

## Egypt

**An elaborate exceptional court system continued to function, undermining the jurisdiction of regular courts and allowing the government to choose which court to refer sensitive cases to. Towards the end of the year, judges' associations called for an ending of the control over the judiciary by the Ministry of Justice through the administration and financing of the court system. Although the Bar Association remained under governmental sequestration, and security forces prevented members of the Bar from holding their general assembly, the Court of Cassation upheld a previous ruling to lift the measure of sequestration.**

Since 4 October 1981, Mr. Hosni Mohammed Mubarak has been serving as Egypt's President. On 26 September 1999, he was re-elected for a fourth six-year term which was approved by a national referendum. President Mubarak continued his policy of a controlled multi-party system and economic liberalism.

The President appoints the Prime Minister, who selects the various ministers. On 10 October 1999, a new Cabinet of technocrats was appointed in Egypt.

The legislative power belongs to a bicameral parliament. It is composed of the People's Assembly (Majlis al-Sha'b) elected for a five-year term and the Advisory Council (Majlis al-Shura). Majlis al Shura, which functions only as a consultative organ, is partly elected and partly nominated by the President.

### **Human Rights Background**

Although violent attacks by Islamic opposition seriously declined in Egypt during 1999, serious human rights violations continued to be committed with impunity. These include arbitrary detention, trial of civilians before military courts and serious limitations on the freedom of expression and association. Although human rights work is generally tolerated in Egypt, most human rights groups continue to operate without being legally registered. Human rights defenders continue to face harassment and persecution for carrying out their professional activities.

The Islamic movement continued to use the judicial system and to incite public opinion against writers and journalists who express views that they consider to be against Sharia and Islam. They continued to pressure the government to censor literary work and other forms of expression that they consider to constitute blasphemy.

### *The State of Emergency*

A state of emergency has been in effect in Egypt since 1981. On 22 February 1997, the People's Assembly voted to extend the emergency law until 31 March 2000. Act No. 162 of 1958, as amended by Act No. 50 of 1982, permits the proclamation of a state of emergency when public order and security are endangered due to the outbreak of war, the existence of a situation that threatens to lead to such an outbreak, the occurrence of disturbances within the country, general disasters or the spread of an epidemic (Article 1).

Since its institution in 1981, the state of emergency has been extended for a total of nine times over a period of 19 years. The State of Emergency Law grants excessive powers to the

executive. It allows the President, inter alia, to impose restrictions on the freedom of assembly, movement and residence, and authorises the detention of individuals without charge or trial. After thirty days, a detainee can petition the State Security Court for review. If the review is favourable, the detainee must wait another month and then petition another State Security Court for release. The minister can, however, simply re-arrest the detainee, which is often the practice.

As a result of these powers, hundreds of individuals have been detained without charge or trial for several years. Although the courts have ordered that some be released, the court orders were either ignored or new detention orders were issued.

### *Professional Associations and Trade Unions*

Within the framework of the government's campaign against Islamic opposition groups, trade unions and professional associations, including the Bar Association, have suffered serious restrictions during the past two years. Their members have been often arrested and accused of belonging to a "secret outlawed group", "planning to overthrow the system of government" and of "infiltrating the professional syndicates to undermine security in the country". They are sometimes tried before the Military Court for suspected links with the banned Moslem Brotherhood.

During 1999, the government referred three cases involving 148 civilians to the military courts. The cases involved the leadership of several professional associations, including the Bar Association (see Cases below). Twenty of these defenders were suspected members of the Moslem Brotherhood. The charges included preparing for the associations' elections.

### *Torture*

Torture and ill-treatment of detainees also continued to be widespread and systematic throughout 1998/1999. While there are reports of some investigations into torture cases, the sanctions received by the violators tended to be minor and administrative. In many instances where a civilian defendant sued the Ministry of Interior and the case was brought to court, however, compensation was ordered. According to the Egyptian group, the Human Rights Centre for the Assistance of Prisoners, between 1982 and 1997 the government was ordered to pay a total of 877,000 Egyptian pounds, which equals \$ 260,000, in compensation.

The prosecutor, however, referred five security officers to the court for their alleged involvement in the death in police custody of Waheed al-Sayyed Ahmed in 1998. At the end of the year, no date had yet been fixed for this case.

### *Human Rights Defenders*

The year witnessed several restrictions on human rights work in Egypt. The government prohibited the holding of the first regional Arab meeting on the independence of the judiciary. The meeting, which was shifted to Bayrouth, Lebanon, was organised by the CIJL affiliate, the Cairo-based Arab Centre for the Independence of the Judiciary and the Legal Profession, in collaboration with the CIJL. A regional meeting of the Arab human rights movement that was organised by the Cairo Institute for Human Rights was also prohibited and had to be shifted to Morocco.

