



A JUDICIARY PRESIDENT

*Using Emergency State Security Courts to Prosecute
Political Activists and Human Rights Defenders*



EGYPTIAN FRONT
FOR HUMAN RIGHTS

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Report by

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Index

Introduction	5
Report Methodology	7
Analyzed Emergency State Security Case Profiles	8
The Case of Researcher Ahmed Samir	8
Al-Amal Case.....	9
The Case of Mohamed El-Baqer and Alaa Abd El-Fattah.....	9
The Case of Politicians Abdel Moneim Aboul Fotouh and Mohamed El-Qassas....	10
The Case of the Egyptian Coordination.....	11
The Case of the Joker.....	12
The Case of Politician Yahia Hussein Abdel-Hady	13
The Case of Researcher Patrick Zaki.....	14
The Case of Politician Mamdouh Hamza	14
Chapter One: Overview of the Development and Issues of the Law Governing Emergency State Security Courts	15
Development of the Law Governing Emergency State Security Courts	15
Issues of the Law Governing Emergency State Security Courts	17
First: Encroachment on Judicial Independence	17
Second: Denying Defendants the Right to a Natural Judge	18
Third: Prohibiting Sentence Appeal and Denying the Right to Litigation on Two Levels.....	18
Fourth: Grievance Against Emergency State Security Court Sentences	19
Fifth: The Retrospective Effect of the Emergency Law.....	20
Sixth: The Lasting Effect of the Emergency Law	20
Chapter Two: Violations in Emergency State Security Trials of Cases of Political Activists and Human Rights Advocates	21
Unlawful Referrals to Trial Allowing for Double Jeopardy	21
Venue and Security Presence Inside Courts.....	23
Prejudice to the Right of Defense During Trials	25
First: Restricting Access to Copies of Case Documents.....	26
Second: Restricting Allowing Defendants to Speak to the Court Panel	27
Third: Restricting and Dismissing Defense Requests.....	28
Fourth: Restricting and Refusing to Present Witnesses	29
Fifth: Rejecting Constitutional Challenges	30
Conclusion and Recommendations	33
Attachments	35

Introduction

Egyptian authorities continue to commit numerous human rights violations targeting different segments of the civil society, including human rights advocates, journalists, and political activists. The authorities have developed their tools of crackdown on the opposition, to keep them detained as long as possible. Plenty of practices and methods were developed for targeting civil society activists, for example, “rotation” and probation.

Since 2019, “rotation” has become prevalent as a practice used by security services, with the participation of the Public Prosecution, to repress political opponents. Rotation takes many forms, all within the scope of pretrial detention. Recently, in mid-2021, the Supreme State Security Prosecution developed forms of rotation and introduced a new form, which is duplicating cases in order to get around pretrial detention and ensure keeping people in prisons under final judgments.

The authorities took advantage of the declared state of emergency and referred detainees in cases of conscience, after exceeding the pretrial detention period stipulated by law, to the Emergency State Security Courts specified by Emergency Law No. 162/1958, resulting in depriving individuals of trial before their natural judge, and instead, trying them before extraordinary courts, where they don't receive fair trials. The Supreme State Security Prosecution referred those individuals to trial, whether by duplicating cases to the Emergency State Security Misdemeanor Court, or referring cases to the Emergency State Security Criminal Court.

2021 saw increased use of Emergency Law against political activists and human rights advocates, as the State Security Prosecution referred 5 cases of conscience to the Emergency State Security Courts, during the second half of 2021.

The first of the cases referred to the Emergency State Security Courts is that of researcher Ahmed Samir which was referred by the State Security Prosecution to trial before an Emergency State Security Court in May 2021 in duplicate case no. 877/2021. On July 14, 2021, human rights lawyer and former MP Zyad El-Elaimy, journalist Hussam Mo'nis, and labor leader Hisham Fouad, among others were also referred to an Emergency State Security Court in duplicate case no. 957/2021. In August of the same year, the Supreme State Security Prosecution referred the Egyptian Coordination for Rights and Freedoms' case, in which human rights lawyer and former member of the National Council for Human Rights Hoda Abdel Moneim and human rights lawyer Ezzat Ghoneim, among others, were detained, to the Emergency State Security Criminal Court in case no. 1552/2018 after three years of pretrial detention.

In September 2021, the Supreme State Security Prosecution referred Strong Egypt Party Chairman Dr. Abdel Moneim Aboul Fotouh, the party's Deputy Chairman Mohamed El-Qassas, and 23 others, to the Emergency State Security Criminal Court in case no. 440/2018. Days before the state of emergency was lifted, the Supreme State Security Prosecution referred human rights lawyer Mohamed El-Baqer, blogger Alaa Abd El-Fattah, and journalist Mohamed Oxygen, to the Emergency State Security Misdemeanor Court in duplicate case no. 1228/2021.

On October 12, 2021, the President's Facebook and Twitter accounts posted a decision to lift the state of emergency after it has been extended 17 times. As a result, the cases, which were still under investigation by the Public Prosecution, were no longer referred to Emergency State Security Courts, after the authorities managed to use such questionable trials against many prominent detainees in cases of conscience.

Report Methodology

To write this report, the Egyptian Front for Human Rights (EFHR) used nine online voice chats with nine lawyers who defended detainees before Emergency State Security Courts in nine cases, in which a number of political opponents and human rights advocates were detained from early 2021 until the time of writing this report. All conversations were made between mid-April and early June 2022, and touched upon the legal characterization of referring their clients to trial before Emergency State Security Courts, the constitutionality of some relevant legal texts, violations against fair trial guarantees by these courts, legal defenses used, and the sentences rendered against their clients.

The report is also based on an examination and analysis of the official documents of 5 cases referred by the Supreme State Security Prosecution to Emergency State Security Courts between mid-2021 and October 25, 2021, before lifting the state of emergency. It is also based on a perusal of three defense statements filed by the lawyers to the Emergency State Security Misdemeanor Jurisdictions during pleadings.

In addition, the report is based on an examination of the provisions of Egypt's constitution, Emergency Law, Criminal Procedure Code, Penal Code, and Anti-Terrorism Law, to consider the issues of the provisions of the Emergency Law, the charges against political opponents brought to trial before Emergency State Security Courts, and the legal procedures specified in the Criminal Procedure Code and their compatibility with the Emergency Law.

Finally, the report is based on an examination of some International Law resources, including the International Covenant on Civil and Political Rights, the Universal Declaration of Human Rights, the European Convention on Human Rights, and the Amnesty International Fair Trial Manual.

Analyzed Emergency State Security Case Profiles

The Case of Researcher Ahmed Samir

- **Case no.:** 2021/877 (Supreme State Security), 2021/774 (First Settlement Emergency State Security Misdemeanor).¹

- **Number of defendants:** 4.

- **Charges:** Deliberately spreading, at home and abroad, false news and rumors about internal affairs that undermine state's prestige and respect, jeopardize its powerful interests, disturb public order, and spread terror among people (by posting, on their Facebook accounts, false news and rumors including claims of COVID19- outbreak and the state not taking precautionary measures, murders of prisoners, unlawful detention of citizens, state involvement in the murder of Giulio Regeni, lack of medical care and poor conditions of prisoners, and having a number of detainees in prisons.

- **Jurisdiction:** First Settlement Emergency State Security Misdemeanor Court.

- **Venue:** New Cairo Court of First Instance.

- **Rulings:** 4 years in prison and a 500 EGP fine. After retrial, he was sentenced to 3 years in prison in July 2022, and then was released by presidential pardon in the same month.

- **Most Notable Violations:** Heavy security presence inside the courtroom, bringing the defendant under heavy guard, and court declining the defense's request to hear the prosecution witnesses.



Ahmed Samir

¹ See Attachment 1

Al-Amal Case

- **Case no.:** 2021/957 (Misr El-Qadima Emergency State Security Misdemeanor), registered under no. 1625 (Supreme State Security).
- **Known in the Media as:** Al-Amal Case.
- **Number of defendants:** 6.
- **Charges:** Deliberately spreading, at home and abroad, false news, statements, and rumors on the Internet about internal affairs.
- **Jurisdiction:** Misr El-Qadima Emergency State Security Misdemeanor Court.
- **Venue:** South Cairo Court.
- **Rulings:** The court sentenced Zyad El-Elaimy to 5 years in prison, Hisham Fouad and Hussam Mo'nis to 4 years in prison and a 500 EGP fine, and sentenced the rest of the defendants in absentia to 3 years in prison with labour and a 500 EGP fine each. (Hussam Mo'nis and Hisham Fouad were released by presidential pardon in April and July 2022, respectively).
- **Most Notable Violations:** Heavy security presence inside the courtroom, bringing the defendants under heavy guard, court declining the defense's requests to obtain a copy of the case documents and hear the prosecution witnesses, and court rejecting constitutional challenges to some of the Emergency Law articles.



Zyad El-Elaimy

The Case of Mohamed El-Baqer and Alaa Abd El-Fattah

- **Case no.:** 2021/1228 (Emergency State Security Misdemeanor), a duplicate of case no. 2019/1356 (Supreme State Security).
- **Number of defendants:** 3.
- **Venue:** New Cairo Court of First Instance.
- **Jurisdiction:** First Settlement State Security Misdemeanor.
- **Charges:** Deliberately spreading, at home and abroad, false news, statements, and rumors on the Internet about internal affairs.
- **Jurisdiction:** First Settlement State Security Misdemeanor.
- **Rulings:** Activist Alaa Abd El-Fattah was sentenced to 5 years in prison, and human rights lawyer Mohamed El-Baqer and blogger Mohamed Radwan (Oxygen) were sentenced to 4 years in prison.



Alaa Abd El-Fattah



Mohamed El-Baqer



Mohamed (Oxygen)

- **Most Notable Violations:** Heavy security presence inside the courtroom, bringing the defendants under heavy guard, not enabling the defense to access or obtain a copy of the case documents, unresponsiveness to all defense requests, and passing the sentence after hearing the Public Prosecution's pleading and without hearing the defense's pleading.

