former regime as an engine for political, economic and social corruption in a manner which hindered the country’s diversified potentials and resources,

And as the collapse of the regime entails the collapse of its tools as a precondition for building a democratic society which enjoys freedom and justice, maintains its resources, protects its wealth, preserves the dignity of its people and secures their right to a dignified life,

And the continuity of the so called the Egyptian Trade Union Federation causes harm to the society and the people, particularly the waged workers, the objectors submitted this claim requesting to terminate this organization together with any pertinent effects.

Causes of Objection

The objectors reject the aforementioned decision for the following reasons:

First: The entity called “the Egyptian Trade Union Federation” does not exist legally and physically because the High Administrative Court (the First Circle) - in the objections Nos. 20030, 20279 and 20459/57 regarding the termination of the National Democratic Party and the liquidation of its funds which are referred to the state – provided that “the collapse of the regime entails necessarily the collapse of its tools through which the regime exercised its authorities ...”; and as the Party has come to an end legally and physically, the mandate of this court will be to uncover the reality of this termination and its consequent legal effects represented in liquidating its funds and deciding the party to which these funds will be referred”.

The High Administrative Court was keen in its afore mentioned sentence to ensure the essential constitutional right included in the Constitutional Declaration issued on 30 March 2011. The last paragraph of its Article Four provided that “citizens have the right to establish associations and form trade unions, federations and parties ...”. The court considers it an integral and indispensable right” but the court established its sentence on the fact that the Party is terminated with the termination of the regime which it was one of its tools.

If the “trade union organization acts freely without the domination of the administrative authority and stays independent and far from its control” ... and if it is inadmissible to “link the formation of a trade union with the permission of the administrative authority or that the administrative authority interferes in managing the union’s affairs, dissolve it or suspend its activities” “[the High Constitutional Court in its sentence No. 6/15]”.

But this trade union freedom, which must be protected and maintained is “an essential rule for trade union organization which some states gave it a constitutional value in itself in order to secure the right of every worker to join the trade union which he prefers, the trade union which he chooses in case there are several ones and the right to separate himself from all of them or end his membership” .. [the above mentioned sentence].

As a matter of fact, the Egyptian workers have suffered for long from the deprivation of their right to assemble and form the trade unions which they choose freely. This right was surrounded by many legal and administrative restrictions for many decades by the establishment of the Egyptian Trade Union Federation which was equally bureaucratic similar to the regime which established it, imposed it as the only organization and banned the formation of any trade unions outside it. And as these restrictions on the right to form trade unions outside this Federation –which became one of the official bodies of the state – have in turn produced a complete system of administrative and bureaucratic procedures which separated the “official” Federation from the workers and linked it to the state agencies. this resulted in corrupting the political, economic and social life of the country as follows:

- The roles were mixed. The trade union organization became one of the tools of the ruling regime, a horn for its propaganda and a support for its practices in order to maintain false consensus for which not only the workers but also the whole society paid the price. This situation prevented the exchange of opinions which aim to reciprocal correction, hindered the flow of facts related to decision taking, blocked the development of human personality which depends on plurality, diversification and fertile interaction.
- The organization so called “the Egyptian Federation of Trade Unions” which was attached to the regime did not only waste the workers’ rights, but also wasted the national wealth when it agreed to and participated in the privatization bargains which contained a lot of corruption. There is no doubt that its leaders participated in such bargains and played a considerable role to convince the workers to accept early pension schemes in order to sell their companies. In this context, trade union leaders defended all the privatization procedures that were taken.
- This organization with its present structures is subject to serious appeals related to the nomination and election of its members which took place according to Ministerial Decisions No, 298, 299, 300 and 301 for the year 2006 which contained clear violations of the trade union freedoms especially in the restrictions on the right to stand for election, the right to campaign and the right to equal treatment. The election process contained violations which were recorded and documented by observers and journalists. A very outstanding violation was depriving many workers from the right to stand for election. Tens of court sentences were issued against the election of the board members of many general trade unions.
- This was not the only participation of the leaders of the Federation in corrupting political life. Most of them, being members of the dissolved National Democratic Party, participated in serious corrupt political practices especially in the previous legislative elections.
- It is not a secret, in light of the report issued by the Fact Finding Committee and the investigations of the Public Prosecution with Mr. Hussein Megawer President of the Egyptian Trade Union Federation, that the leaders of the Federation played a role against the revolution of the Egyptian people starting from the signal they gave to the presidents of the general trade unions on 26

January 2011 which contained strict directives to “abort any attempts to get the workers involved in the demonstrations in Cairo and the other governorates” passing by the second declaration of the Federation on Wednesday 2nd February which welcomed “the great changes and reforms announced by President Mubarak through reforming the constitution and the keenness to protect Egypt from going to the unknown” ... assuming that “the Egyptian workers cannot accept violating the regime” !! ... and ending by the participation of the president of the federation and some of the leaders in person in organizing violent actions with the thugs against the protestors at Midan el Tahrir on that bloody Wednesday.

