Court of Cassation Addresses Fair Trial Guarantees in Relation to the Use of Glass Cages in the Courtroom

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Court of Cassation

Judgement of 11th July 2021

Appeal 1091 of Judicial year 90

On 11 July 2021, the Court of Cassation addressed fair trial guarantees grounded in human rights in relation to the use of glass cages in the courtroom. The ruling arose in the context of criminal proceedings concerning the January 2011 events commonly referred to as the "Storming of Prisons."

The case concerned coordinated attacks on several detention and security facilities, including Wadi El-Natroun and Abu Zaabal prisons, carried out by organized armed groups composed of Egyptian participants and foreigners who entered Egypt through eastern border regions pursuant to a pre-arranged plan. According to the Prosecution, the operations aimed at undermining State authority, destabilizing internal security, and facilitating the escape of detainees held in security-related cases.

The defendants were charged with offences relating to armed attacks on prison facilities using firearms, explosives, and vehicles, as well as providing logistical support, smuggling weapons, coordinating transportation and communications, and participating in the escape of detainees. The Prosecution further alleged that some defendants had formed or joined prohibited organizations, including Hamas, Hezbollah, and elements affiliated with the Muslim Brotherhood.

The Cairo Criminal Court convicted several defendants and imposed penalties ranging from death sentences and life imprisonment to fixed-term imprisonment, in addition to confiscation orders, fines, and civil compensation. Multiple appeals were subsequently filed before the Court of Cassation challenging, inter alia, the validity of the proceedings and the sufficiency of the evidence.

Among the grounds raised before the Court of Cassation was the contention that the trial proceedings were invalid because the accused had been placed inside a glass cage/box during the

hearings.

In rejecting this plea, the Court discussed the principle of orality of proceedings and the right of the parties to examine and discuss all evidence presented before the court, stating that:

> "There is no dispute that the principle of orality of pleadings—by which the elements of the case are presented before the parties at the hearing—requires enabling the parties to discuss all evidence submitted before the court, in application of the principle of confrontation between the parties, and what this entails in terms of the necessary balance between the rights of the parties — a balance which requires the presence of the parties to the dispute throughout all the trial proceedings and their being kept informed of what each party submits or raises, so that each party may ascertain the evidence and discuss it.

In that respect, **The Court emphasized that these guarantees are affirmed by international human rights instruments, namely the Universal Declaration of Human Rights (Article 10) and the International Covenant on Civil and Political Rights of 1966 (Article 14(1)).**

The Court then addressed the right to defence and the requirements for its effective exercise. It emphasized that:

> "the presence of the accused is a condition for the validity of the trial proceedings, and that the right to a defence requires that every person accused in a felony have someone to defend him."

The Court further emphasized that this guarantee "is not a mere formality but must be effective," explaining that the lawyer must be capable of properly defending the accused and that communication between the lawyer and the accused "must not be hindered by material obstacles." In this regard, the Court referred to Article 54(2) of the 2014 Constitution, noting that the constitutional guarantee allowing anyone whose liberty is restricted to contact their lawyers immediately, requires that such communication remain free from barriers or obstacles, including measures affecting the confidentiality of communications or the exchange of information and documents.

The Court nevertheless explained that considerations of public interest may justify restrictions on certain procedural guarantees in exceptional circumstances. Referring to Article 270(2) of the Code of Criminal Procedure, it observed that proceedings may continue in the absence of the accused where the accused disrupts the hearing until order is restored. It also noted that courts may exclude an accused person where necessary to ensure the proper conduct of proceedings, including situations where a witness may be unable to testify freely in the

accused's presence because of intimidation or influence (Article 273/2 of the Code of Criminal Procedure).

The Court further referred to comparative international jurisprudence, citing the judgment of the European Court of Human Rights in the Sarban case of 4 October 2005, which held that that the separation between the lawyer and the accused by means of a glass panel, although it may create an obstacle and may prevent effective communication between the accused and the man of law, does not prevent the detained accused from organizing an effective defence before the court, and on this basis it rejected the claim that the glass panel which materially separated the accused from his lawyer had resulted in a violation of his private life and his correspondence as guaranteed by Article (8) of the European Convention on Human Rights.

Applying these principles to the case before it, the Court observed that the number of accused exceeded twenty, making it impracticable for the trial court to manage the hearings while the accused spoke loudly inside the dock. It therefore considered the use of a glass cage/box necessary. The Court further found that the enclosure did not prevent communication between the accused and their lawyers, since meetings were permitted whenever requested, nor did it prevent the accused from following the proceedings because the enclosure allowed visibility and was equipped with audio systems enabling them to hear and speak during the hearings.

Finally, The Court of Cassation stated:

"Whereas it is evident from the record of the hearing that placing the appellants in a glass cage/box during the proceedings did not prevent them from attending the trial, presenting their defence, or communicating with their lawyer, nor did it prevent the court from hearing and observing what occurred inside the enclosure. It is further evident that the trial was conducted in public and that the judgment was delivered and pronounced publicly. Accordingly, the reasoning provided by the judgment in response to this plea is sufficient, sound, and consistent with the law, and **the appellants' challenge on this ground is therefore unfounded."**

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