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

*The case of Virginity testing*

**Summary and Outcome**

After being detained by military forces for demonstrating and picketing at the Tahrir Square, one of the plaintiffs was subjected to a compulsory virginity testing by the military.

The Court of Administrative Judiciary in Egypt held that the decision of conducting a compulsory medical examination, in particular avirginity testing on girls detained by the military forces during public protests is illegitimate as it violates the Egyptian Constitution and the law, and therefore shall be suspended and revoked.

**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 which she has reported 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 virginity testing on girls detained by the military forces.

The plaintiffs argued that the decision is void as it contradicts with 1) the constitutional declaration issued on 30.03.2011; 2) the international conventions which Egypt is party in, and 3) the Criminal Procedures Code, and the law of prisons.

The defendant asked the court to 1) dismiss the whole lawsuit for the lack of an administrative decision; and 2) dismiss the case as it was filed by parties with no interest in the disputed issue.

The Court upheld the plaintiffs’ demands, ruling that the military's administrative decision of subjecting female detainees to compulsory virginity tests to be suspended and revoked. The Court affirmed that the decision is in contradiction with the Egyptian Constitution and the law, and does not align with international human rights conventions as it constitutes a violation of the sanctity of women's bodies and an assault on their human dignity, and a deliberate humiliation to the women participating in the demonstrations.

**Decision Overview**

The ruling was issued by the first chamber of the Egyptian Administrative Court

The Court addressed two main issues. First, whether to dismisses the whole lawsuit for the lack of an administrative decision. Second, whether to suspend and revoke the military forces’ administrative decision of conducting a compulsory virginity testing on female detainees.

In Light of the first issue, the court first rejected the defendant’s argument that the Supreme Council of the Armed Forces (SCAF) did not issue an administrative decision to conduct such virginity testing. The court founded its decision on the fact that the reports issued from “Amnesty International” on 27/6/2011 mentioned that general Abdel Fatah El Sisi has discussed the issue of compulsory virginity testing with the Secretary General of the organization and mentioned that “The reason behind these virginity tests conducted in March was to protect the army from any potential rape allegation”. The court also added that the head of military intelligence has promised Amnesty International that the army will suspend conducting these tests. Accordingly, the court has noted that since the defendant did not deny what is mentioned in the Amnesty report, these virginity tests were conducted upon an administrative decision. Therefore, the defendant’s argument is not legally justified, hence, dismissed.

In relation to the second issue, the Court noted that according to the constitutional declaration of 30.03.2011 and criminal procedural law, “personal freedom is a natural, inviolable right that should not be restricted except under the conditions and procedures provided by law” and that “every citizen, who is arrested, imprisoned, or his freedom has been restricted, must be treated in a way that maintains his human dignity and should not be subject to any form of harm either physically or mentally. The constitutional declaration also asserted that it is not allowed to detain or imprison any person in places not regulated by the law of prisons.”

The Court has also underlined that, based on Art (180) of the Military law No. (25) of the year 1966, “execution of penalties against civilians takes place in civilian prisons”, and that “neither the law nor the prisons regulation specified any provision that allows at any point any authority to subject female prisoners to virginity testing.

Moreover, the Court referred to a well-established 1996 ruling of the Egyptian Supreme Constitutional Court (SCC) no 33 of judicial year 16 in which the SCC reiterated the importance of reinforcing human dignity, stating that “A criminal sanction shall not be repugnant or cumbersome. And it will be so if it is barbaric, torturous, oppressive, or if it wastes the standards, which civilized nations had committed to, in their treatment of mankind”.

Additionally, the Court noted that international human rights conventions, which Egypt is part of and bound by, particularly Articles 7 and 10 of the International Covenant on Civil and Political Rights, emphasise that “No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment, and that all persons deprived of their liberty shall receive humane treatment that respects their inherent human dignity.”

The Court went further, mentioning that International Humanitarian Law sets forth robust guarantees with regard to the treatment of war prisoners. The Court underscored that the third Geneva Convention states clearly that “War prisoners shall be treated in a way that maintains their human dignity”, and that Article 14 of the Convention stipulates that “female war prisoners shall be treated with all the regard due to their sex”.

Finally, the Court stated that “the virginity testing conducted by the armed forces lacked any judicial tincture and lied out of the jurisdiction of both military judicial officers and the military prosecution set out in the 1966 Military law No. 25.” Added to that, the Court noted that “the armed forces claim that the virginity tests were conducted merely to protect their military personnel against any probable rape allegations is perverse”. Simply because “legitimate aims shall only be pursued through legitimate means” and these virginity tests violate the law and the Constitution, hence, not legitimate.

In conclusion, the Court held that the contested virginity testing administrative decision had no legal basis and was in violation of human rights conventions, the Egyptian Constitution and the law. Consequently, the court decided to suspend the decision.

**Decision Direction**

The decision expands freedom of expression

One of the main reasons that makes this a landmark judgment is the fact that it admitted the report issued from a Non–governmental Organization (Amnesty International) as proof on the existence of the administrative decision based on which the military forces conducted the compulsory virginity testing.. This Judgment reflects the importance of using the reports issued from international entities, especially non-governmental organizations as proof evidence.

The judgment also 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.

Finally, the Judgment is considered a landmark as it addressed the role of military forces during civil unrest and during the absence of civic police, and stressed on the obligation of military forces - while doing civic tasks - to respect the laws and constitution and not exceed the limits the law imposes.

**Global Perspective**

International Law

* International Covenant on Civil and Political Rights 1966
* 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 of prisons which is issued upon the decree of the Minister of interior No (79) of the year 1961