This organization, which used to stand against the workers’ movements, has collapsed after its last battle vis-à-vis the revolution of 25th January as if history wanted it to collapse with its hands covered with the blood of the youth of the revolution.

This organization has fallen down and there is no way that it will come back to life again.

Second: Ensuring Trade Union Freedom Necessitates Liberalizing the Egyptian Workers from Coercion and Forced Membership of the Existing Organization:

The High Administrative Court provided that “the supervision of the Administrative Judiciary on the soundness of the actual and legal case of the foundation of reason is realized whether the result attained by the decision is properly derived from material and legal foundations. If the result is derived from facts which cannot produce it materially or legally it will lose the foundation of reason and it will be in contradiction with the law”. Moreover, the soundness of an administrative sentence is measured by its goal and objective. The administrative sentence should aim to realize a public benefit.

The High Administrative Court, in its sentence to dissolve the National Democratic Party, made clear that the demands are true in light of “the will of the Egyptian people who is the source of authorities and who is above the constitution and the laws and who gave the armed forces the legality to rule the country temporarily until building the constitutional institutions is completed. It is the will which the High Military Council depended upon in issuing the constitutional declaration of 13 February 2011 according to which the People’s Assembly and the Shura Council were dissolved and the provisions of the 1971 constitution were suspended after the 25th January revolution in order to topple down the regime and the Party which it has corrupted ...”.

“ and as the fall of the regime means necessarily the fall of its tools through which it exercised its authorities” and as the so called “the Egyptian Trade Union Federation” is one of these tools which corrupted the political, economic and social life, and as the High Military Council did not dissolve or liquidate the Party but left this process to the High Administrative Court in respect of the judiciary authority and the principle of separation between the authorities .. it has become necessary that this Court reveals this collapse and the subsequent effects thereof”. [The High Administrative Court, the sentence regarding the National Democratic Party].

If the subject of the objected decision in this case is that there was no decision to determine that the “Egyptian Trade Union Federation” has collapsed and ended with the collapse and end of the regime. Lack of such a decision will enable the Federation to continue corrupting political and social life. Revoking this negative decision and judging the collapse and end of the Egyptian Trade Union Federation does not contain any violation to trade union freedoms. On the contrary, it will emphasize this freedom and put an end to violating it. This is explained as follows”

The membership of trade unions is divided between semi forced membership in the public and government sectors, and paper membership for those who pay trade union fees in order to get a work permit or license while they do not know anything about the union which they are supposed to join.

Employees in the public and government sectors are automatically considered members of trade union organization without applying for membership or whether they want to join a trade union or not. Their fees are cut-off automatically from their monthly salaries by law.

Example: The Egyptian Trade Union Federation decided on 26/12/2011 to form what is called “the General Trade Union for Workers in Finance, Taxes and Customs” which became known as the 24th member of the Egyptian Trade Union Federation which for long decades comprised 23 general trade unions according to arbitrary classification which could not be changed with the change of the economic conditions or structures.

How was the new trade union formed? It was formed by a decision taken by the Federation. Then the president of the Federation sent a letter to the Head of the Real Estate Tax Authority asking him to cut-off monthly trade union subscriptions from the employees’ salaries as from the beginning of January 2010 and transfer these amounts to the new “General Trade Union for Workers in Finance, Taxes and Customs”. The equivalent of 10% of the cut off amounts would be transferred to the Egyptian Trade Union Federation.

The Board of Directors of the Egyptian Trade Union Federation decided to form the above mentioned new union. The general assembly of the Federation considered the decision and approved it at its session held on 26/12/2009 and the Federation considered the approval as sufficient grounds to cut off subscriptions from the workers’ salaries and transfer them to this union as from the beginning of January 2010.

It is logical and legal that the workers have the will to establish a general trade union, articulate this will to establish it or apply to join it. But it is not logical or legal that the Federation decides to establish a trade union and chooses a name for it without defining the names of its members, when was their assembly, how did they elect their representatives or having any indication that the workers are willing to join the union. There is no indication about the presence of these members, their number, work locations or governorates. Nevertheless, subscriptions are collected publicly from all the workers in the government units and establishments which the new union is decided to represent.

On the other hand, in order that an unemployed person is registered in the Manpower Office as job seeker, the applicant has to pay membership subscription for the union he is going to join when he is employed (according to the professional classification). Thus, a worker is forced to join a union which he does not know and will never know. Taxi, mini bus and bus drivers and all who work as drivers have to pay subscriptions for the General Trade Union of Land Transport. They are forced to be members of the union.

As a result, the Egyptian workers are deprived from their second core right to collective negotiations which cannot be conducted in the absence of independent trade union organizations which gain the workers confidence. Workers had no other alternative but to resort to strikes and protest movements from the very beginning in order to attract the other parties to negotiate with them directly or with their actual representatives whom they choose freely during the protest movement. Thus, strikes became the first option rather than the final resort to initiate negotiations. Strikes and protest movements were very successive during the last few years disclosing an unstable society that lost equilibrium due to the absence of core trade union rights and freedoms together with the absence of negotiation mechanisms.