The Case of Politicians Abdel Moneim Aboul Fotouh and Mohamed El-Qassas



Abdel Moneim Aboul
Fotouh



Mohamed El-Qassas

- **Case no.:** 2021/1059 (Fifth Settlement Emergency State Security Criminal) registered under no. 2018/440 (Supreme State Security).
- **Number of defendants:** 25.
- **Charges:** Leading a terrorist group; joining a terrorist group; financing a terrorist group; directly and indirectly committing terrorist offenses by equipping and training individuals

on using conventional weapons; receiving training and education with the intent to commit a terrorist offense; possessing and acquiring publications promoting the purposes of a terrorist group; deliberately spreading, at home and abroad, false news, statements, and rumors about internal affairs; indirectly verbally promoting committing terrorist offenses; possession and acquisition of rifled firearms; possession and acquisition of ammunition used for rifled firearms; and possession and acquisition of non-rifled firearms (shotgun).

- **Jurisdiction:** Third Terrorism Circuit of the Emergency State Security Criminal Court.
- **Presided over by:** Justice Mohamed Hammad, Wagdy Abd El-Moneim (right-side panel judge), Ali Emara (left-side panel judge), and Mahmoud Zeydan (left-side panel judge).
- **Venue:** Tora Police Institute.
- **Rulings:**
 - **First:** A default judgment of 25 years for: Ibrahim Munir “Acting Director of the Muslim Brotherhood,” Mohamed Sayed, Hani Hisham, Dhiaa Ahmed, Hussein Youssef, Mohamed Gamal, Lotfy El-Sayed, Hussam El-Din Atef, Hussam Eqab, Ayman Eqab, Ahmed Eqab, Amr Salah, Mahmoud Abd El-Aziz, Mohamed Yasser, and Atteya Ashour.
 - **Second:** 15 years in maximum security prison for: Mahmoud Ezzat, Abdel Moneim Aboul Fotouh, Maha Salem, Ahmed Abdel Moneim Aboul Fotouh, Amr Ahmed Fahmi, Adham Qadri Motawe, Omar Mohamed Rabie, and Ahmed Taha.
 - **Third:** 10 years in prison for: Mohamed El-Qassas and Moaz Nagah El-Sharqawy.
 - **Fourth:** Designating the Muslim Brotherhood a terrorist organization and the convicted terrorists.
 - **Fifth:** Probation of five years for each of them.
 - **Sixth:** Confiscating seized items, and charging the convicted with the expenses.

The Case of the Egyptian Coordination

- **Case no.:** 2021/1 (Nasr City Second Circuit of the Emergency State Security Criminal Court) registered under no. 2018/1552 (Supreme State Security).²
- **Known in the Media as:** Egyptian Coordination for Rights and Freedoms.
- **Number of defendants:** 31.
- **Charges:** Leading a terrorist group, joining a terrorist group, possession of publications and records involving promoting the purposes of the terrorist group of the first charge, providing financial aid to a terrorist group, committing a crime of terrorism financing, using Internet websites for promoting a terrorist group by using two accounts on

² See Attachment 2.



Aisha Al-Shater



Mohammad Abu Huraira



Hoda Abdel Moneim



Ezzat Ghoniem

Facebook and Twitter and a YouTube channel under the name of the Egyptian Coordination for Rights and Freedoms to promote the alleged ideas.

- **Jurisdiction:** Fourth Terrorism Circuit of the Emergency State Security Criminal Court. Presided over by the Justice Mohamed Saeed El-Sherbiny, Essam Abu El-Ela (right-side panel judge), Gharib Ali Gharib (left-side panel judge), Mohamed Nabil Shafiq (left-side panel judge).
- **Venue:** Tora Police Institute.
- **Rulings:** No ruling has been made yet.
- **Violations:** Holding sessions inside police facilities, heavy security presence, intense security screening procedures, not allowing all defendants to speak, court unresponsiveness to the defense's repeated request to implement the law and release the defendants due to exceeding the pretrial detention period stipulated by law, not allowing for family visitation, and court leading witnesses during taking their testimonies.

The Case of the Joker

- **Case no.:** 2021/653 (First Settlement Emergency State Security Criminal) registered under no. 2019/1357 (Supreme State Security).³
- **Known in the Media as:** The Joker.
- **Number of defendants:** 103
- **Charges:** Organizing an assembly that jeopardizes public peace and that is meant to commit crimes of assault on people and influencing the work of public authority actors using force and violence; indirectly promoting terrorist crimes by posting videos on YouTube involving incitement to participate in demonstrations against the existing regime; using two websites on the Internet promoting ideas calling for terrorist

³ See Attachment 3.

acts; inciting terrorist crimes; taking part in an assembly of more than five persons jeopardizing public peace; attempted murder of Suez Security Forces officers Hamada Saeed Saad Ali, Ahmed Ismail Abd El-Tawwab, Mo'men Mohamed Fahim; using force and violence with public officials and persons entrusted with public service, i.e. the Suez Security Forces officers and soldiers stationed at Al-Arbaeen Square; assaulting public officials and persons entrusted with public service, i.e. The Suez Security Forces officers and soldiers; endangering and disrupting road public transport; possession and acquisition of ammunition used for firearms; and possession of edged weapons and tools used for assaulting people.



- **Venue:** Tora Police Institute.
- No ruling has been made yet.
- **Violations:** Holding sessions inside police facilities, heavy security presence, not allowing all defendants to speak, and court unresponsiveness to the defense's repeated request to implement the law and release the defendants due to exceeding the pretrial detention period stipulated by law.

The Case of Politician Yahia Hussein Abdel-Hady

- **Case no.:** 2021/558 (Nasr City Second Circuit of the Emergency State Security Misdemeanor) registered under no. 2019/210 (Supreme State Security).⁴
- **Number of defendants:** 1.
- **Charges:** Deliberately spreading, at home and abroad, false news about internal affairs by publishing via his Facebook account an article titled "It Is a Revolution, Whether Denied by a President or a Thief."
- **Jurisdiction:** Nasr City Second Circuit of the Emergency State Security Misdemeanor Court.
- **Venue:** Nasr City Summary Court.
- **Sentence:** Four years in prison. (He was released by presidential pardon in June 2022)



Yahia Hussein
Abdel-Hady

⁴ See Attachment 4.

The Case of Researcher Patrick Zaki

- **Case no.:** 2021/1086 (Emergency State Security Misdemeanor)
- **Venue:** Mansoura Criminal Court
- **Number of defendants:** 1.
- **Charges:** Spreading false news and statements for the purpose of spreading rumors and incitement against state institutions and symbols via Facebook
- **Rulings:** Case is under trial and Zaki was released pending trial in December 2021



Patrick Zaki

The Case of Politician Mamdouh Hamza

- **Case no.:** 2017/31 under investigation by Cairo Appellate Prosecution, 2020/2 Central Cairo Emergency State Security.⁵
- **Number of defendants:** 1.
- **Charges:** Incitement to committing the terrorist crime of using force, violence, and threats which disturb public order and endanger society's safety and interests, by posting the following on his personal Twitter account: (To the people of Warraq Island, assert your rights and don't submit to those who sell your land. In 2009, we have fought for the Qurasaya Island against the occupation attacks. In union, there is strength), for the purpose of impeding and resisting and obstructing the work of the public authority, but the incitement had no effect; maliciously spreading false news, namely the tweet posted on his personal Twitter account on August 2017, 23, to disturb public peace and jeopardize public interest.
- **Jurisdiction:** First Terrorism Circuit. Presided over by the Justice Mohamed Shereen Fahmi, and the following members of the panel: Raafat Zaki Hussein, Hassan El-Sayes, Tariq Mahmoud Hassan, Hussam El-Din Fathi Amin, and Tariq Abd El-Sattar Dorrah.
- **Venue:** Tora Police Institute.
- **Sentence:** 6 months in prison and listing on terrorist entities list.



Mamdouh Hamza

⁵ See Attachment 5.

Chapter One

Overview of the Development and Issues of the Law Governing Emergency State Security Courts

Emergency Law No. 162/1958 was passed by order of then-president Gamal Abdel Nasser and published in the Official Gazette on September 28, 1958.⁶ The law included 20 articles governing the state of emergency in the country, its duration, and the president's powers during this period. The law also provides for the Emergency State Security Court, identifying its jurisdiction, formation, and types. Emergency Law is a procedural law, however, it is extraordinary, as it only governs the procedures followed during the state of emergency according to the cases provided for in Article 1, such as a state of war, internal disturbance, natural disasters, or the spread of an epidemic. The validity of the law is associated with the duration of the state of emergency, and consequently, the Emergency State Security Courts are extraordinary courts competent to hear the crimes committed during the state of emergency, and following the procedures provided for in the Law instead of the procedures provided for in the Criminal Procedure Code No. 50/1950.⁷

Development of the Law Governing Emergency State Security Courts

Emergency State Security Courts, their formation, and followed procedures are provided for in Emergency Law No. 162/1958, from Articles 6-20. The Law divides courts into two types: Supreme Courts and Summary Courts. And according to the last amendment to the Law governing Emergency State Security Courts by Prime Ministerial Decree no. 840/2017, "Each of the State Security Summary Circuits of the Court of First Instance shall be composed of a Judge and be competent to rule on crimes punishable

⁶ The United Arab Republic President's decision to pass the law no. 1958/162 on the State of Emergency, irregular issue no. 29(bis) b, Official Gazette, Cairo, September 1958 ,28, Manshurat Qanunia. <https://manshurat.org/node/12875>

⁷ Law No. 1950/50 as amended by Law No. 2020/189 on Criminal Procedures, Manshurat Qanunia. <https://manshurat.org/node/14676>

by confinement and/or fine. The Supreme State Security Circuit of the Court of Appeal shall be composed of three Justices and be competent to rule on crimes punishable by a criminal penalty and other offences specified by the President of the Republic or his deputy whatever the prescribed penalty. A member of the Public Prosecution shall initiate the proceedings before the State Security Courts.”

This decree has eliminated military judges in the Emergency State Security Courts Jurisdiction, so that the State Security Courts shall currently only be composed of civil judges. Article 1 (amended) states that “As of April 10, 2017, all appeal chief judges, deputy chief judges, and justices; as well as all (a and b) chief judges and judges of the Courts of First Instance, shall be appointed to sit in Emergency Supreme and Summary State Security Courts referred to in Article 7 of Law no. 162/1958, to hear the crimes specified in the mentioned Law.”⁸

Concurrently with imposing the state of emergency again in April 2017 by a decision of the President following bombings of Mar Girgis Church in Tanta and St. Mark Church in Alexandria,⁹ Emergency State Security Courts resumed work, expanding the scope of crimes before them, some of which is associated to freedom-limiting laws, as the Prime Ministerial Decree No. 2198/2017 amending the Emergency Law was issued, and stated in Article 1 that the “Public Prosecution shall refer to the Emergency State Security Courts formed pursuant to the Law No. 162/1958 the crimes stipulated in the following laws: Assembly; Penal Code; Compulsory Pricing; Weapons and Ammunition; Protecting Places of Worship; Organizing the Right to Peaceful Public Meetings, Processions, and Demonstrations; Criminalization of Assaults on the Freedom to Work and Vandalism against Facilities; and Anti-Terrorism Law.”¹⁰

The development of the law regulating ESSC

- 1 Emergency Law No. 162/1958: Provided that ESSC, its forming and the procedures
- 2 Impose of a state of emergency in April 2017 after the bombing of two churches
- 3 Prime Minister Decision No. 840/2017: an amendment to the law regulating emergency state security courts

8 Prime Ministerial Decree No. 2017/840, Issue no. 18, on Appointing Members of the (Emergency) Supreme and Summary Courts, Official Gazette, May 2017 ,4.

