

CHARGED WITH BEING A LAWYER...

LAWYERS DETAINED AS PUNISHMENT FOR DOING THEIR JOB



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Introduction

The right to a legal defense and the right to a fair trial are among the most important rights guaranteed by international human rights treaties and conventions as well as the law and the Constitution. Lawyers always play a leading role in defending the rights and freedoms of citizens in the face of the violations they might endure by the regime and supporting the implementation of the law, holding miscreants accountable, and ensuring the right to equality before courts. It's common knowledge that the profession of a lawyer is one of the three main legal professions of judicial justice (judges-prosecutors- lawyers). Moreover, all principles pertaining to the protection of those who are subject to any form of detention or imprisonment provide that a detained person shall be entitled to have the assistance of, and to communicate and consult with, legal counsel. The U.N. Standard Minimum Rules for the Treatment of Prisoners recommend, in particular, that legal assistance and confidential communication with counsel should be ensured to untried prisoners. Also, professional associations of lawyers have a vital role to play in upholding professional standards and ethics, protecting their members from legal prosecution, improper restrictions and undue infringements. On their part, governments shall provide all safeguards ensuring that lawyers can carry out all their duties and that they have the right to freedom of expression and association; the right to form and join associations. Lawyers, like other citizens, are particularly entitled to take part in public discussion of matters concerning the law, the administration of justice and the promotion and protection of human rights and to join or form local, national or international organizations and attend their meetings, without suffering professional restrictions by reason of their lawful action or their membership in a lawful organization. In exercising these rights, lawyers shall always conduct themselves in accordance with the law and the recognized standards and ethics of the legal profession. ⁽¹⁾

There have been many cases of security arrests and prosecutions of some lawyers in recent period, in an unprecedented way to infringe on lawyers' legal and judicial immunity because of their political views and stances and for carrying out their work defending those involved in certain cases, or for any other stances that have nothing to do with their legal profession or their own opinions. Such a matter constitutes a flagrant violation of the Constitution and legislation that grants lawyers immunity from arrest or prosecution. In this regard, this paper aims to demonstrate the situation of lawyers and the legal profession in cases of public concern citing some examples of cases of arrest against some lawyers because of their legal work. It first offers a brief background of the safeguards and guarantees necessary for lawyers and their clients as established by international covenants, the Constitution and the law. Then it gives a number of examples of the violations committed against lawyers, most of whom are human rights defenders and those involved in issues of public concern. The paper is based on the information obtained by lawyers from the Arabic Network for Human Rights Information (ANHRI)'s Legal Unit through their attendance of the investigation sessions and court's trial hearings and their access of the investigation records.

Legislative background

The Universal Declaration of Human Rights (UDHR) establishes a set of fundamental rights to govern the relation between individuals and the law; starting from Article (8) which provides for the right to resort to courts for adequate reparation/ remedy for harm suffered, to Article (9) which prohibits

arbitrary arrest and detention and Article (10) that ensures the right to equality before the law and to appear before an independent and impartial tribunal, along with Article (11) which states that everyone has the right to be presumed innocent until proven guilty in a public trial at which he has had all the guarantees necessary for his defense.

The International Covenant on Civil and Political Rights (ICCPR) lists these rights in more detail, while adding that: "Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him" (Article 9-2), "It shall not be the general rule that persons awaiting trial shall be detained in custody" (Article 9-3), "Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court that may decide without delay on the lawfulness of his detention" (Article 9-4), and that "Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation" (Article 9-5).

Article (14) of ICCPR outlines some of fair trial requirements including that: everyone shall be entitled to a public hearing except in some special circumstances where publicity would prejudice the interests of justice (Paragraph 1), every one shall be entitled to have adequate facilities for the preparation of his defense and to communicate with counsel of his own choosing (paragraph 3-b), to examine the witnesses against him and to obtain the attendance and examination of witnesses on his behalf (paragraph 3-e), not to be compelled to testify against himself or to confess guilt (paragraph 3-g), to have his sentence being reviewed by a higher tribunal according to law (paragraph 5), to be compensated in case of wrongful judgment (paragraph 6), and not to be tried again for an offence for which he has already been finally convicted (paragraph 7).

