Multiple Plaintiffs v. Head of Supreme Council of Army Forces & Others

The case of Virginity testing

**Summary and Outcome**

On December 27, 2011, the Court of Administrative Judiciary in Egypt issued a ruling admitting the demands of suspending the decision of conducting a compulsory medical examination, in particular **a** Virginity testing on girls exposed to detention in the places subordinate to the army forces or any of its places. The Court’s decision was established on the fact that the decision of conducting a compulsory medical examination is issued was established in contradiction with the constitutional declaration and the law.

The plaintiffs, who brought the case before the Court of Administrative Judiciary demanding the suspension of the implementation of the decision,.

The plaintiffs argued that the decision is contradicting the law as it is issued in contradiction with the provision of the constitutional declaration, International conventions which Egypt is the party in, the Criminal Procedures Code, and the law of prisons. In addition, the plaintiffs argued that the decision issued null for lack of legal reasons.

The defendant asked the court to (1) dismiss the whole lawsuit for lack of administrative decision. (2) Dismiss the case for the second plaintiff for the lack of legal capacity and interest (3) Reject the case, for both parts the urgent and objective.

**Facts**

Both plaintiffs have exercised their right to freedom of expression, through participating at the demonstration and setting in Tahrir square. One of the plaintiffs has been exposed to arrest and a compulsory examination of her **Virginity**. She has reported the incident to the military prosecutor’s office.

Therefore, on July 17, 2011, the plaintiffs brought the case before the Court of Administrative Judiciary against the head of Supreme Council of Armed Forces, Minister of Defense, The Military General Attorney, and the Leader of Military Central Area, requesting to urgently suspend the implementation of the decision of conducting a compulsory medical examination, in particular **a** Virginity testing on girls exposed to detention in the places subordinate to the army forces or any of its places.

**Decision Overview**

The ruling was issued by the first chamber within the Court of Administrative recorded under the No. (45029) for the judicial year 65.

The Court addressed three main issues that arose before it (1) dismisses the whole lawsuit for lack of administrative decision. (2) Dismiss the case for the second plaintiff for a lack of legal capacity and interest. (3) Urgent request to suspend the SCAF decision of conducting a compulsory virginity testing on the female detainees.

In Light of the main issues that arose before the Court, the court decided to reject the first defendant’s argument related to lack of administrative decision, as the SCAF did not issue an administrative decision to do the medical examination, in particular, the virginity test. The court founded its decision on the fact that the reports issued from “Amnesty International “ on 27/6/2011 mentioned that the general Abdel Fatah El Sisi has discussed the question of compulsory virginity testing with the Secretary-general of the organization and mentioned that “These testing conducting in March to protect the army for the potential allegation of rape”. The court in its response to the argument of the lack of an administrative decision and added that the head of military intelligence has promised Amnesty International that the army will suspend conducting these tests. The court mentioned that, whereas the defendant did not deny what is mentioned in the report which reflects that the Army has conducting these tests on females and conducting, so these tests were upon an administrative decision by exposing the female detainees to the virginity test. Therefore the defendant’s argument is not legally supported and justified so, it should be rejected.

The Court also rejected the argument that related to the lack of legal capacity and legal interest for the second plaintiff as she was neither exposed to the detention nor virginity test. The court established its decision on Art (23) of the [Constitutional Declaration issued on 30/3/2011](https://manshurat.org/node/3169) and Art (71) Egyptian [Constitution 1971](http://constitutionnet.org/vl/item/msr-dstwram-1971-almnshwr-fy-aljrydt-alrsmyt-fy-12-aylwlsbtmbr-1971-alrqm-36-mkrr) which both stipulated that “Everyone who arrested or detained should be informed immediately by the reasons of detention, has a right to communicate with whom he sees to inform him by what happened, or seek his assistance according to the law, should inform him immediately by the accusation that he encounters, he and other has a right to submit a petition on the procedures of restricting his freedom before the Judiciary, the law regulating the right t the petition in a way ensure that take a decision in a specific period or release him”

Therefore the second plaintiff enjoys the legal capacity and legal interest in the lawsuit for defends on the personal freedom of other female detainees even if she did not subject to detention. The court added that it is adequate to accept the lawsuit, the existence of interest for the plaintiff even if a potential interest.

In relation to the plaintiffs’ urgent request to suspend the SCAF decision of conducting a compulsory virginity testing on the female detainees, The Court admitted the request of the Plaintiffs to suspend the decision, based on Art 49 of [law No. 47/1972](https://manshurat.org/node/7274) in concern of the State Council, and, regarding of the cancellation of the administrative decisions which stated that “The court may suspend the implementation of the decision if it requested in the lawsuit and court held that the results of implementation were irreversible” and on constitutional declaration provisions in particular; Art. (8) which stipulated that “The personal freedom is a natural right and it is inviolable, except in the case of flagrant, it is not permitted to arrest, search, jail and restrict the rights of everyone or restrict his right in movement but upon an order for the necessity of the investigation or maintain the security of the society, this order should issue from the Judiciary or public prosecution office”, Art (9) “every citizen who arrested, imprisoned, or his freedom has restricted, he must be treated in a way that maintains his human dignity. It is not permissible to harm him physically or mentally. And it is not allowed to imprison him in places that not subordinate to places that regulating by the law of prisons”, and Art (17) which stipulated that “Every abuse to the personal freedom or Inviolability of private life of citizens, or any other public freedoms and rights guaranteed by the constitution and law is a crime in which the criminal or civil lawsuit arising from it is not t subject to the statute of limitations. In addition, the court has based its decision on Art (40) of [the Criminal procedures Code No (150) of the year 1950](https://manshurat.org/node/14676) which stipulates that “It is not permitted to arrest, imprison any person except upon order issued from the competent authority and must be treated in a way that maintains his human dignity. It is not permissible to harm him physically or mentally.” and Art (46) which stipulated that “ in the circumstances which legally permitted to arrest a person, the law force officer could search him, if the accused person is female the search shall be by a female assigned by the law enforcement officer”