9 President Abdel Fattah El-Sisi's decision to declare the state of emergency for three months, Asharq Al-Awsat Newspaper, April 2017 ,9, <https://arabic.cnn.com/middle-east/2017/04/09/egypt-sisi-state-emergency>

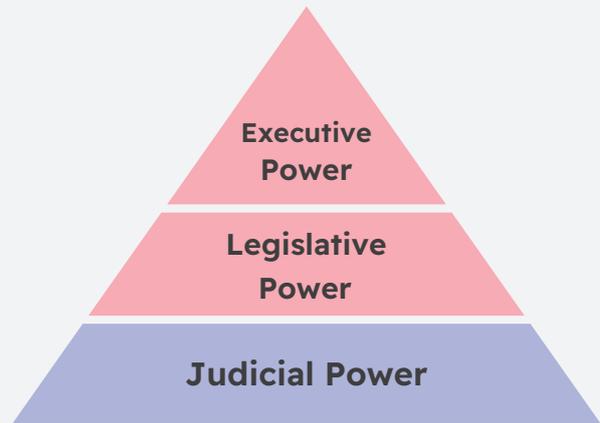
10 Prime Ministerial Decree No. 2017/2198, Issue No. 14, on referring some crimes to the Emergency State Security Courts, Official Gazette, October 2017 ,12.

Issues of the Law Governing Emergency State Security Courts

First: Encroachment on Judicial Independence

The Emergency Law empowers the President to establish extraordinary courts to try those accused of committing crimes during the state of emergency and gives him the sole right to appoint court judges, along with the advisory and non-binding opinion of the Minister of Justice. According to the Law, these courts are subject to the sole authority, oversight, and sentence review of the President, which constitutes an encroachment on the judicial authority by the executive authority, threatening the principle of separation of powers and the independence and impartiality of the former. Another issue of establishing

such courts is about the right to equality before the law, as this Law legitimizes the presence and function of extraordinary courts forbidden by Egypt's Constitution.



Article 97 of Egypt's Constitution, as amended in 2019, forbids extraordinary courts:

“Litigation is a safeguarded right guaranteed to all. The state shall bring together the litigating parties, and work towards speedy judgment in cases. It is forbidden to grant any act or administrative decision immunity from judicial oversight. Individuals may only be tried before their natural judge. Extraordinary courts are forbidden.”

The powers granted to the President by the Emergency Law contravene the principle of the rule of law, provided for in Article 94 of the Constitution:

“The rule of law is the basis of governance in the state. The state is subject to the law, while the independence, immunity, and impartiality of the judiciary are essential guarantees for the protection of rights and freedoms.”

They also contravene the principle of judicial independence provided for in Article 184 of Egypt's Constitution:

“The judiciary is independent. It is vested in the courts of justice of different types and degrees, which issue their judgments in accordance with the law. Its powers are defined by law. Interference in judicial affairs or in proceedings is a crime to which no statute of limitations may be applied.”

Second: Denying Defendants the Right to a Natural Judge

Emergency State Security Courts are, by nature, a form of extraordinary judiciary that allows for infringement upon the freedoms of individuals, as such courts deny people their right to a natural judge, a right guaranteed by Egypt’s Constitution.

The Egyptian Association of Criminal Law’s conference defines ordinary or natural jurisdiction as “the jurisdiction that has three elements: a judge appointed as per the requirements of the Judicial Authority Law, undertaking his work in criminal matters according to the Criminal Procedure Code, and whose decisions and rulings are subject to appeal through legal means.” In defining the concept of natural jurisdiction, the conference concluded that defendants may not be denied the right to competent natural jurisdiction at the time of committing the crime, and that the natural judge is one who is appointed as per the laws governing judiciary, is independent and irremovable, and implements the Criminal Procedure Code. Natural Jurisdiction, thus, means that a person shall be tried before an ordinary permanent jurisdiction, established or regulated by general rules of law prior to the crime, with the guarantees of independence and impartiality, allowing for all rights to defense.¹¹

Third: Prohibiting Sentence Appeal and Denying the Right to Litigation on Two Levels



The Emergency Law robs the defendant of an inherent right of litigation and fair trial guarantees, i.e. the right to litigation on two levels, which is a right enshrined in Egypt’s constitution. As Article 12 of the Law prohibits appeals on sentences passed by

¹¹ The First Conference of the Egyptian Association for Criminal Law, Cairo, 3 ,1987rd Committee, The Relationship Between Judicial Organization and Criminal Procedures. See: Fathi Sorour, Constitutional Criminal Law (Constitutional Legality in the Penal Code and Constitutional Legality in the Procedure Code), 3rd edition, Dar El-Shorouk, 2004, P.408.

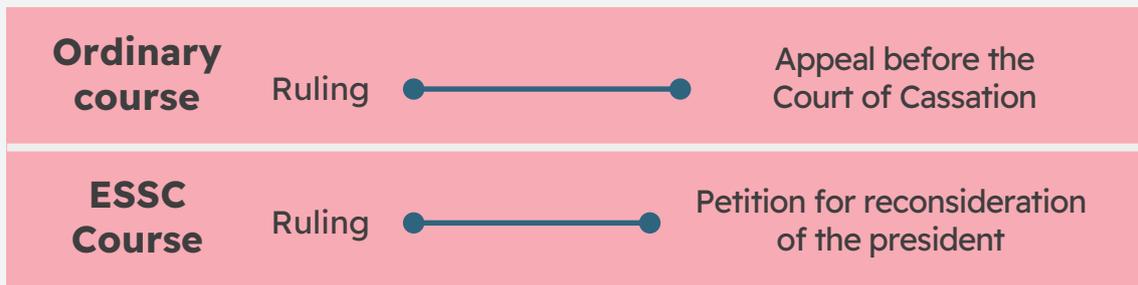
Emergency State Security Courts and grants the President the powers of the Courts of Appeal and Cassation, making verdicts final upon his ratification. Pursuant to Article 14 of the Law, the President may also annul the verdict and retry the case before a different jurisdiction, reduce, commute, or suspend sentences.

Article 96 of Egypt's Constitution guarantees the right to litigation on two levels:

“The accused is innocent until proven guilty in a fair court of law, which provides guarantees for him to defend himself. The law shall regulate the appeal of felony sentences.”

Making sentences immune, by virtue of the Emergency Law, enables judges to breach the right of defense, not respond to the defense requests, not substantiate sentences, as sentence substantiation is necessary for appeals, and it is not available in Emergency State Security trials. This Law also allows for procedural and substantive violations during trial, amidst lack of inspection and judicial oversight, in the absence of which, many doubts about judicial integrity and independence arise.

Fourth: Grievance Against Emergency State Security Court Sentences



The Emergency Law restricts the defendant's right to grievance against Emergency State Security Courts sentences to filing a petition for review to the President, as Article 16 of the Law states that the “President shall assign a Court of Appeal justice or an attorney general, assisted by a sufficient number of judges and employees, to form a committee to examine petitions by the convicted, validate procedures and give an opinion. The committee chair shall submit a statement of opinion to the President before ruling ratification, subject to approval or dismissal.”

As evident in this article, the Law stipulates that filing, examining, and submitting a statement on a grievance shall be prior to the President’s ratification. However, the Law did not specify an amount of time to ratify rulings, which means it could happen after the defendant had already spent long periods of time in prison. It also did not specify an amount of time to examine and respond to a grievance, undermining the purpose of grievance in its essence, as the aim of grievance is to indicate the aspects of the sentence violating the law, remedy mistakes made against the defendant, and achieve justice, all of which is not achieved in case the defendant had already spent a long period of his sentence in prison.

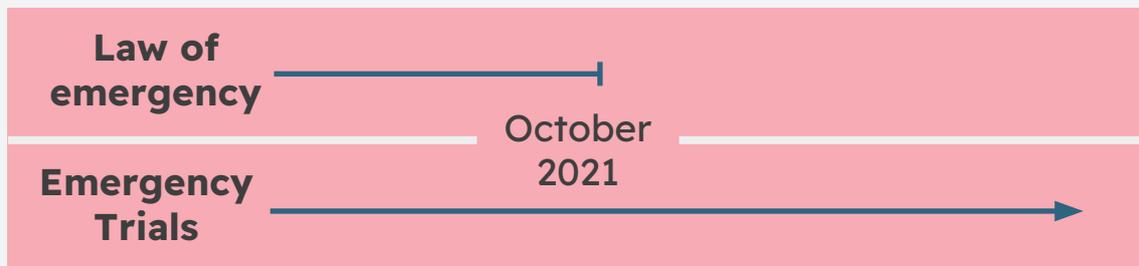
Fifth: The Retrospective Effect of the Emergency Law

On April 9, 2017, the President declared the state of emergency for three months, extended for 17 times before it was lifted in October 2021. As a result, Emergency State Security Courts were functioning again during these extensions.¹²

As noted earlier, the Emergency Law is associated with extraordinary circumstances as per the cases included in Article 1 of the said Law, therefore, it's a temporary law bound to the duration of the state of emergency and is rendered inoperative when the state of emergency is cancelled. As per the Law, Emergency State Security Courts are competent to try offenders during this state, as Article 7 of the Law granted the Supreme and Summary State Security Courts the right to rule on crimes violating the provisions of the orders made by the President or his deputy, however, it failed to determine the time of the crimes, allowing such courts to hear the crimes committed prior to declaring the state of emergency if these cases went to trial during the state of emergency.