The Egyptian Organisation for Human Rights (EOHR) was accused by the government of serving "Western interests" by denouncing the events of Al-Kosheh. Its Secretary-General, Hafez Abu Se'da, was arrested in December 1998 after EOHR published reports regarding sectarian violence that took place in the village of Al-Kosheh in Upper Egypt. (See Cases below)

A wide media debate took place regarding the financing of NGO's and other organisations in Egypt. Officials and government-sponsored papers insinuated that foreign funding undermines the impartiality of these groups. They accused human rights groups of being a tool in the hands of Western interest and of using the human rights issue as a weapon to undermine the state in crucial times.

#### *Law No 153 on Association*

In June 1999, Law No. 153 on non-governmental organisations (NGO's) was enacted. Its seventy-four articles ensure the Egyptian state's grip on political and civil life. The law uses flexible and vague terms to outlaw NGO activities, such as prohibiting them from "practising any political or trade-union activity exclusively restricted to political parties and trade unions" or engaging in activities that "threaten national unity" or "violate public order or morality". The law regulates the formation, functioning and funding of NGO's. It requires groups to re-register with the Ministry of Social Affairs.

Although it was rushed through parliament for approval, the law generated a major debate, particularly amongst human rights groups in Egypt. Several groups considered that it severely restricted their ability to function properly. On 28 November 1999, the Ministry of Social Affairs issued regulations to facilitate the implementation of the law. The regulations were said to take into account the criticisms presented by human rights groups.

In June 2000, as this report was being finalised, the Constitutional Court of Egypt ruled that Law No. 153 was unconstitutional. The court did not examine the substance of the law, rather it invoked procedural grounds, regarding the manner in which it was adopted by parliament, to consider the entire law as null and void.

### **The Judiciary**

Although the year witnessed demands by Egyptian judges to boost their structural independence, the regular court system in Egypt continued to be regarded with high esteem. The elaborate exceptional court system continued, however, to deprive the regular courts of its jurisdiction in sensitive cases.

#### *The Regular Court System*

The regular court system is composed of two sets of courts: one that deals with civil, criminal, and commercial disputes, and another that deals with administrative matters.

The civil court system is composed of a Court of Cassation, Courts of Appeal, Courts of First Instance and Magistrate Courts.

The Magistrate Courts are courts of small claims and minor offences. The Courts of First Instance are the courts of general jurisdiction. In civil cases, they are generally composed of

one judge. In criminal cases, however, they could be composed of either one judge or three judges, depending on the seriousness of the possible penalty.

Appeals Courts constitute the second level jurisdiction and are composed of three judges. There are seven Courts of Appeal in Egypt. Each is divided into civil and criminal chambers.

The Court of Cassation sits in Cairo. It accepts petitions on judgements rendered by the Court of Appeal on two grounds: mistakes of law and violations of due process.

There is also an elaborate system of administrative courts that is divided into primary level, appeal and the Council d'Etat.

The Supreme Constitutional Court is an independent judicial body. It is tasked with control of the constitutionality of laws and the interpretation of legislative texts in the manner prescribed by law. There is no possibility for individuals to petition this court.

In a move that created much criticism, a presidential decree amended the law establishing the court in July 1998. The decree was issued after the court annulled a tax that the government imposed on Egyptians working abroad. The effect of the court's judgement was that the government was required to return millions of dollars that it had collected from these workers. To by-pass this ruling, the presidential decree stipulated that the court's judgements cannot be applied retroactively.

#### *Selection, Promotion, and Transfer*

According to Articles 165 and 166 of the Egyptian Constitution, judges and the judicial authority are independent. The Constitution forbids interference by other authorities in their judicial functions. Judges serving in the regular court system are appointed by the President upon recommendation of the Higher Judicial Council. This council is composed of senior judges and chaired by the President of the Court of Cassation. The Council also regulates judicial promotions and transfers.

Judges are appointed for life and cannot be dismissed without serious cause. In practice, however, since the appointments are a presidential prerogative the executive enjoys considerable influence over the judiciary. The High Council of Judicial Authorities recommends appointees to the President, in addition to regulating promotions and transfers. Judges are considered functionaries of the Ministry of Justice, which administers and finances the court system. This scheme makes the executive the de facto head of the judiciary, which potentially undermines basic principles of impartiality and the separation of powers.

The Constitutional Court is comprised of seven judges appointed by the President of the Republic following consultation with the High Council of Judicial Authorities. The President of the court is also appointed by the President of the Republic and is third in line for the presidency of the Republic after the President and the Speaker of the People's Assembly. The potential to become head of state compromises the position of the President of the Supreme Constitutional Court as a member of the judiciary.