The Court has based its decision also on Art (180) of [the Military law No. (25) of the year 1966](https://manshurat.org/node/1487)which stipulated that “Execution of penalties against civilians takes place in civilian prisons”, Art (9) of the [Prisons Law No. (396) of the year 1956](https://manshurat.org/node/12357) which regulated the procedures of searching the prisoners, and on chapter (4) of the [internal regulation for the prisons which issued upon the decree of the Minister of interior No (79) of the year 1961](https://manshurat.org/node/12358) which regulating the procedures of medical examination that have every prisoner subject to immediately whenever he put on the prison, the court added that “Neither law nor the prisons regulation included provision allowed to conduct the virginity test on female prisoners whether, when searching prisoners or when conducting the medical examination”

## The court as well based its decision on Art (7) and (10) of ICCPR and stated that “ the international human rights conventions which Egypt is part of, and which its provision become effective in Egypt and one of its domestic laws has emphasized on respect the human rights and freedoms” and added that “which included (IHRL) Articles 7 and 10 of International Covenant on Civil and Political Rights, No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment and All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person”

The court has depended as well on the provisions of International Humanitarian law to support its decision, as it mentioned that “The legislative protection has extended to includes the war prisoners” according to the Geneva convention in concern of the treatment of war prisoners which signed in 12/8/1949 which emphasized that, the war prisoner shall be treated in way maintain his human dignity, and Art (14) of the convention stipulated that the war female prisoners must be treated in the due respect for their gender”.

The court has supported its decision by the principles established by the High Constitutional court [Ruling No 33 of Judicial year 16 issued in 3/2/1996](http://www.sccourt.gov.eg/SCC/faces/RuleViewer.jspx) as the court stated that the High Constitutional Court has affirmed on the respect of human dignity even in the sanction field as the high court stated that “A criminal sanction may not be repugnant or heavy. And it would be so if it was barbaric, torture, or oppressive, or if it would waste the standards which civilized nations had committed to, in their treatment of mankind.

In the reasoning of the judgment, the Court stated that “The Task of Armed forces according to Art (53) of the constitutional declaration is to protect the country and its territorial integrity, protect its security encounter any external assault” this task is differentiated from the tasks the police as a civilian authority which tasked to keep the internal security and enforce the law” the court added for reasoning this decision that “If the situation after the revolution of 25 January and due to the Inability or inaction of the police has forced the Armed forces to interfere to doing some police forces’ tasks which represented in keep the internal security and order which include takes fit under Administrative control work, The Armed forces shall when doing this tasks to be obliged by the law and not to exceed its limits in dealing with citizens, unless its decision becomes null”.

 The court in its response to the urgent demand to suspend the SCAF’s decision stated that “what it is obviously clear from the documents that the Armed forces when breaking up the demonstrations has subjected some of the female citizens to a medical examination to tested their virginity Under the pretext of protecting the individuals of Armed forces from a potential allegation by rap that could be alleged by the female detainees” the court added that “ this behavior is not supported and in contrary to the law and constitutional declaration and constitute abuse to the inviolability of female bodies and assaulted their human dignity, Whether this behavior issued from the Armed forces as a task of the Administrative control tasks or occurred in the occasion of the investigation”

The court clearly stated that” what Armed forces did is out of the tasks of the Members of the military judicial police and exceeds the jurisdiction of Military prosecution office for investigation according to the Military law No.(25) of the year 1966 and stripped of any judicial description”

The court added that “the Armed forces allegation of its aim to protect their individuals is not correct, as the legitimate aims should be reached through legitimate means, so The Armed forces may not take action that contradiction with the law and constitution to protect their individuals from potential allegation”

 Therefore, the Court found and concluded that the contested decision of subject the detained and arrested female protesters to virginity test is issued illegal and likely to be canceled when looking into the subject matter, So the court decided to suspend the decision, with referring the case to the commissioner department to prepare a report on the legal opinion on the cancellation request.

**Decision Direction**

The Court decided to admit the request of suspending the SCAF decision. The Court affirmed that the decision is in contradiction with the constitutional provisions and laws, and not aligned with the international treaties concerning human rights.

One of the main reasons that makes this a landedmark judgment is the fact that it admitted the report issued from a Non –governmental Organization (Amnesty International) as proof of existence of the administrative decision which was the reason behind rejecting all defendant’s arguments. This Judgment reflects the importance of using the reports issued from international entities especially non-governmental organizations as one of proof evidence.

This judgment emphasized that the human dignity of prisoners, in particular that of women, shall be respected whether in war or during civic tensions times through referring to the Geneva Conventions of 1949 concerning treatment of war prisoners, this is another reason characterizing this ruling.

This Judgment is considered a landmark Judgment as it addresses the role of Military forces during civic tensions and the absence of civic police and stressed on when military forces doing civic tasks should be committed by the laws and constitution and not exceed its limitations.

 **Global Perspective**

International Law

* ICCPR
* Geneva convention in concern of the treatment of war prisoners 1949

National Law or Jurisprudence

* Egyptian Constitution of 1971
* Constitutional declaration issued in 30/3/2011
* law No. 47/1972 in concern of the State Council
* Criminal procedures Code No (150) of the year 1950
* Military law No. (25) of the year 1966
* Prisons Law No. (396) of the year 1956
* Internal regulation for the prisons which issued upon the decree of the Minister of interior No (79) of the year 1961