Since establishing Emergency State Security Courts is associated with declaring the state of emergency, such courts are supposed to rule on crimes committed during the state of emergency, and it is unlawful to refer cases to the Emergency State Security Court to rule on crimes committed prior to declaring the state of emergency, which is allowed for by virtue of the Emergency Law.¹³

Sixth: The Lasting Effect of the Emergency Law



Article 19 of the Emergency Law stipulates that upon the end of the state of emergency, Emergency State Security Courts remain competent to hear the cases referred to them. And despite that the general rule is that a person shall be tried before a natural judge, the Law provided for the sustained effect of the extraordinary circumstances even after such circumstances are no longer existent, without taking into consideration the resulting constitutional violations infringing the rights and freedoms of individuals and making the executive authority above the law.

¹² President Abdel Fattah El-Sisi's decision to declare the state of emergency for three months, Asharq Al-Awsat Newspaper, April 2017 ,9, <https://arabic.cnn.com/middle-east/2017/04/09/egypt-sisi-state-emergency>

¹³ Emergency State Security Criminal Court's ruling, case no. 2021/598, Nasr City Criminal, on March ,31 2022, See Attachment 6

Chapter Two

Violations in Emergency State Security Trials of Cases of Political Activists and Human Rights Advocates

Unlawful Referrals to Trial Allowing for Double Jeopardy

The Supreme State Security Prosecution used case duplication as a form of “rotation” and referring defendants to Emergency State Security trials as an alternative to the pretrial detention of opponents that has caused Egypt to suffer widespread criticism. The Prosecution duplicated the charges against the defendants in the original case, except for those subject to the Anti-Terrorism Law or those falling within the jurisdiction of the Criminal Court according the Penal Code, to add the defendants to a new case referred to the Emergency State Security Misdemeanor Court, while they continue to be detained in the original case until a sentence is passed in the duplicate case. After the sentencing, the renewal of the pretrial detention for the original case is postponed until the sentence in the duplicate case is executed, which means that after serving the sentence of the duplicate case, the defendant would go back to the cycle of renewals of pretrial detention for the original case.

The ordinary course

referral to trial on the same case



the same accusations



calculating the previous period of pretrial detention

Duplicating of cases course

referral to another case for trial



with the same/ some of the accusations



continuation of the first case

Last year, 2021, the Supreme State Security Prosecution referred 4 cases to the Emergency State Security Misdemeanor Court by means of duplicating the charges of the original case. In these cases, human rights advocates, politicians, activists, and journalists were tried. These cases are as follows: the case of human rights lawyer Mohamed El-Baqer, political activist Alaa Abd El-Fattah, blogger Mohamed Oxygen, and lawyer and former MP Zyad El-Elaimy; the case of researcher Ahmed Samir; the case of the engineer Yahia Hussein Abdel-Hady. Final judgments were passed against all of them, as they were all sentenced to 4-5 years in prison.

Case duplication violates multiple fundamental rights such as the right to freedom, fair trial, and ne bis in idem. Furthermore, the Criminal Procedures Code No. 150/1950 did not provide for duplicating cases in any shape or form, and according to Article 214 of the law, specifically in paragraph 4, in cases of several interrelated crimes falling within the jurisdiction of different courts of different levels, such crimes shall be referred to the highest court. The Article did not refer to separating crimes and referring some of them to the Misdemeanor Court, which shows that the noted duplication is arbitrary and without any legal basis.

In the first investigation of these four cases, the Public Prosecution has pressed against the detainees the charges of joining a terrorist group or aiding a terrorist group in achieving its aims, along with the charge of spreading false news. The Public Prosecution bases these charges on a single piece of evidence, that is the National Security investigations, which often involves some news or a post or an article shared by the defendant via the Internet.¹⁴

The Prosecution then separated the charges, referring the charges related to sharing to the Emergency State Security Misdemeanor Court, in a duplicate case of the original case, with the same piece of evidence under a new case number, while it kept the charges falling under the jurisdiction of the Criminal Court under investigation by the Prosecution.

Duplication is a violation of the principle of Ne bis in idem, provided for in the Criminal Procedure Code in Articles 454 and 455, as they state that cases shall not be subject to recognizance after a final judgment of conviction or acquittal is made.

In the international and regional context, Article 14 of the International Covenant on Civil and Political Rights and Article 19 of the Arab Charter on Human Rights state that no one may be tried twice for the same offense in the same jurisdiction in case a judgment of conviction or acquittal has been made. And under some international standards, it is prohibited that a person be tried again for facts identical or substantially similar to those which gave rise to the first trial.¹⁵

14 A scanned copy of the National Security investigations report used as an incriminating evidence in one of the cases. See Attachment 6

15 Amnesty International Fair Trial Manual, Second Edition, released on February 2014 ,22.

Venue and Security Presence Inside Courts



“All persons shall be equal before the courts and tribunals.” Article 14 of the *International Covenant on Civil and Political Rights*

“Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal.” Article 10 of the *Universal Declaration of Human Rights*

Everyone has the equal right to resort to courts without any discrimination, including discrimination on grounds of political affiliation, without discrimination between parties to the proceedings, as a procedural means to ensure the principle of the rule of law and establish justice. Article 53 of Egypt's Constitution states that “citizens are equal before the law, possess equal rights and public duties, and may not be discriminated against on the basis of religion, belief, sex, origin, race, color, language, disability, social class, political or geographical affiliation, or for any other reason.” The principle of equality before the courts and non-discrimination on the basis of political affiliation applies to all trial proceedings, from the venue to the sentencing.

The court hearings of the cases that are the subject of this report were clearly discriminating in the usual procedures of hearings inside Egyptian courts. According to defense lawyers in the Emergency State Security cases that are the subject of this report, who spoke to EFHR, most of the trial hearings in these cases were held in police facilities, such as Tora Police Institute and the Police Academy in the Fifth Settlement, which belong to the Ministry of Interior rather than the Ministry of Justice. Judges, as well as defendants, are transported to such facilities under heavy guard, inside a wired cage containing small holes, significantly obscuring the view, and a sound-proof glass cage, and then a human wall formed by security personnel. Lawyers asserted that in most of these hearings, the defendants were unable to hear the judge or communicate with their defense lawyers.

This discrimination went beyond the defendants, as lawyers reported they were also subjected to excessive security screening procedures in these facilities, as they

were frisked and stripped of their phones, smart watches, and all devices that could enable them to communicate with the outer world. A lawyer, who frequently went to the Police Institute for hearings of an Emergency State Security case, noted that lawyers feel under threat during these hearings, "it's as if we're kidnapped inside the Institute, if something happened to us, no one would know."

EFHR spoke with seven lawyers who frequently went to the Police Institute and Police Academy for trial hearings of the Emergency State Security cases in this report, and according to them, the heavy security presence in these hearings affected their performance. In addition to being denied communication with, or being able to clearly see the detainees, a lawyer reported to EFHR that they felt they were being watched during these hearings, as the "police and national security officers are there among us lawyers throughout the hearings, so we're afraid to talk to each other so that they wouldn't hear us."

The lawyers who spoke to EFHR said that those responsible for organizing the trial hearings in most of the Emergency State Security trials are national security officers, and there is significantly more of them during the trials of famous politicians or human rights activists.

The lawyers confirmed that the Ministry of Interior's officers are clearly in control over these hearings, to the extent that when a detainee requests to speak to the court panel, he gets out of the cage surrounded by at least 5 police and national security officers.

A human rights lawyer told EFHR that in a trial hearing of Strong Egypt Party Chairman Dr. Abdel Moneim Aboul Fotouh and Deputy Chairman Mohamed El-Qassas, before the Third Terrorism Circuit of the Emergency State Security Criminal Court, an altercation began between a lawyer and a national security officer, following which the officer removed the lawyer from the courtroom.

In the few cases where the trial hearings of a number of political activists and human rights advocates before Emergency State Security Misdemeanor Courts were held inside ordinary courthouses, the discriminatory procedures were still in place. Five lawyers who attended these hearings noted that the defendants were brought in under heavy security guard, the courtrooms were evacuated, lawyers were only allowed entry after showing their legal practice identity cards and providing proof that they were on the case defense team, they were searched and stripped of their means of communication, and there was heavy security presence in and outside the courtroom.

According to an interview by EFHR with a member of the defense team in researcher Ahmed Samir's case, the lawyer accompanying the Austrian Ambassador was stopped by the security personnel outside the courtroom, her legal practice identification card was withdrawn and only returned to her after making a copy, and was eventually banned, along with the ambassador, from entering the courtroom.

The lawyers who spoke to EFHR confirmed that the security restrictions also included the families of the detainees, as they were often banned from entering the courtroom, and in the few hearings they were allowed to attend, they were not able to talk to their family members inside the cage.

Prejudice to the Right of Defense During Trials

The efficiency of justice and the purpose of trials are only achieved through guaranteeing the right of defense and the freedom of the defender in what he demonstrates before the court. The right of defense is a pillar of fair trial. The purpose of litigation and fair trial is for individuals to get justice, if the right of defense was limited and restricted, the desired objective of litigation is not achieved. Denying the defendant the chance to freely make his statement, failing to decide on an explicit and material request of his, or on supplemental pleas, is a prejudice to that right, raises doubts in individuals about the futility of resorting to courts, and compromises the authority of litigation over litigating parties.

The principles relevant to the right of defense are guaranteed in several articles of Egypt's Constitution. Article 98 affirms that the right of defense either in person or by proxy is guaranteed and that the independence of lawyers and the protection of their rights are ensured as a guarantee for the right of defense. Also, Article 198 of the Constitution recognizes that all lawyers enjoy the guarantees and protection granted to them by law, which also apply to them before investigation and trial authorities, and that except in cases of flagrante delicto, arresting or detaining lawyers while exercising their right of defense is prohibited.

Article 47 of Advocacy Law no. 17/1983, as amended, stipulates that lawyers shall have the right to follow whichever method they deem fit according to professional principles in defending their client, not be accountable for what is stated in their oral arguments or written statements, and be only restricted by what is required by the right of defense, and that shall not be in prejudice to the provisions of the Criminal Procedure Code and the Code of Civil Procedure. The Advocacy Law affirms the lawyer's right to the due respect by courts and all bodies he appears before.

In case no. 198/20 Constitutional J.Y., the Supreme Constitutional Court referred to the guarantee of the right of defense, stating that people shall not be differentiated in their right to a natural judge, in the scope of the procedural and substantial rules governing similar litigations, in the effectiveness of the guarantee of the right of defense granted by the constitution or the legislator of the rights they seek, or in obtaining rights according to unified standards when their requirements are met. The same rights shall have standard rules for prosecution or defense.