Furthermore, the Egyptian constitution establishes full equality before the law (Article 53). Articles (54) and (55) regulate the conditions of restricting detainees' personal freedom and rights; including the detainee's right to contact his family and lawyer and be brought before the investigating authority within twenty-four hours of their freedoms having been restricted and to be brought to criminal trial for crimes that he may be detained for only in the presence of an authorized or appointed lawyer, in addition to the prohibition of torture, intimidation, coercion, or physical or mental harm, asserting that any violation of the aforementioned is a crime that is punished by law.

Article (96) of the Egyptian Constitution also states that "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 judgments passed on felonies", in recognition of the right to appeal judicial sentences before higher courts. Article (97) states that: "Individuals may only be tried before their natural judge. Extraordinary courts are forbidden", while Article (98) stipulates that: "The right of defense either in person or by proxy is guaranteed. The independence of lawyers and the protection of their rights are ensured as a guarantee for the right of defense".

The Constitution also singles out a special section on the legal profession; as Article 198 states:

"The legal profession is an independent profession. It participates with the judiciary in achieving justice and the rule of law, and ensuring the right to defense. It is practiced independently by lawyers, and lawyers of public sector and public business sector agencies and companies. While undertaking the right of defense before courts, all lawyers enjoy the guarantees and protection granted to them by law, which also apply to them before investigation and trial authorities. Except in cases of flagrante delicto,

arresting or detaining lawyers while exercising their right of defense is prohibited. The foregoing is organized by law. "

As for the Advocates Law (The Legal Profession Law), it stipulates in its first article that "The practice of law is a profession that is exercised independently. This profession is carried out by lawyers alone independently. And they are subject only to their conscience and the provisions of the law". Articles 49 and 50 of this law provides for lawyers' exception to the provisions governing the disciplinary and criminal procedures, order and crimes that are committed in the court room. Article 51 therein states:

"No investigation may be conducted with the lawyer nor may his or her office be searched except through a member of the Public Prosecution. The Public Prosecution shall be obligated prior to the comments of the investigation to advice the Branch Syndicate of any complaint against the lawyer within a reasonable period. The Dean of the Syndicate or the President of the Branch Syndicate may, if the lawyer is accused of a felony or misdemeanor related to his or her profession, attend the investigation. The Board of Directors of the General or Branch Syndicate may request copy of the investigation protocol without costs."

Article 54 stipulates:

"Whoever attacks a lawyer or insults him or her with a gesture, statement, or threat while he or she is performing his or her professional activities or on account of said activities shall be punished with the penalty stipulated for persons who commit this crime against a member of the court bench".

Examples of cases of arrest against lawyers during the period from 2018 to the present:

1- Mohamed Ramadan Abdel-Baset

He was arrested on 10 December 2018. The next day he appeared before Montazah Prosecution which accused him of joining a terrorist group, promoting its goals, spreading false news, inciting against state institutions and calling for protests; pending the Case No. 16576 of 2019 Montazah Administrative, known in the media as "the Yellow Vests" case. Ramadan was arrested after he posted a photo of himself wearing a yellow vest on his Facebook page, in conjunction with protests took place in France at the end of last year. Ramadan was previously arrested by state authorities that charged him with insulting the President and accordingly he was sentenced to five years in prison while preventing him from using social media for a similar period.

2- Mostafa Kamal

He was arrested while he was leaving his office in Fayoum city in the early hours of Thursday 30 August 2018, before he was taken to an unknown place where he went missing for 45 days. It turned out that this place is the headquarters of the National Security Agency in Fayoum. During his disappearance, his family had sent a number of telegrams to the Public Prosecutor, Minister of Justice, Minister of the Interior and Fayoum Prosecutions' public attorney. During this period also, a memorandum was sent to the Bar Association inquiring about Kamal and a notice was sent to the Fayoum Prosecution Office from the Public Prosecutor's Office requesting to open an investigation into the incident and hearing the testimonies of lawyers regarding his arrest.