As the current decisive transitional period requires all the sincere efforts and hard work to develop societal foundations to activate negotiation potentials, reach consensus and develop opportunities for conflict resolution instead of protest movements and calling for demands,

And as the actual problem which challenges this very urgent mission is the current condition of the so called “the Egyptian Trade Union Federation” and the widespread refusal of this organization which the workers express particularly during protest movements of the past years to the extent that one of their main demands was to dissolve the trade union organizations and withdraw confidence from them,

It has become necessary to liberate the Egyptian workers from the bonds of the Egyptian Trade Union Federation.

Third: The Objectors have the capacity and have a serious personal benefit:

“As the provisions of the constitution in its Article No. 56 concerning the establishment of trade unions and federations on democratic foundations applies generally on all the different levels and degrees of every trade union or professional organization, and emphasize that trade union action does not provide marginal benefits with limited importance but provides for its members all the facts which enable them to decide their priorities” [Objection No. 6/15, Higher Constitutional Court, 15 April 1995].

And as the objectors are of the workers who should be entitled to form and join trade unions to defend their rights, take care of their interests and improve their work conditions, they have real and genuine interest in the proper formation and structure of the trade unions which ensure their good performance and implementation of trade union activities.

The concept of personal interest in this claim to annul the negative decision extends to include any serious interest for the objectors which may be affected by the decision without mixing this claim with the claims of probation “Hesba”.

It is not necessary for accepting the claim that the objector’s right was jeopardized by the objected decision. It is sufficient for the objector to have a direct personal moral or material interest in order to request cancellation of the decision “ [Objection No. 1121/10, High Administrative Court, 23/3/1968].

Fourth: Completion of Conditions for Urgent Request:

As two preconditions are required for accepting the urgent request and to suspend the implementation of the decision:

- I. Urgency: In case the continuous implementation of the decision will cause unavoidable injuries which cannot be remedied:

And as the trade union organization is required to satisfy by all means the numerous and diversified purposes for which it is established, and as the soundness and integrity of trade union action “establish a sphere of protection for the essential interests of the manpower, crystallize their will and ensure their activity” [Objection No. 77/19, Higher Constitutional Court, 7 February 1998],

The Administrative Court (the Technical Bureau – 6 – 1323) judged on 11/4/1951 as follows: “The suspension of the core rights and public freedoms which the constitution ensures is in

itself a serious issue which causes irreversible damage. In such a case, the request to stop implementation is possible”.

II. Seriousness and legality: The objector’s claim must be based on serious reasons sufficient to annul the decision.

The element of seriousness is also available here in toppling down the regime, and consequently toppling down the tools through which the regime used to exercise its authority including the Egyptian Trade Union Federation.

Accordingly

The objectors request:

First: To define a date to consider this objection as soon as possible,

Second: To accept the claim in form, and

Third: To annul the negative decision issued by the respondents which did not decide the dissolution of the Egyptian Trade Union Federation together with all the related legal effects represented particularly in annulling its capacity as a representative of the Egyptian workers in all the councils, organizations and forums, dissolve and dismantle its present structures and put its funds under receivership in order to protect and manage them until the organization to which these funds will descend is decided,

And very urgently stop the implementation of the objected decision and act according to the draft sentence without service.

And to make the respondents bear the expenses and lawyers fees.

For the Objectors:

Mohsen el Bahnasy, Lawyer

Ashraf Mohamed Abd el Fattah, Lawyer

Ahmed Mohamed Saoudi, Lawyer

Mohamed Abd el Mo’ez Abd el Karim, Lawyer

Rahma Refaat, Lawyer

Notification

On this day, / /2011

And according to the request of:

1. Kamal Ahmed Abbas Abd el Kader,
Borg el Rihaab, Mohamed Sayed Ahmed Street, Helwan.
2. El Sayed Saad el Din Mohamed Hassan,
Mashroa' Nassir, Zone 3, Entrance 9, Helwan, and
3. Mohamed Omar Mohamed Osman,
41, Sherif Street, Helwan, Cairo.

Their chosen address is the office of Mohsen el Bahnasy, Ashraf Abd el Fattah el Sherbeeney, Ahmed Mohamed Saoudi, Mohamed Abd el Mo'ez Abd el Karim and Rahma Refaat (Lawyers),
Helwan, 1 (A) Mohamed Sayed Ahmed Street.

I Bailiff of Court

Notified:

1. The Head of the Egyptian Higher Military Council in his capacity,
2. The Prime Minister in his capacity, and
3. The Minister of Manpower and Immigration.

At the State Lawsuits Authority, Tahrir Complex, Cairo

And delivered to them a copy to act accordingly.