On 2 December 1999, the Judges Clubs in Egypt, which serve as associations of judges, met and called for the independence of the judiciary, and for the amendment of the law on the

judiciary. The judges asserted that Law 47 of 1972 on the judicial authority in Egypt must be amended so as to lift the control of the Ministry of Justice over judicial affairs. In particular, they stressed the importance of separating the budget of the judiciary from that of the Ministry of Justice; placing the Judicial Inspection Department under the supervision of the Supreme Judicial Council rather than the Ministry of Justice; and amending the criteria for the selection of high ranking positions in the judiciary. The judges also expressed concern that the Judges Clubs are subject to the law on freedom of association (see above), and thus are controlled by the Ministry of Social Affairs. They nevertheless formed a committee to amend the statute of Judges Clubs in order to conform to the association law.

### *Special Courts*

There are several types of special courts in Egypt, which were described previously in detail in Attacks on Justice 1998, 1997, 1996. There has not been much change in the structure of these courts or in the scale of their operation. These special courts include the Permanent State Security Court, the Emergency State Security Court, as well as military courts. There is much overlap in the jurisdiction of these various courts, which mainly deal with issues of internal and external security. This allows the government to choose which court to refer a specific case to.

The Permanent State Security Court system is composed of Magistrate Courts and Supreme Courts. Civilian judges normally sit in these courts. The President of the Republic may, however, order two additional military officers to sit. The verdicts of these courts are subject to appeal before the regular court system.

The Emergency State Security Courts are formed by judges appointed by a presidential decree, upon the recommendation of the Minister of Justice. The Emergency Law allows the President to appoint military officers to this court. The judgements of these courts are not subject to appeal. The President of the Republic may alter them, however.

The military courts are part of the military hierarchy. There is no right to appeal before these courts. The jurisdiction of these courts is not restricted to military personnel however. The President of the Republic may refer cases involving civilians to these courts. Hundreds of civilians, including lawyers, have been tried before these courts, which do not accord proper rights of defence. Death sentences are often passed and promptly executed without a fair trial.

### *The Bar Association*

The dismantling of the lawyers' associations and the sequestration of the Egyptian Bar Association (EBA) have been a major concern to the CIJL since 1996 (see Attacks on Justice 1998). The sequestrators have taken over important powers of the EBA, such as the taking of disciplinary action against lawyers and the ability to propose and comment on legislative reform.

In March 1999, Egyptian lawyers were prevented by security forces from holding an extraordinary general assembly which was scheduled for 18 March and aimed at preparing the election for a head and a council for the Bar Association.

According to the Judicial Sequestration Committee, this assembly was illegal. The Public Prosecutor asserted that it was not part of his competencies to prevent the holding of this

assembly, and the government officially declared itself neutral on the matter. Nevertheless, large number of security forces were dispatched by the government in order to prevent the meeting.

In October 1999, the Court of Cassation upheld an earlier court ruling to lift the government sequestration of the Bar. The court appointed a Supervisory Committee chaired by the head of the Cairo Court of Appeal. The Committee is to prepare for the Bar elections. Elections are expected to take place during 2000.

### **Cases**

Hafez Abu Sa'da (lawyer, Secretary-General of the Egyptian Organisation for Human Rights): The case of Mr. Abu Sa'da continued. On 1 December 1998 he was charged before an Emergency Supreme State Security Court for "accepting funds from a foreign country with the aim of carrying out acts that would harm Egypt(...)"(see Attacks on Justice 1998). EOHR received the sum of \$ 25,000 from the Human Rights Committee in the British House of Commons to support a women's rights project. This amount was channelled to EOHR through the British Embassy in Cairo in 1998, without giving the required notification to the authorities. The government claimed that this amount is to sponsor an EOHR report regarding sectarian violence that took place in the village of Al-Kosheh in Upper Egypt.

The Egyptian Government invoked Military Decree No 4/1992 which prohibits the collection or receipt of donations without prior approval of the Ministry of Social Affairs. Article 2/1 of that decree stipulates imprisonment for a minimum of seven years for violations of the decree. No appeal is possible from the decisions of this court.

Abdel Aziz Mohamed (lawyer, and chairman of EOHR): On 25 and 26 December 1999, Mr. Mohamed was questioned by the State Security Prosecutor regarding a report published in 1998 regarding events in Al-Kosheh in Upper Egypt.

Mukhtar Nouh, Khaled Badawi (lawyers of the Egyptian Bar Council) and Ibrahim al-Rashidi (lawyer): On 15 October 1999, and a few days following the Court of Cassation ruling with regard to the Bar elections, the three lawyers were arrested among twenty other individuals and referred to the Military Court, by virtue of a presidential order. The charges related to organising the Bar elections.