Mostafa Kamal appeared for the first time in the evening of 14 October 2018 at the Supreme State Security Prosecution headquarters, where he was interrogated in the Case No. 1330 of 2018 State

Security on a charge of "joining a terrorist group" without facing him with the name of this group, nor was he faced with any exhibits or evidence except for the investigation record. The Prosecution then ordered his detention for 15 days before he was transferred to Al-Fayoum Police Station where he had been held in detention for two months.

It's worth mentioning that there is no relation whatsoever between Mostafa and any of the defendants involved in his case besides that most of them are from different governorates, which makes it clear that it is one of the "recycling" cases as a large number of its defendants had been recycled from previous cases.

Although a representative of the Fayoum Bar Association was present during Kamal's first detention renewal session requesting to release him by arguing that the bar would guarantee the defendant's appearance before the Prosecution whenever it summons him, the Prosecution decided to renew Kamal's detention pending probe. And on 7 December 2018 which marked the sixth detention renewal session, Kamal was transferred to Tora Prison where he is still languishing behind bars. During his last detention renewal session that was convened on Tuesday, 25 February 2020, the court ruled to renew the lawyer's detention for further 45 days pending investigations.

3- Sayed Ali Abdel-Aaal "Sayed al-Banna"

He was arrested on 14 October 2018, and then he appeared on 17 October 2018 at the State Security Prosecution as an accused in the Case No.621 of 2018 State Security on charges of joining an outlawed group and publishing false news against the state on social media. Sayed al-Banna is known as "the lawyer of the poor" and he is concerned with public affairs issues of a political nature.

4- Hamad Nasser Deifallah

He was arrested on 10 April 2019 and appeared on 15 April 2019 at New Cairo Prosecution headquarters where he was questioned for evidentiary purposes before the receipt of the National Security investigation. After submitting the investigations, Deifallah was referred to the State Security Prosecution as an accused pending the Case No. 631 of 2019 State Security, in which he is charged with joining a colluding with a terrorist group to achieve its purposes.

Hamad Deifallah has no role in public affairs and doesn't defend defendants involved in political cases. He was arrested after he tried to take a picture of the building of the Public Prosecutor's office in Al-Rehab City, where he used to work. It appears that he was impressed by the way the building looks. The security guards however stopped him and prevented him from entering the building, confiscated his mobile phone and deleted all the files stored on it. Consequently, a memorandum was filed into the incident and the lawyer was ordered to be held within the Fifth Settlement Police Station, where he went missing until the 15th of April. Thereafter, he appeared before the Fifth Settlement Prosecution that ruled to hold the lawyer until the next day's morning pending the receipt of the National Security's investigations, upon which Deifallah is charged with colluding with a terrorist group to achieve its goals.

5- Mohab Youssri Ragab "Mohab El-Ebrashi"

He was arrested from his house on 27 January 2019, when he was accompanied by a group of his friends to mark the anniversary of the January 25 Revolution. He appeared on 31 January 2019 at the

State Security Prosecution pending the Case No. 1739 of 2018 State Security, in which he is accused of joining a terrorist group and misusing social media.

On 4 February 2020, Cairo Criminal Court decided to replace the pretrial detention issued against lawyer Mohab El-Ebrashi with precautionary measures pending the aforementioned case. The State Security Prosecution didn't appeal against the decision. However, on 11 February 2020, instead of finalizing his release order procedures from Masr El-Qadima Police Station, he appeared once more before the Supreme State Security Prosecution that interrogated him in the Case No.1898 of 2019- whose incidents started while he was in prison- over the same abovementioned charges. The Prosecution then ordered the continuation of the lawyer's detention pending this new case and accordingly he began a new journey of remand detention.