Despite the many texts and provisions explicitly granting the right and freedom of defense and demonstrating the importance



A picture from a court hearing in an Emergency State Security case

of this right and the consequences of violating it, the actual practices of the Emergency State Security Courts regarding the cases in this report largely ignores these texts. This is due to the uniqueness of the Emergency State Security Courts hearing political cases, its formation, and selecting its appointed judges, as well as the exceptional character of these courts according to the law.

First: Restricting Access to Copies of Case Documents

The International Law, in Articles 9 and 14 of the International Covenant on Civil and Political Rights and Article 6 of the European Convention on Human Rights, requires that the defendant shall be informed, at the time of arrest, of the reasons of his arrest and the charges against him, and shall be enabled to contact his lawyer and given the needed facilities to raise his defense.

Article 54 of Egypt's Constitution requires that all those whose freedoms have been restricted shall be immediately informed of the causes therefor and notified of their rights in writing. The Egyptian legislator also granted this right in Articles 77 and 125 of the Criminal Procedure Code and required that the lawyer shall be allowed to inspect the investigation on the day prior to interrogation.

According to nine lawyers who represented defendants in the nine cases referred to Emergency State Security Courts, and that are the subject of this report, the Public Prosecution did not enable the defendants or their lawyer to inspect or obtain copies of the investigation documents of these cases, and only read out the charges to them during the investigation.

Those lawyers confirmed that they were not stopped from obtaining copies of case documents only during investigations, as in 2021, the First Settlement, Nasr City, and Misr El-Qadima Emergency State Security Misdemeanor Courts refused to enable the defense to obtain copies of the documents of three different cases of the cases in this report.

According to human rights lawyer Khaled Ali, during his trial, political activist Alaa Abd El-Fattah requested to obtain a copy of his case document in jail, but the court dismissed his request.

During the trial of lawyer Zyad El-Elaimy and journalist Hussam Mo'nis, Khaled Ali insisted on his right to obtaining a copy of the case documents, but the Judge of Misr El-Qadima Emergency State Security Misdemeanor Court refused to enable him access and insisted that the defense proceed with the pleading without obtaining a copy of the case documents.

According to Patrick Zaki's defense, Mansoura Emergency State Security Misdemeanor Court allowed the defense team to obtain a copy of the case documents at first, before the jurisdiction was changed and the case was tried before a new court panel that did not allow the defense to access or obtain a copy of the new documents subsequently.

Second: Restricting Allowing Defendants to Speak to the Court Panel

The International Law recognizes the defendant's right to defend himself and considers it an inherent right that has priority over the right to hire a lawyer to defend him. The defendant's presence in trial hearings is an important guarantee to achieving justice and a fundamental right of defense. Article 14(3) paragraph (d) and (e) of the International Covenant on Civil and Political Rights provides that:

"In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality:

(a) To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing;

(b) To be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it;

(e) To examine, or have examined, the witnesses against him."

Article 11 (1) of the Universal Declaration of Human Rights states that:

"Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence."

In local legislation, Articles 270-275 of the Criminal Procedure Code regulate case procedures and explicitly state that the general rule is that the defendant shall initiate proceedings himself, including debating evidence, questioning the prosecution witnesses, presenting the defense witnesses, and giving consent to reexamination. The only reference to the defense counsel along with the accused is in paragraph 3 of Article 275 granting the court the right to prevent the accused or their counsel from expanding on the pleadings if the same are diverted from the case subject or reiterate their accounts.



A picture of Aisha Al-Shater during trial in the Egyptian Coordination case

According to the defense lawyers who spoke to EFHR, the Third Terrorism Circuit of the Emergency State Security Criminal Court allowed Strong Egypt Party Chairman

Dr. Abdel Moneim Aboul Fotouh and Deputy Chairman Mohamed El-Qassas to speak before the court following their defense request, while not allowing the other defendants in the cases in this report to speak at all.

The lawyers told EFHR that the Fourth Terrorism Circuit of the Emergency State Security Criminal Court granted defense request for allowing Aisha Al-Shater to speak and get out of the cage during a trial hearing, while not allowing the other defendants to speak.

The defense lawyers in the case known in the media as “The Joker” reported that the Fourth Terrorism Circuit of the Emergency State Security Criminal Court did not allow any defendants to speak before the court in any of the trial hearings.

Third: Restricting and Dismissing Defense Requests

Prejudice to the right of defense, by failing to decide on an explicit and material request or supplemental pleas by the defendant himself or his counsel during trial proceedings and court dismissing material defense requests, could be a sufficient basis for cassation and vacation of judgments by a higher court. According to ordinary procedures and the Court of Cassation’s rulings, which considered the judgment’s ignoring looking into a defense request made before the court, when such request is a material request, to be a violation to the right of defense and vitiates the judgment.

In appeal no. 17493 of the Judicial Year 85 dated 17/11/2021, the Court of Cassation stated that:

“failure to respond to the challenged judgment and the appellant’s request is a violation of the right of defense and vitiates the judgment.”

In appeal no. 3251 of the Judicial Year 86 dated 01/09/2021, the Court of Cassation stated that the if the:

“judgment disregarded examining a substantial defense by the litigant, the judgment is vitiated, resulting in quashing the judgment.”

According to human rights lawyer Khaled Ali, the First Settlement Emergency State Security Misdemeanor Court sentenced human rights lawyer Mohamed El-Baquer and political activist Alaa Abd El-Fattah without responding to defense requests. Throughout the hearings, the lawyers filed three main requests and the court did not respond any of them. The lawyers requested a copy of the case file; a pass for the lawyers to visit Alaa Abd El-Fattah, Mohamed El-Baquer, and Mohamed Ibrahim in prison to discuss the defense strategy; and allowing Alaa Abd El-Fattah to create a special power of attorney granting his lawyer the power to take legal action against the Attorney General of the State Security Prosecution and his associates.

Blogger Mohamed Oxygen’s lawyer also requested allowing his client to create a special power of attorney to file a litigation before Cairo Court of Appeal against the

First Settlement Emergency State Security Court for violating legal trial procedures, as the Court ordered the Public Prosecution to present its pleading then set a date for adjudication, without hearing the defense oral or written pleading. Oxygen's defense request was rejected.

Defense lawyers told EFHR that during the trial of lawyer Zyad El-Elaimy and labor leader Hisham Fouad, the defense had to present an oral pleading and a pleading brief after the Court insisted on hearing the pleading without responding to the defense request.

A member of Patrick Zaki's defense team reported that the defense had to request an adjournment in several hearings due to the frequent dismissal of defense requests by the Court.

According to a human rights lawyer who spoke with EFHR, the Third Terrorism Circuit of the Emergency State Security Criminal Court responded to Dr. Abdel Moneim Aboul Fotouh's defense request by allowing him to obtain a testimony by the UK Foreign Office on whether a member of Muslim Brotherhood was in the UK at the same time when Dr. Aboul Fotouh was there to refute the accusation of meeting with the Brotherhood leaders abroad to execute their plots to overthrow the state, but the Court did not allow him sufficient time to fulfill the request, making its response merely a response in form.

Fourth: Restricting and Refusing to Present Witnesses

The court of merits has the right to reinvestigate the criminal case and not rely only on the Public Prosecution investigations. One aspect of this investigation is taking the testimonies of the prosecution witnesses, which is always upheld by the defense, especially since the Public Prosecution interviews the witnesses in the absence of the defendant and his defense, contravening the right granted by international and local laws to examine the prosecution witnesses by the defendant or his defense, considering it's evidence against him.

Article 14 of the International Covenant on Civil and Political Rights states that:

"Everyone charged with a criminal offence shall have the right to examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him."

Article 6 of the European Convention on Human Rights guarantees that:

"In the determination of his civil rights and obligations or of any criminal charge against him to examine witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him."

In the local context, Article 271 of the Criminal Procedure Code provides that:

“prosecution witnesses shall be first examined by the Prosecution, then the victim, followed by the civil rights plaintiff, the accused person, and then civil rights respondent.”

Article 272 of the same Code states that:

“After hearing the prosecution witness, the defense witnesses shall be heard and examined first by the accused person, then by the civil rights respondent, followed by a cross-examination by the Public Prosecution, then the victim.”

However, the Egyptian legislator amended the Criminal Procedure Code in 2017, replacing Article 277 to grant the court the right to decide that it's not necessary to hear a witness testimony, as the amended Article states that:

“Without prejudice to the first paragraph of this Article, litigants shall specify the names, data, and grounds for summoning the witnesses, and the court shall decide whose testimony needs to be heard. If the court decides that the testimony of any of them need not be heard, it shall explain why in its ruling.”

EFHR contacted one of the lawyers in the Case of the Egyptian Coordination who asserted that, during taking the testimony of a prosecution witness, the Fourth Terrorism Circuit of the Emergency State Security Criminal Court lead the witness to the answer consistent with his statements in the prosecution investigations, in clear violation of the principle of judge impartiality, providing proof of presumption of guilt and closing the door on any chance to prove the contrary to the account of the prosecution investigations.

Fifth: Rejecting Constitutional Challenges

Article 94 of Egypt's Constitution states that

“the rule of law is the basis of governance in the state,”

and Article 154 provides that:

“the President of the Republic declares, after consultation with the Cabinet, a state of emergency in the manner regulated by law..”

Therefore, the law regulating the state of emergency shall abide by the regulations of legislative action, most important of which is not violating the other provisions of the Constitution, as promulgating the Emergency Law based on a provision in the Constitution does not imply authorizing such law to infringe the rest of its provisions, according to the Supreme Constitutional Court judgment no. 17 of 15 Constitutional Judicial Year in June 2013.

In its judgment, the Constitutional Court emphasized the constitutional principle that “the rule of law is the basis of governance of the state,” and that all laws shall abide by the regulations of the legislative action, most important of which, as stated in the judgment, is not violating other provisions of the Constitution.

For decades, several constitutional challenges were filed against the provisions of the Emergency Law for violating successive Egyptian constitutions. The broader usage of the Emergency Law by ruling regimes has led larger segments of the society to be affected by it. Even though Article 192 of Egypt’s Constitution gave the Supreme Constitutional Court the mandate to decide on the constitutionality of laws and regulations, interpret legislative texts, and adjudicate in disputes pertaining to the affairs of its members, during the last 30 years, the Constitutional Court has allowed but one appeal against the Emergency Law, i.e. the appeal against paragraph (1) of Article 3 of the President of the Republic’s Law by Decree No. 162/1958, authorizing the President to arrest and search persons and places without abiding by the provisions of the Criminal Procedure Code. The Article was finally ruled unconstitutional after almost 21 years of the challenge.

