**Case Analysis**

**Meta Data**

**Case Title:** The TikTok Girls Case

**Case Number:** 1046/2020

**Corresponding Law Reference:** Egypt’s Cybercrime Law No. 175 of 2018.

**Date of Decision:** 27/07/2020

**Region:** Middle East and North Africa

**Country:** Egypt

**Mode of Expression:** Electronic / Internet-based Communication

**Judicial Body:** First Instance Court

**Type of Law:** Criminal Law

**Themes:** Freedom of Expression, Indecency / Obscenity

**Outcome:** Criminal Sanctions

**Case Status:** On appeal

**Tags:** TikTok, Women, Public Moral, Legally Ambiguous or Overly Broad, Vague Standards, Indirect Censorship

**Analysis**

**Case Summary and Outcome**

In Egypt, a social media influencer called “Hanin Hossam” was arrested for encouraging girls to join her on an application called LIKEE in order to meet, chat and build relationships with men online in exchange of money. Another social media star called “Mawada Al-Adham” was also arrested for posting “indecent” photos and videos depicting her unclothed and dancing, respectively. The Public Prosecution accused the two Girls of inciting “debauchery” and violating “the values and principles of the Egyptian family” according to Articles 25 and 27 of the Cybercrime Law no .175/2018.

On 27 July 2020, the Cairo Economic Misdemeanour Court upheld the Public Prosecution accusations and sentenced the two Girls to two years of imprisonment and a fine of 300,000 EGP (roughly USD 20,000) for assaulting family values. In its decision, the Court noted that while free speech is a sacred right, there must be limitations to safeguard such right against those who try to transcend the customs and principles derived from religious literature and misuse such a right to cause harm to society and to violate its values and principles.

*Columbia Global Freedom of Expression believes that this case may be politically motivated and although this case is not legally tied to freedom of expression, it constitutes an infringement of those rights.*

**Facts**

During the partial lockdown in Egypt due to the Covid-19 pandemic, a video under the name “Exploiting the body for money” went viral on social media causing a fuss by showing a girl named Hanin Hossam inviting girls to join her on an application called LIKEE in order to meet, chat and build relationships with men online for a salary that starts from USD 300 up to thousands of dollars. In April 2020, Egyptian authorities arrested the 20-year-old Egyptian student, Hanin after the Public Prosecution’s Monitoring Unit received a number of complaints on its Facebook page by social media users concerning the said video, accusing Hanin of taking advantage of the financial difficulties resulted from the Covid-19 pandemic and incited girls to debauchery and immorality in exchange of money. In May 2020, Mawada Al-Adham, another social media celebrity, was also arrested for publicly posting “indecent” photos and videos of her on social media.

Following the investigations, the Public Prosecution charged the two Girls with violating Articles 25 and 27 of the 2018 Cybercrime Law no.175, which make it a crime to assault “family principles and values of Egyptian society”.

The defendants moved to dismiss these accusations, arguing that the widespread video of Hanin was incomplete and truncated and its content neither undermined public morals nor violated the law. Mawada’s also argued that the videos were merely satirical and dancing videos and that the indecent photos were leaked from her stolen phone.

The Court denied the defendants’ arguments, concluding that the evidence submitted by the Prosecution admissible and accordingly affirmed the convictions against the defendants. The Court then sentenced Hanin Hossam and Mawada Al-Adham to two years in prison and a fine of 300,000 Egyptian Pounds each (nearly USD 20,000).

**Decision overview**

This decision was unanimously rendered by Cairo’s Misdemeanours Economic Court of Appeal.

The key issue before the Court was whether the following acts are in violation of family values and principles in Egyptian society and public morals: 1) Posting a video on social media encouraging girls to join a social media platform called “LIKEE” to chat with men through virtual meetings in exchange for money; 2) Posting “indecent” personal videos and photos on social media.

In this case, the defendants on one hand argued that 1) Article 25 of the 2018 Cybercrime Law is unconstitutional since it lays down an ill-defined criminal offence represented in “assaulting the principles and values of the Egyptian family” which lacks clarity and specificity as required by Article 95 of the Constitution; Article 25 lacks precision and is “open to a variety of interpretations” and constitutes a violation of “the constitutionally-protected right to freedom of expression.” 2) the indecent videos and photos of Mawada Al-Adham were published online after being leaked from her stolen mobile phone and that she reported the stealing incident to the police in 2019; 3) the search and arrest procedures are invalid as they were not conducted in accordance with the law in addition to the discrepancies found in the investigation.