6- Haytham Fawzy Mohamadein

He was arrested on 11 May 2019. He appeared on 16 May at the Supreme State Security Prosecution pending the Case No. 741 of 2019 State Security. During the day of his arrest, Mohamadein was carrying out his precautionary measures at Al-Saf Police Station pending the Case No. 718 of 2018 State Security, which is known as "Metro Protests" in objection to the increase of Metro tickets price- in which Mohamadein was implicated although he didn't take part in any of these protests. After finishing his probation, a National Security officer contacted him asking him to come the next day to the police station and once he arrived there, he was detained and subject to enforced disappearance until he appeared as a new defendant pending the above case on a charge of "colluding with a terrorist group to achieve its goals".

7- Amr Nawhan

He was arrested on 10 June 2019, before he appeared on 13 June 2019 at the State Security Prosecution as a defendant in the Case No. 741 of 2019 State Security on a charge of joining a terrorist group. Nawhan had volunteered to deliver a visit to a defendant who would be transferred to Al-Qanater Prison. However, when he went there on Monday, at 5 pm to deliver the items received from her family, he got arrested and detained under no legal ground. Alexandria Bar of Association was notified of the arrest of its member (Amr Nawhan) at the time, but it didn't take the necessary action.

8- Ziyad El-Eleimy

He was arrested on 24 June 2019 after the Interior Ministry issued a statement referring to a coalition dubbed "Plan of Hope" that involved a number of prominent figures from different political affiliations and currents, including lawyer and former parliamentarian Ziyad El-Eleimy. Then he appeared before the Prosecution on 25 June and was investigated on charges of colluding with and financing a terrorist group to achieve its goals.

9- Amr Imam

Amr Imam, a lawyer from the Arabic Network for Human Rights Information (ANHRI) was arrested on 16 October 2019, after 30 security personnel in plain clothes raided his house and took him to an unknown place where he went missing for 36 hours, without notifying the Bar Association with his legal position or revealing his whereabouts. ANHRI consequently issued a statement detailing his kidnapping (2). Blindfolded and handcuffed, Imam had been held in an illegal detention place affiliated with the

National Security Agency, before he appeared at the State Security Prosecution headquarters on 17 October. The lawyer is now held in solitary confinement where he is banned from practicing any form of physical exercise.

10- Mahinor El-Masry

She was arrested on 22 September 2019 while she was standing in front of the main gate of the State Security Prosecution headquarters where she was attending the detention renewal sessions of a number of defendants. After her arrest, a group of lawyers headed to the office of the Attorney General who in turn confirmed that an arrest warrant has already been issued against El-Masry. The next day, on 23 September, Mahinour El-Masry appeared inside the Prosecution and was interrogated pending the Case No. 488 of 2019 State Security over the usual charges; spreading false news, misusing social media, and joining a terrorist group. The detention of the lawyer is still being renewed until now.

11- Mohamed Abo-Harira

He was arrested by the State Security forces from his house in Cairo on 31 October 2018 and had been under enforced disappearance until he appeared at the State Security Prosecution headquarters, where he was interrogated over a charge of joining a terrorist group established contrary to the provisions of the law. Abo-Harira is still being held in pretrial detention pending this case.

12- Walid Selim

On 23 October 2018, the security forces stormed into the house of the Alexandria-based lawyer Walid Selim and took him to an unknown destination. Selim appeared later as a defendant involved in the Case No. 1175 on charges of publishing false news that would harm the country's national security and joining a group that is established contrary to the provisions of the law and the Constitution.

13- Sahar Ali

At dawn on the morning of 23 September 2019, the security forces raided the house of lawyer Sahar Ali, hours she attended investigations with a large group of detainees in the South Cairo Prosecution against the backdrop of the September 20 Protests. She was then added to the Case No. 1358 of 2019 State Security in which she is accused of: colluding with a terrorist group to achieve its purposes, misusing social media, receiving funds, taking part in criminal conspiracy, protesting, and using Internet personal accounts with the aim of committing a crime that is punishable by law and disturbing public order.