According to lawyer Khaled Ali, he challenged the constitutionality of Articles 12, 14, and 20 of the President of the Republic’s Law by Decree No. 162/1958 on the State of Emergency, during the consideration of appeal no. 21713 of 70 J.Y. by the First Circuit of Supreme Administrative Court, which assessed the seriousness of the challenge and remitted the case to the Supreme Constitutional Court on January 24, 2017. The Constitutional Court is yet to decide on the appeal.

In the nine cases examined in this report, the lawyers challenged the constitutionality of Articles (12, 14, and 20) of the President of the Republic’s Law by Decree No. 162/1958 on the State of Emergency, before different Emergency State Security Courts, for violating Articles (5, 53, 94, 95, 96, 97, 100, 184, 188, and 237) of the Constitution, according to the lawyers who spoke with EFHR.

In his written pleading brief in Al-Amal Cell case,¹⁶ Mr. Khaled Ali explained his challenge to the constitutionality of some of the provisions of the Emergency Law. The challenge argued that Articles 12, 14, and 20 of the President of the Republic’s Law by Decree No. 162/1958 on the State of Emergency involved granting the President the authority to ratify Emergency State Security Court rulings and did not deem such rulings final until their ratification by the President. They also granted him the authority to annul rulings by the aforementioned courts and order retrial before a different jurisdiction. Article 17 allowed the President to appoint a deputy in the powers provided for by the Law, including ratifying and annulling rulings and ordering retrial. But as per the Constitution, the President of the Republic has no authority to interfere in criminal sentences except insofar as exercising the right to pardon, provided for in Article 155 of the Constitution, which states that:

16 A scanned copy of the requests submitted in human rights lawyer Khaled Ali’s defense statement in Al-Amal Cell case, See Attachment 8

“The President of the Republic may issue a pardon or mitigate a sentence after consulting with the Cabinet. General amnesty may only be granted in a law, which is ratified by a majority of members of the House of Representatives.”

The Constitution did not grant the President of the Republic the authority to ratify or annul court rulings or give orders regarding them, due to the rules stipulated by law for their entry into effect, whether by retrial, as criminal sentences are effective from the date they are passed, or by expiry of the time limit for the appeal. Authorizing the President of the Republic to ratify the rulings changes the nature, power, and value of court rulings in a way that is considered a constitutionally unwarranted interference with the judicial process. Furthermore, the aforementioned provisions granting the President of the Republic the power to annul rulings of the said courts undermine judicial independence and turn judiciary into an administrative body subordinate to the President of the Republic, who has control over the outcomes of its work.

The defense lawyers in the case of the engineer Yahia Hussein Abdel-Hady and Dr. Abdel Moneim Aboul Fotouh, as well as in the Case of the Joker, challenged the constitutionality of the same articles mentioned in Mr. Khaled Ali's challenge. In addition to the motion they filed to revoke referral to the Emergency State Security Court in the first place, based on paragraph (2) of Article 19 of the Emergency Law, preventing referring cases that were not referred to the Emergency State Security Court prior to the end of the state of emergency, due to the fact that the determining factor in either cases is the time of the crimes and that the state of emergency, according to the Constitution, is temporary, declared for a certain amount of time and is lifted by the end of this time. During the time most of the detainees in these cases were in pretrial detention, the state of emergency was declared and lifted at least five times, followed by intervals between extending and declaring the state of emergency again, during which the country remained free of the state of emergency. Hence, the state of emergency, during which the crimes most of the detainees were accused of were committed, has ended, and therefore, they may not be referred to Emergency State Security Courts, as per Article 19 of the Emergency Law, based on declaring a new state of emergency, since this makes states of emergency continuous, in contravention of the Constitution which considers them temporary.

Although the criminal judge has the discretionary authority to determine the seriousness of the filed challenge, in case of rejection, he should respond to the challenge, explaining the grounds for rejection in the reasoning of the judgment. Examining Emergency State Security Misdemeanor Court judgments in three cases, which the EFHR was able to obtain, it was found that the Court failed to respond to the constitutional challenges in two judgments, while basing its rejection in the third judgment only on its discretionary authority to determine the lack of seriousness of the challenge.

Conclusion and Recommendations

The first part of the report concluded that there are several issues with the Emergency Law, making its expanding use a form of targeting political opponents, as the Law denies defendants the right to a natural judge and makes extraordinary judiciary the general rule in prosecuting political opponents, while denying defendants the right to litigation on two levels as a guarantee of fair and just trial, and eliminating supervision over court rulings by granting them immunity from appeals, as the Law grants the executive authority, represented by the President or his deputy, the right to annul court rulings, in violation of the provisions of the Constitution.

The second part of the report discussed how the Egyptian authorities used Emergency State Security Courts to target political opponents and human rights advocates. This part concluded that the Supreme State Security Prosecution used the measure of duplicating a number of political cases, as a form of rotation, adopted and used widely in early 2019 by the Prosecution, despite the Criminal Procedure Code does not include the procedure of case duplication that could allow for double jeopardy, and only notes that in case of several interrelated crimes falling within the jurisdiction of different levels of litigation, such crimes shall be referred to the highest court.

Referring these cases to Emergency State Security Courts was accompanied by several violations by these courts, in violation of fair trial guarantees, according to international and local standards. Emergency State Security Courts had the biggest share of such violations, as they failed to implement the Criminal Procedure Code and adhere to constitutional standards, and persisted in violating the right of defense. In addition to ruling on cases without responding to requests or hearing pleadings. The violations amounted to declining to hand the defense a copy of the reasons for the judgment against political activist Alaa Abd El-Fattah, human rights lawyer Mohamed El-Baquer, and blogger Mohamed Oxygen so they could submit a grievance challenging the judgment.

Based on the findings of this report, in legal and practical terms in the procedures of Emergency State Security trials, EFHR makes several recommendations to Egyptian authorities:

- **First:** The President must annul the judgments passed by Emergency State Security Courts in unfair trials, particularly those against political prisoners and human rights advocates.

- **Second:** Judicial authorities must immediately stop hearing Emergency State Security trials of political opponents and human rights advocates, that are still going on, on top of which are case no. 2018/1552 (Supreme State Security), known in the media as the Case of the Egyptian Coordination, and case no. 2019/1357 (Supreme State Security), known in the media as the Case of the Joker.
- **Third:** The Constitutional Court must urgently exercise the role mandated to it by the Constitution and rule on constitutional challenges against the Emergency Law.

Attachments



النائب العام

نيابة أمن الدولة العليا

في ٢٦ / ٥ / ٢٠٢١

أحمد بدوي

رئيس نيابة أمن الدولة العليا

بعد مطالعة الأوراق وما تم فيها من تحقيقات

أولاً: تقيد الأوراق جنحة أمن دولة طوارئ المواد ٢/١٥، ٨٠ (د) ١، ١٠٢ مكرراً / ١ من قانون العقوبات.

ضد

١- أحمد سمير عبد الحي علي، "محبوس".

٢- خالد سليمان محمد السرتي "هارب".

٣- حسام الدين عبد الرحمن سعيد عبد الرحمن الشوريجي "هارب".

٤- علي حسين مهدي حسن محمد "هارب".

لأنهم في الفترة من ٢٣/٧/٢٠٢٠ وحتى ١٧/٤/٢٠٢١

بمحافظة جمهورية مصر العربية وخارجها

أذاعوا عمداً بالداخل والخارج، أخباراً وإشاعات كاذبة حول الأوضاع الداخلية للبلاد من شأنها إضعاف هيبة الدولة واعتبارها، والإضرار بمصالحها القومية وتكدير الأمن العام وإلقاء الرعب بين الناس؛ بأن أذاعوا عبر حساباتهم على موقع التواصل الاجتماعي "فيس بوك" أخباراً وإشاعات كاذبة تضمنت ادعاء المتهم الأول بتفشي وباء كورونا وعدم اتخاذ الدولة إجراءات احترازية لمواجهة، وقتل مسجونين داخل السجن، وحبس مواطنين دون سند من القانون وتعذيبهم وقتلهم وتورط مؤسسات الدولة في حادث مقتل المدعو/ جوليو ريجيني وآخرين، وادعاء المتهم الثاني قتل أفراد القوات المسلحة للمواطنين، ودارسة اغلاق المجري الملاحي لقياد السوييس كل ثلاثة أشهر، وعدم اتخاذ الدولة إجراءات تطوير منطقة قناة السويس، وادعاء المتهم الثالث عدم تقديم الرعاية الصحية اللازمة للمسجونين وتردي



1. A scanned copy of the referral order of case no. 2021/877 (Supreme State Security), 2021/774 (First Settlement Emergency State Security Misdemeanor).

القضية رقم ١٥٥٢ لسنة ٢٠١٨ حصر أمن الدولة العليا

النيابة العامة

مكتب النائب العام

نيابة أمن الدولة العليا

صفحة ١

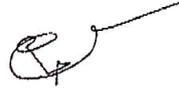
أمر إحالة

الفضية رقم ١ لسنة ٢٠٢١ جنابات أمن الدولة طوارئ مدينة نصر ثان
المقيدة برقم ٧٠٢ لسنة ٢٠٢١ ~~كلية~~ القاهرة الجديدة
والمقيدة برقم ١٥٥٢ لسنة ٢٠١٨ حصر أمن الدولة العليا
والمقيدة برقم لسنة ٢٠٢١ جنابات أمن الدولة العليا

نحن / خالد ضياء المحامي العام الأول لنيابة أمن الدولة العليا
بعد الاطلاع على الأوراق وما تم فيها من تحقيقات

نتهم:

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تقسيم إلياس - ثان أسيوط - محافظة
أسيوط
٢. محمد عبد الوهاب عبد الفتاح السن ٥٦، كبير مهندسين بمعهد البحوث
حمودة
المساحية، ويقوم حي ٢ - مجاورة ٣ -
"مارب"
عمارة ٧٣٧ - ٦ أكتوبر - محافظة الجيزة.
٣. أحمد صلاح الدين أحمد طلعت السن ٥٦، طبيب بشري، ومقيم ٩٤ شارع
حتوت
المقياس - الروضة - مصر القديمة، وآخر
"مارب"



2. A scanned copy of the referral order of case no. 2021/1 (Nasr City Second Circuit of the Emergency State Security Criminal Court) registered under no. 2018/1552 (Supreme State Security).