On the other hand, the public prosecution argued that the TikTok Girls assaulted the family values and principles of the Egyptian society by inviting both adult and minor girls to use the platform LIKEE to virtually meetup with men for money and by sharing obscene personal videos and photos on social media. These acts are thus punishable under Article 25 of the Cybercrime Law. The prosecution also accused them with creating and managing private online accounts to facilitate the abovementioned illegal activities which is punishable under Article 27 of the same law. The prosecution further requested the implementation of Article 7 of the said law which “grants the investigative authorities the power to block any website whenever they deem that the website’s content promotes extremist ideas that violate national security or damages the Egyptian economy.” Finally, the prosecution asked the court to prevent Al-Adham and Hossam from disposing any of their properties and financial assets and to withhold them.

While the Court rejected all the defendants’ submissions, it upheld the prosecution accusations and allowed the withholding of the TikTok girls’ assets. The Court, however, refused to grant the prosecution the authority to implement Article 7 of the Cybercrime Law only because the court’s jurisdiction only allows it to either approve or amend the scope of an already imposed blocking order.

In the case at hand, the Court relied on Articles 25 and 27 of the Cybercrime Law No. 175/2018:

* Pursuant to Article 25, “Posting content that violates the family principles and values upheld by Egyptian society may be punished by a minimum of six-months’ imprisonment and/or a fine of EGP50,000–100,000.”
* According to Article 27, “A web administrator who creates, manages, or uses a website or a private account with the aim of committing or facilitating a crime can face imprisonment of not less than two years and/or a fine of between 100,000 and 300,000 Egyptian pounds.”

The court in this case had to interpret Articles 25 and 27 since the Executive Regulation of Law was not issued at the time of the trial and this was the first time these Articles were put into action. First, the Court explained that the material element of the crime of “assaulting the principles and values of the Egyptian family” may come in the form of using the information technology, information network or internet to broadcast, send or communicate content with individuals in a way that would destruct the family bonding, induce repulsion between family members or undermine the standards and principles governing the family. Second, the Court clarified that the criminal act takes place by “publishing content (via the internet, social media, email or any other electronic channel) that directly or indirectly calls or encourages dishonesty, parents disrespect, deviation from chastity or the obliteration of the value of science and religion using an article, visual/audio material, drawing, caricature...”. The Court then stated that deciding whether the conducts of defendants in the case at hand constitute an assault on the Egyptian family values is subject to the discretionary power of the judge who should assess these actions in light of the well-established family principles in the Egyptian society. The Court however did not address the mental element of the crime in order to proof that the defendants had the knowledge and intention to commit the above mentioned crime, emphasising that the mental element can be deduced from the case facts, surrounding circumstances and submitted evidence.

After that, the Court went through the evidence submitted by the prosecution which included the report of the Monitoring Unit at the General Attorney Office (MU), the police investigation report, the prosecution report, the reports submitted by the National Telecommunications Regulatory Authority (NTRA) and the Egyptian Central Bank (ECB) upon the prosecution request and the witness statement.

First, the report of MU showed that the Public Prosecution has received a number of complaints by social media users about Hanin’s video. The report stated that the defendant has taken advantage of the financial difficulties resulted from the Covid-19 pandemic and encouraged girls to join her on the platform LIKEE. The report has further noted that Hanin Hossam is a social media influencer especially among the youth and that it is why administration of LIKEE approached her to take part in an advertising campaign through which she would invite girls to meet and have inappropriate conversations with men on the platform.

Second, the police investigation report noted that the video posted by Hanin resulted in a great shock to the Egyptian community as it incited a tremendous number of adult girls to appear in live broadcasts to chat and make friendships with men in exchange for money which contradicts with public morals. It also explained that in addition to the video at issue, the defendant used the concerned platform to post videos that include 1) singing and dancing solo or with other girls 2) seductive conversations with men, and 3) audio capturing sexual intercourse. The report further clarified that the investigations conducted by confidential sources found that the purpose behind Hanin’s video was to seduce men and encourage girls to involve in prostitution and profaneness for financial gains. Finally, the report revealed that the online account which posted publicly the indecent photos of Mawada Al-Adham belonged to her.