14- Mohamed al-Baqer

He was arrested on 29 September 2019 from the State Security Prosecution headquarters while he was requesting to attend the investigation with blogger and activist Alaa Abdel-Fattah pending the Case No. 1356 of 2019 State Security. The Prosecutor told him that an arrest warrant had been issued against him over the same case turning him from a lawyer to a defendant. Consequently, the Prosecution detained him and charged him with colluding with a terrorist group to achieve its goals, misusing social media, financing terrorist groups, and publishing and broadcasting false news and statements. Al-Baqer is still being held in solitary confinement in Tora Prison where his detention is constantly renewed.

15- Ibrahim Metwally

On 10 September 2017, human rights lawyer Ibrahim Metwally Hegazy was arrested at Cairo Airport while boarding a plane to Switzerland; as he was invited to attend a conference organized by the UN Working Group on Enforced Disappearances to attend the proceedings of its 113th Session, held from 11 to 15 September 2017 in the UN Human Rights Council in Geneva.

Ibrahim Metwally Hegazy didn't commit any guilt except that he established the "Association of the Families of the Disappeared" that involves parents who share the same pain he suffers; searching for his son who went missing since the "Republican Guard" incidents that took place in July 2013, as he sought to establish the fate and whereabouts of his son and other disappeared people in Egypt. The association had played a critical role during the past period through corresponding with international organizations, especially the UN, which depended on the association's reports documenting its reports and recommendations.

On 12 September 2017, Hegazy appeared at the State Security Prosecution headquarters as a defendant pending the Case No. 900 of 2017 State Security on charges of: leading and establishing an outlawed group, conspiracy with foreign entities to harm the security of the state and spreading false information. He was ordered to be detained pending this case at "Al-Aqrab" maximum-security prison, until he was released from custody after serving more than two years in remand detention. However, just before his release, he was subjected to enforced disappearance. Days later, he appeared at the State Security Prosecution once more as a defendant pending a new case; No. 1470 of 2019 State Security, over which he is currently held in detention on charges of joining a terrorist group and committing one of terrorism funding-related crimes, spreading false news and misusing social media.

16- Hoda Abdel-Moneim

She is a human rights lawyer and a former member of the National Council for Human Rights (NCHR). On the first of November 2018, a police and National Security force broke into her house at midnight and took her blindfolded to her mother's house. While the Security forces searched her mother's house, she was left blindfolded in a police vehicle. Hoda was then forcibly taken to an unknown destination. On 21 November 2018, she appeared at the State Security Prosecution after spending 20 days in enforced disappearance. She was then interrogated and charged with joining a terrorist group and committing a funding-related crime. She is still being held in remand detention pending this case.

The 60-year-old lawyer Hoda Abdel-Moneim suffers from several health conditions, according to her husband lawyer Khaled Badawi; as she suffers roughness in the knee and premature cartilage erosion which prevented her from moving or walking during the permitted exercise hour at Al-Qanater Prison, which could pose a severe threat to his health in case she is transferred by deportation cars to attend the detention renewal sessions, and besides that, she is banned from receiving visits since her arrest.

17- Ezzat Ghoneim

He is an Egyptian human rights lawyer and the executive director of the Egyptian Coordination for Rights and Freedoms. Ghoneim has recently specialized in cases of enforced disappearance. He is the lawyer of Zubeida's mother who appeared in a documentary released by the British Broadcasting Corporation (BBC) in February 2018 speaking about the enforced disappearance of her daughter. The mother was later arrested and detained pending probe at the State Security Prosecution on charges of spreading false news and joining a terrorist group established contrary to the provisions of the law.