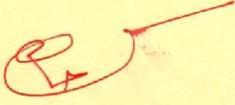
في ٢٠٢١/٥/٢٤
البنية القضائية
النيابة العامة
التائب العلم
نيابة أمن الدولة العليا

أمر بحالة

في القضية رقم ٦٥٣ لسنة ٢٠٢١ جنابات أمن الدولة طوارئ التجمع الأول
المقيدة برقم ١٩٥ لسنة ٢٠٢١ كلي القاهرة الجديدة
المقيدة برقم ١٣٥٧ لسنة ٢٠١٩ حصر أمن الدولة العليا
المقيدة برقم ١٣٠ لسنة ٢٠٢١ جنابات أمن الدولة العليا
خالد ضياء - رئيس الاستئناف - المحامي العام لنيابة أمن الدولة العليا
بعد الاطلاع على الأوراق وما تم فيها من تحقيقات

نتهـم:

١. محمد علي علي عبد الخالق السن ٤٥، رئيس مجلس إدارة مجموعة أملاك الاستثمارية للمقاولات والتوريدات، ويقيم ٩١ فيلا ٨٥ الرحاب - التجمع الأول - القاهرة الجديدة - محافظة القاهرة.
٢. تامر جمال محمد حسني احمد وشهرته "عطوة كنانتي" "هارب" حدائق المعادي - محافظة القاهرة.
٣. سامي جمال أحمد جاد الرب "محبوس" مركز جرجا - محافظة سوهاج.
٤. حسن هاني حسن النجار السن ١٩، طالب، ومقيم ٦ شارع إبراهيم السيد - الأربعين - محافظة السويس.
٥. مؤمن مصلح محمد علي موسى "محبوس" مؤسسة الأحداث - الجنانين - محافظة السويس.
٦. محمود مصلح محمد علي موسى "محبوس" السن ١٩، عامل نظافة، ومقيم أبو عارف - بجوار مؤسسة الأحداث - الجنانين - محافظة السويس.
٧. مصطفى صلاح محمود بيومي وشهرته "نفتلينا" "محبوس" السن ١٩، عامل، ومقيم ١٣٤ تعاونيات القاهرة - فيصل -، وآخر أرض عبد العزيز شارع عمر بن الخطاب - الألبان - الأربعين - محافظة السويس.
٨. مروة عبد الغني عبد الباقي عبد الله "محبوسة" السن ٢٣، طالبة، ومقيمة شارع علي خضر - سكة البنا - الجنانين - محافظة السويس.




3. A scanned copy of the referral order of case no. 2021/653
(First Settlement Emergency State Security Criminal)
registered under no. 2019/1357 (Supreme State Security).

القضية رقم 558 لسنة 2021 جنح مدينة نصر ثان طوارئ أمن دولة

والمقيدة برقم حصر 210 لسنة 2019 حصر أمن دولة طوارئ

أمر تقنين

بعد الإطلاع

المتهم / يحي حسين عبد الهادي محمد ، السن 66 – ضابط بالقوات المسلحة بالمعاش – مقيم 34 منطقة امتداد رمسيس – القاهرة.

لأنه في غضون الفترة من 6/11/2018 حتى تاريخه بداخل وخارج جمهورية مصر العربية وهو مصري أذاع عمداً بالداخل والخارج أخبار كاذبة حول الأوضاع الداخلية للبلاد بأن نشر بتاريخ 6/11/2018 عبر حسابه على موقع التواصل الاجتماعي (فيسبوك) مقالاً بعنوان "هي ثورة .. وإن أنكرها لص أو رئيس" وأعاد نشره مجدداً على ذات الصفحة بتاريخ 25/1/2019 تضمن أخباراً وبيانات وإشاعات كاذبة نسب فيها زورا لمؤسسات الدولة ارتكابها لمذابح جماعية وفردية، وانحيازها لمرشحين في الإستحقاقات الانتخابية وتفريطها في الأراضي المصرية واستدانتها وتفاوضها مع البنك والصندوق الدوليين بما يضر بمصالح البلاد وانتهاكها حرية الإعلام وتكليفها بالمعارضين للإيحاء للرأي العام العالمي بارتكاب مؤسسات الدولة لجرائم قتل جماعية وانتهاكها لحقوق الانسان بالبلاد وكان من شأن ذلك إضعاف هيبة الدولة واعتبارها واضعاف الثقة المالية بالدولة واعتبارها والاضرار بمصالحها القومية وتكدير الأمن العام والقاء الرعب بين الناس والحاق الضرر بالمصلحة العامة على النحو المبين بالتحقيقات.

بناء عليه

يكون المتهم قد ارتكب الجرح المؤتممة بالمادتين 80 (د) 1 ، 102 مكرراً 1 من قانون العقوبات

لذلك

بعد الاطلاع على المادة 214 إجراءات جنائية

وبعد الاطلاع على القانون رقم 162 لسنة 1958 بشأن حالة الطوارئ

وعلى قرار رئيس الجمهورية رقم 290 لسنة 2021 بمد حالة الطوارئ

4. A scanned copy of the referral order on case no. 2021/558 (Nasr City Second Circuit of the Emergency State Security Misdemeanor Court) registered under no. 2019/210 (Supreme State Security).

عمر صبر على الدائرة للإدعاء
 على ٤/٢٠٢٠
 القاضي/محمّد كرم

- النيابة العامة
 نيابة وسط القاهرة الكلية
 مكتب المستشار العام الأول

أمر إحالة

في القضية الرقمة ٣١ لسنة ٢٠١٧ حصر تحقيق نيابة استئناف القاهرة

المقيدة برقم ٤٨ لسنة ٢٠٢٠ جنابات أ.د. ط. قصر النيل

و المقيدة برقم ٣ لسنة ٢٠٢٠ كلي وسط القاهرة ٥.٥.٥

المخامي العام الأول

المستشار/أحمد حنفي رياض

بعد مُطالعة الأوراق وما تم فيها من تحقيقات ،،

تتهم النيابة العامة:

مدوح مصطفى عبد الفتاح حمزة-٧١ عام-يعمل مهندس مدني حُر-مقيم ١٣ شارع مُحمّد ثاقب قصر النيل-

يحمل رقم قومي ٢٤٧٠٧٠٨٠١٠١٠٣٩

لأنه بتاريخ ٢٠١٧/٧/١٦ بدائرة قسم شرطة قصر النيل محافظة القاهرة

- حُرّض علناً على ارتكاب جريمة إرهابية و هي إستخدام القُوّة و العُنْف و التّهديد الذين من شأنهم الإخلال بالنظام العام و تعريض سلامة المجتمع و مصالحه و أمنه للخطر ، بأن نُشر مُشاركة عَبر حسابهِ الشخصي لدى موقع التّواصل الإجتماعي "تويتر" بشبكة المعلومات الدولية حوى عبارة "إلي أهالي جزيرة الوُزّاق: تمسكوا بحقوقكم و لا تخضعوا لمن يبيع الأرض لقد دافعنا عن جزيرة القرصاية ٢٠٠٩ أمام هجوم الإحتلال-في الإتحاد قوة"، و كان ذلك بغرض مُنع و عرقلَة السُلطّات العامة من القيام بعملها و مقاومتها ، و لم ينتج عن ذلك التحريض أثر على النحو المبيّن بالتحقيقات.

- حُرّض علناً على عدم الإلتزام للقوانين و كان ذلك بدعوته الممتثلّة في مُشاركته المنشورة-محل الإتهام السابق- على النحو المبيّن بالتحقيقات .

بُناءً عليه يكون المتهم قد ارتكب جريمة إرهابية و إختلج أمن الدولة طوارئ المعاقب عليهما بالمواد ٥/١٧١ ، ١٧٦ ، ١٧٧ من قانون العقوبات و المواد ١/١ بند (ب)، ج) ، ٢ ، ١/٦ ، ١/١٩ من القانون رقم ٩٤ لسنة ٢٠١٥ بشأن مكافحة الإرهاب.

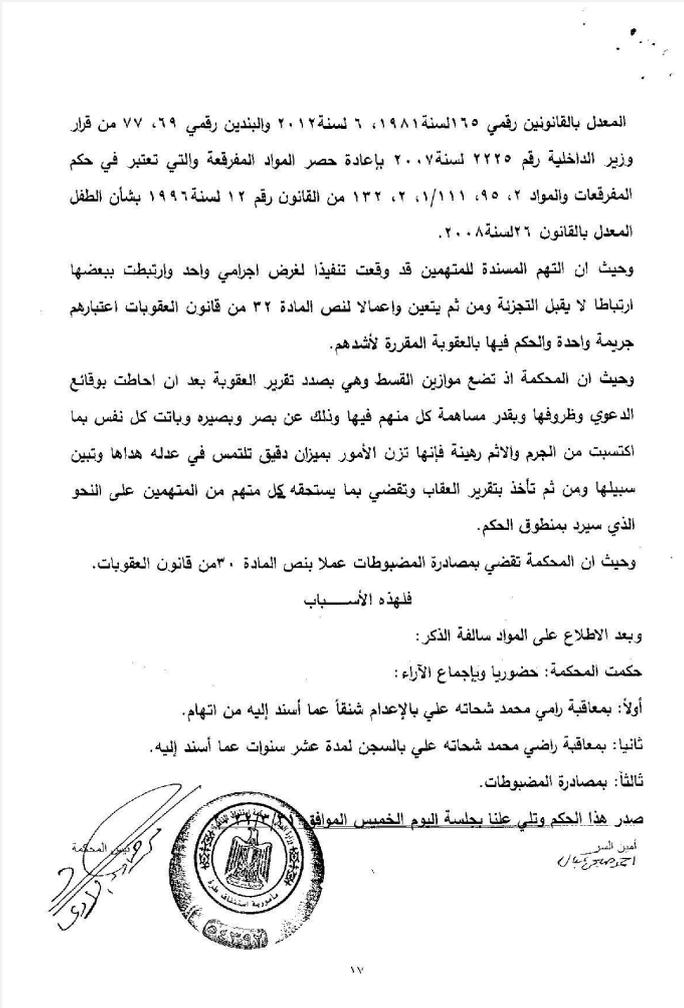
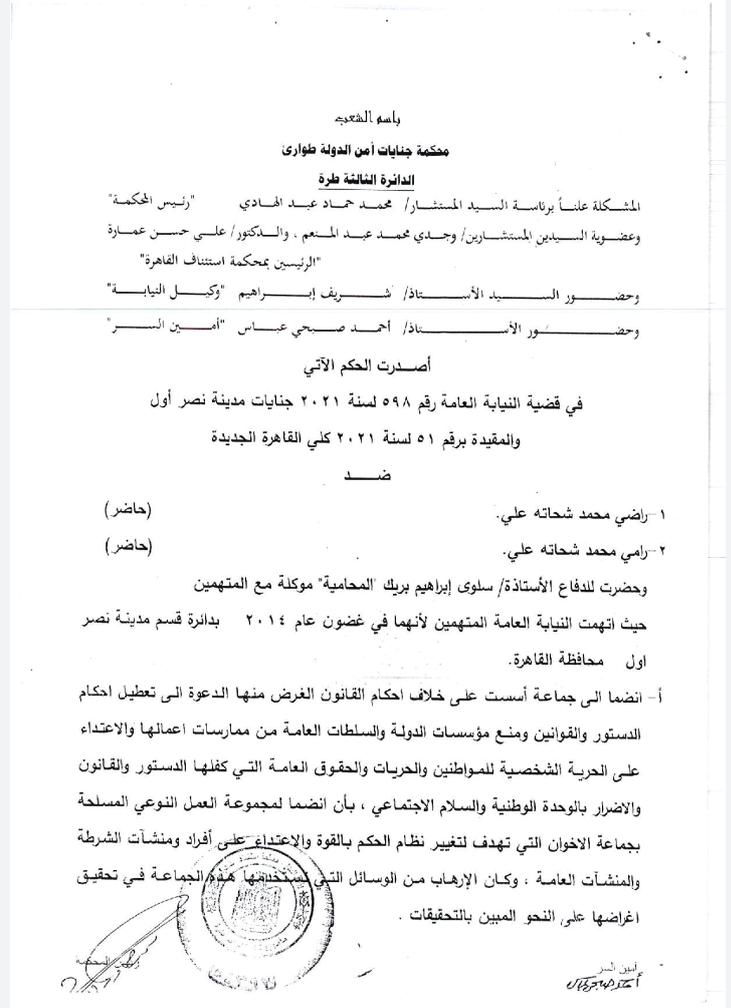
المخامي العام الأول