Third, the prosecution report showed that Hanin Hossam admitted the truthfulness of the controversial video but denied that its content violates the law. Mawada Al-Adham also admitted that she shot promotional videos for LIKEE and that the indecent photos at issue belong to her, but they were published online from her stolen mobile phone. Furthermore, prosecution investigations showed that an employee called Mohamed Mahgoub who works as the director of photography at LIKEE confessed during the interrogations that he launched a hashtag namely #yourtheatre\_yourbed on the app. And by examining his phone, a number of videos were found showing girls, women, children and young men recording short videos of themselves while wearing home clothes and sitting on their beds to upload them to the app.

Fourth, NTRA report indicated that after scrutinising Mawada’s online accounts, mobile phone and laptop, numerous videos were found manifesting the defendant dancing in public places wearing revealing clothes. Moreover, the report of ECB disclosed that Mawada received 2 bank transfers from a company called BIGO Technology which owns the platform LIKEE as well as a number of money transfers from several men living in different countries.

Finally, the statement of a witness called Hussein Al-Gohary, who voluntarily went to the Public Prosecution, stated that Al-Gohary works as a presenter abroad and that the company which owns LIKEE offered him a job, but he refused their offer due to the bad reputation of LIKEE. He further explained that girls use the app in an obscene way and that the administration runs the app as if it were a place for prostitution.

After assessing the aforementioned evidence, the Court found them all convincing, concluding that the submitted evidence formulated an interconnected, coherent unit that proves that the defendants violated the Egyptian societal values and family principles as stipulated under Articles 25 and 27 of the Cybercrime Law. The Court also noted that the evidence established beyond a reasonable doubt that the defendants had knowledge of these crimes and that they had the intention to commit them without paying attention to the consequential damage to the conservative beliefs and religious heritage of the Egyptian society. Additionally, the Court emphasised that the defendants’ actions aimed to target a wide section of the Egyptian youth with unorthodox and deviant ideas under the cover of freedom and modernism, turning the virtual space to a platform used to spread ideas that violate public order and public morals. The Court finally noted that although freedom of expression and creativity is a sacred right that must be respected and guaranteed, this right still has limits that would distance it from obscene speech, indecency and immorality in order to ensure respect for people’s honour, dignity and reputation. And for this reason, it was imperative to enact laws, such as the 2018 Cybercrime Law, to first protect freedom of creativity which is a constitutional right and secondly to safeguard it against those who try to transcend the customs and principles derived from religious literature and misuse such a right to cause harm to society and violate its values and principles.

Consequently, the Court upheld the convictions against the defendants, sentencing them to two years in prison and a fine of 300,000 Egyptian Pounds.

**Decision Direction**

Contracts Expression

The key issue in this judgement is that it limits freedom of expression and creativity based on loose legal rules and vague charges (e.g. assaulting family values) that clearly do not to amount to justifiable restrictions under either the Egyptian Constitution or international human rights law. Article 19 of the International Covenant on Civil and Political Rights stipulates that restrictions on freedom of expression must be prescribed by law and “be formulated with sufficient precision to enable an individual to regulate his or her conduct accordingly and it must be made accessible to the public.” The decision further reflects the problematic role of the Public Prosecution Monitoring Unit which actively monitor content published on social media platforms and the “general trend that considers the Internet a space to be controlled.” It also shows the way the Egyptian Public Prosecution deals with sexual-related leaks that constantly hit Egyptian women. The Prosecution in such incidents tends to press criminal charges against women depicted in these leaks (even though they are victims in this situation) instead of going after those who leaked the content. This was obvious in this case as the Prosecution used the leaked indecent photos of Mawada to charge her and unsurprisingly, yet unfortunate, the Court accepted this evidence and upheld the charges against her.

In short, the 2018 Cybercrime Law includes several controversial articles which may be unconstitutional and thus, should be suspended until being subject to immediate review that ensure its provisions conform with the Constitution and International Law.

**Perspective**

National Law or Case

National law or jurisprudence: Egypt’s Cybercrime Law No. 175 of 2018.

**Case Significance**

This decision marks a continuing backward slide in civil liberties and reflects the “increasingly repressive tactics to control online conduct.” What is also alarming is that this decision may act as a precedent as it represents the first ruling based on the Cybercrime Law.