Ghoneim was arrested by security forces on Thursday 1 March 2018, from the vicinity of his house in Al-Haram region (Giza) and in the meantime his family and friends were unable to contact him. Ghoneim went missing for three days until he appeared on 3 March 2018 before the Supreme State Security Prosecution, where he was interrogated without the presence of a lawyer. The Prosecution then decided to detain the lawyer for 15 days pending investigations on charges of joining a terrorist group established contrary to the provisions of the law and disseminating false news and information pending the Case No. 441 of 2018, publicly known as "The Media Action".

On 4 September 2018, Cairo Criminal Court ordered the release of Ezzat Ghoneim with precautionary measures. However, and as usual in cases where human rights activists are accused and cases of a political nature, the National Security forcibly disappeared Ghoneim for the second time, in flagrant defiance of the Criminal Court's release order and in a blatant violation of the law and the Constitution. Two weeks later, the lawyer appeared at the Police Cadets Institute in Tora where a record was filed against him accusing him of evading the precautionary measures.

Conclusion

The above-mentioned examples paint a very vivid picture of the ongoing prosecution of human rights lawyers for doing their work of providing legal defense to those involved in opinion-related cases. The prosecution of lawyers doesn't only reflect the regime's desire to strip prisoners of conscience of their right to legal aid, while leaving no doubt that the prosecutors and judges' full compliance with the directives dictated by security agencies consolidates the infringement of this right, but it also relates more to the fact that lawyers- by virtue of their job- are the key link between defendants (the conditions of their investigation and detention/incarceration) and the external world. Lawyers are witnesses to the tremendous amount of violations committed against their clients and therefore they are the only ones who can convey this picture to the public sphere, and this is part of their duty to defend their clients. But unfortunately, lawyers always pay the price of this role by being subjected to prosecution, arrest, detention, and even imprisonment over trumped-up charges and unfair sentences.

Although most of the aforementioned violations are committed against lawyers working on human rights or cases of public concern (in particular), lawyers who are not involved in such cases still remain subject to the same violations, as we pointed out in some of the examples above. Furthermore, the increase in the cases of arrest against lawyers continuously undermines the immunity granted to them in general by the Constitution and the law. This immunity is necessary for the performance of their work and hence for the judicial authority and the justice system to play their stipulated role and achieve their objectives. In other words, the prosecution of lawyers has become a phenomenon that threatens the practice of legal profession, not only at the present time but also in the future; by setting several precedents for violating the constitutional and legal rights of those who practice this profession, bearing in mind that there's nothing that could prevent the expansion of this phenomenon or limit its recurrence even if the circumstances change.

The main point to be noted here is that the Lawyers Syndicate plays no role in defending their members in the face of these repeated violations. This doesn't merely reflect the syndicate's inaction and failure to fulfill its role towards its members; rather it demonstrates its reluctance to fulfill its role in defending the profession itself. While the Syndicate's Chairman bears greater responsibility for this inaction, the syndicate's members as a whole also share the responsibility for electing the syndicate's board to be their representatives who are supposed to carry out their stipulated role. This paper, therefore, directs its recommendations to these people (Lawyers Syndicate's members) urging them to

pay attention to the repeated violations endured by their colleagues, turning it to a phenomenon that may pose a threat to their profession and hence to themselves. All lawyers should work together to oblige their syndicate to fulfill its role in defending their members to confront the violations they may subject to and protect their profession, and this won't occur except by pressuring state institutions to comply with the Constitution and the law, which guarantee them immunities and rights that deem essential to continue achieving their mission.

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Footnotes

Office of the High Commissioner for Human Rights, Basic Principles on the Role of Lawyers, United Nations General Assembly, 1990. Accessed on: 07-12-2019
<https://www.ohchr.org/EN/ProfessionalInterest/Pages/RoleOfLawyers.aspx>

The Arabic Network for Human Rights Information (ANHRI)'s website, Lawyer Amr Emam from ANHRI kidnapped from his home today at dawn...The police regime in Egypt shows further hostility against human rights and the rule of law. Published on: 16 October 2019...
<https://www.anhri.info/?p=11496&lang=en>