Handwritten signature of the prosecutor.

Handwritten number ١٩٤.

5. A scanned copy of the referral order of case no. 2017/31 under investigation by Cairo Appellate Prosecution, 2020/2 Central Cairo Emergency State Security.



6. Emergency State Security Court ruling on case no. 2021/598 (Nasr City First Criminal Circuit), registered under no. 2021/51 (New Cairo), sentencing: Rami Mohamed Shehata Ali to death by hanging for the charges against him; Radi Mohamed Shehata Ali to 10 years in prison for the charges against him. This is based on facts that took place around 2014, i.e. prior to declaring the state of emergency, but the Public Prosecution referred the case to the Emergency State Security Court during the state of emergency, in an actual application of the retrospective effect of the Emergency Law.

الساعة : ٣ م
الضابط بقطاع الأمن الوطني

فتح المحضر بتاريخ ٢٠١٩ / ١١ / ٢٢
بمعرفة نجن الرائد : أحمد طه

أشبهت الأتوبيس
نظر و التفتيش
٢٠١٩ / ١١ / ٢٢

* تنفيذاً لقرار النيابة العامة في المحضر رقم ٢٩٩٨ لسنة ٢٠١٨ إداري قسم شرطة مدينة نصر ثان
والمقيدة برقم ١٩ لسنة ٢٠١٨ حصر تحقيق نيابة مدينة نصر ثان بطلب تحريات الأمن الوطني
حول طبيعة نشاط المتهم / يحيى حسين عبد الهادي والغرض منه تحديداً وبيان عما إذا كان منضم
لجماعة الإخوان الإرهابية من عدمه

* أسفرت التحريات التي قمنا بها وأكثتها المصادر الموثوق فيها عن أن المدعو / يحيى حسين
عبد الهادي محمد (مواليد ١٩٥٤/٢/٥ - مقيم ٣٤ ش إمتداد رمسيس إسكان الضباط مدينة نصر
- ضابط سابق بالقوات المسلحة) من ذوي التوجهات المناهضة للمنطقة الدستورية التي تتولى
إدارة شؤون البلاد إذ يضطلع المذكور بتعمد استخدام مناصب التواصل الإجتماعي علي شبكة
المعلومات الدولية الإنترنت في بث مقالاته ومدوناته الإسقاطية والتحريفية ضد المؤسسات
الدستورية في الدولة وتمكين الغير دون تمييز من الإطلاع عليها للترويج لأفكار الهدامة التي
تستهدف تأليب الرأي العام ضد الدولة والعمل علي إثارة الغلاطات الشبابية والفئات العمرية
المختلفة من مرتادي تلك المواقع والمتابعين له للآثار علي قناعتهم ويقعهم لمواجهة السياسات
الإصلاحية التي تقوم بها الدولة بقسبي الطرق الإحتجاجية لزعة إستقرارها وتكدير الأمن والسلم
العام وتحطيل المرافق العامة عن أداء خدماتها لجمهور المنتمين إلى النظام وإطراد

* أضافت التحريات أن المذكور من المؤيدين لنهج الجماعة الإرهابية والداعمين لتوجهات قادتها
والعناصر المنتمية لها وذلك بأن قام المذكور بتعمد الظهور علي القنوات الفضائية التابعة لتلك
الجماعة الإرهابية أو التي يستخدمها عناصر تلك الجماعة كمنابر للترويج لأفكار الهدامة
ومتابعة العداء للدولة حيث جاهر المذكور خلال ظهوره علي شاشات تلك القنوات بالهجوم علي
الدولة صراحة في إطار تبنيه لنهج الجماعة الإرهابية الرامي إلى إسقاط الدولة وإعاقة الجهود
الإصلاحية الشاملة التي تبذلها السلطة الدستورية التي تتولى إدارة شؤون البلاد في الشئ بالمجالات.
* وأقل المحضر علي ذلك عقب إثبات ما تقدم في ساعته وتاريخه وعرضه على السيد المستشار /
رئيس نيابة مدينة نصر ثان للنظر والتصديق



7. A scanned copy of the National Security investigations report used as an incriminating evidence in one of the cases



المركز المصري للحقوق الاقتصادية والاجتماعية
الشبكة العربية لمعلومات حقوق الانسان
ومكاتب الاساتذة

طارق خاطر- أحمد فوزي- يوسف عواض- راجية عمران- مالك عدلي- ياسر شكرى
محمد فتحى- هشام على- نبيه محمد- محمد عبد العزيز- محمود عباس- سارة ربيع

مرافعة دفاع

السيد/ زياد عبد الحميد زكى العليمى (المتهم 1)

السيد/ هشام فؤاد محمد عبد الحليم (المتهم 2)

ضد

النيابة العامة (سلطة الإتهام)

فى القضية رقم 957 لسنة 2021 جنح أمن الدولة طوارئ مصر القديمة

المقيدة برقم 1625 لسنة 2021 حصر أمن الدولة العليا

جلسة الأربعاء الموافق 6 / 10 / 2021

الدفع الثالث: أصلياً: بعدم دستورية المواد (12، 14، 20) من قرار رئيس الجمهورية بالقانون 162 لسنة 1958 بشأن حالة الطوارئ، لمخالفتها لنصوص المواد (5، 53، 94، 95، 96، 97، 100، 184، 188، 237) من الدستور، ولنتمس التصريح لنا باتخاذ إجراءات الطعن أمام المحكمة الدستورية العليا، أو إحالة القضية للمحكمة الدستورية العليا للفصل فى مدى دستورية هذه المواد عملاً بنص المادة (29) من قانون المحكمة الدستورية العليا رقم 48 لسنة 1979.

وإحتياطياً: نلتمس وقف الدعوى الماثلة تعليقياً لحين فصل المحكمة الدستورية فى مدى دستورية المواد 12، 14، 20 من قرار رئيس الجمهورية بالقانون رقم 162 لسنة 1958 بشأن حالة الطوارئ فى الدعوى الدستورية 103 لسنة 39 قضائية دستورية.

الدفع الرابع: عدم دستورية المادتين (80 د، 102 مكرر/1) عقوبات لمخالفتها لنص المادتين 70، 71 من دستور 2014، ولنتمس إحالة الطعن للمحكمة الدستورية العليا للفصل فى مدى دستوريتهما، أو التصريح لنا باتخاذ إجراءات الطعن بعدم دستورية المادتين 80 د، 102 مكرر/1 عقوبات أمام المحكمة الدستورية العليا.

الدفع الخامس: أمر الإحالة أصابه الغلط البين فى تطبيق القانون، واختلق حالة من حالات المشروع الإجرامى الواحد غير المتوافرة بالأوراق، مما جعل اتصال المحكمة بالدعوى اتصالاً غير صحيحاً.

الدفع السادس: بطلان أمر الإحالة فيما تضمنه من تطبيق نص المادتين 80 د، 102 مكرر/1 من قانون العقوبات، لنسخهما بموجب نص المادة 1/71 من دستور 2014، والمادة 29 من القانون 180 لسنة 2018 بتنظيم الصحافة والإعلام.

الدفع السابع: إنعدام الدليل الفنى على أن الصور الضوئية للبوستات المنسوبة للمتهم الثانى هو من قام بكتابتها ونشرها، حيث أكد انتفاء صلته بهذه الصفحة، ونصم على جحد كافة الصور الضوئية، وعلى عدم الاعتداد بها كمتستند فى مواجهة المتهم.

الدفع الثامن: عدم انطباق النموذج التجريمى الوارد بالمادة 80 د عقوبات على المتهمين الأول والثانى.

الدفع التاسع: انتفاء الأركان المادية والمعنوية لجريمة إذاعة أخبار وبيانات وإشاعات كاذبة والمنسوب للمتهمين الأول والثانى ارتكابها.

8. A scanned copy of the requests submitted in human rights lawyer Khaled Ali's defense statement in Al-Amal Cell case



A JUDICIARY PRESIDENT

Egyptian Front for Human Rights (EFHR) is an independent European organization established in Czech Republic in 2017. The Front works to improve the human rights situation in Egypt through research, advocacy and legal work, specifically in criminal justice.



EGYPTIAN FRONT
FOR HUMAN RIGHTS