

The Supreme Council for Media Regulation: A Reading into the competencies and practices



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Publisher:
Association of Freedom of
Thought and Expression

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Cover Design: Amal Hamed
Internal Design:

هذا المُصنَّف مرخص بموجب
رخصة المشاع الإبداعي:
النسبة، الإصدار ٤.٠.



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مؤسسة حرية الفكر والتعبير
Association for Freedom of Thought and Expression

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Methodology

This paper is based on an analysis of the laws related to the regulation of the press and the media and the Supreme Council for Media Regulation. It used official data issued by the Council, published on its official website, and documented by the monitoring and documentation unit of the Association for Freedom of Thought and Expression (AFTE). In addition, the paper relied on the statements of officials of the Council and reports published in newspapers.

Introduction

The debate over media organizational bodies intensified recently when the parliament discussed the constitutional amendments. There was a proposal to abolish the National Press Authority and the National Media Authority with the aim of restoring the Ministry of Information to control the media scene, in the words of some MPs in the Support Egypt Parliamentary Coalition. But the MPs did not agree to abolish the two bodies and thus the same framework governing the work of the media bodies and the Supreme Council for Media Regulation remained. Therefore, AFTE decided to issue this paper on the Supreme Council for Media Regulation to discuss the structure of the Council and the extent of the discrepancy between its competencies stipulated in the law and its practices that negatively affect media freedom.

This paper discusses the formation and committees of the Supreme Council for Media Regulation and some of the problems surrounding them, and highlights the overlapping of the Council's competencies with other already existing bodies. At the level of media work controls, the Council's competencies are in conflict with the competencies granted to the Media Syndicate. The Supreme Media Council also exercises censorship over the creative content, without any legal basis, which contradicts the competencies of the General Authority for Censorship of Works of Art.

The paper highlights some practices of the Supreme Council for Media Regulation, such as the decisions to prevent some persons from appearing on TV and the gag orders, in light of the absence of the executive regulation of the law regulating the press, media, and the supreme council for media regulation

First: Formation and committees of the Supreme Council for Media Regulation

The Supreme Council for Media Regulation was formed for the first time in April 2017, based on the text of the Institutional Organization for Press and Media Law No. 92 of 2016, which provided for the appointment of 13 members of the Supreme Council. The number of members of the Council was changed to 9 members, with the promulgation of Law No. 180 of 2018 on the organization of press and media and the Supreme Council for Media Regulation. Despite this, the President of the Republic did not issue a new decision to form the Supreme Council until the issuance of this paper.

According to Article (68) of the Egyptian Constitution, the Supreme Council is an independent body technically, administratively and financially. It works to organize the affairs of audiovisual and digital media, as well as print and digital press. The law establishing the Supreme Council did not reflect the provisions of the Constitution, as the guarantees of independence of the Council were absent. The paper addresses this as follows:

- **Absence of guarantees of independence**

1. **The executive authority's control of the appointment of members:**

The Supreme Council for Media Regulation is formed in accordance with the law regulating the press, media, and the supreme council for media regulation No. 180 of 2018 issued in August 2018. Pursuant to Article (73) of this law, the Council consists of 9 members; the President of the Republic directly designates two members: the head of the Council, and a public figure with experience. The President also chooses another public figure nominated by the Office of the House of Representatives, provided that this member is not a member of parliament

The Council's membership also includes the vice chairman of the state council, the head of the apparatus on the protection of competition and the prevention of monopolistic practices, as well as a representative of the National Telecommunications Regulatory Authority (NTRA), and a representative of the Supreme Council of Universities, based on the nominations of the entities in which they work. The Council also includes a member of the Journalists Syndicate and another of the Media Syndicate, provided that both are not board members in their syndicates, and they are

chosen based on the nomination of their syndicates.

The Council was composed of 13 members, in accordance with Law No. 92 of 2016, known as the Law on the Institutional Organization of the Press and the Media. However, with the promulgation of Law No. 180 of 2018, the number of members nominated by both the journalists and the media syndicates was reduced from 4 members to only two. Also the number of public figures nominated by the Parliament and the President of the Republic was reduced from 4 members to only two.

This means that the majority of the members of the Supreme Council are not working in the press and the media. During the preparation of this law, the legislator ignored the fact that the independent bodies should be formed from specialists in the relevant fields.

Law No. 180 of 2018 regulating the press, media, and the supreme council for media regulation gives the President the right to select the members of the Supreme Council for Media Regulation from among the nominees, chosen by the journalists and media syndicates, the Office of the House of Representatives and the Supreme Council of Universities, in accordance with Article (73) of the law.

The law obliges these entities to submit a number, twice as specified in the law, so that the final choice will be made by the President of the Republic. The law also grants the President of the Republic the power to appoint these members directly, in the event of the delay of the entities mentioned in the law in submitting their nominations, within three months of the period preceding the expiration of the term of work of the Supreme Council for Media regulation.

The review of the composition of the Council shows that the executive authority has the largest number of members of the Council. There are 3 members representing executive bodies (Supreme Council of Universities, NTRA, the Apparatus on the Protection of Competition and the Prevention of Monopolistic Practices), while the President of the Republic –head of the executive authority- directly appoints the head of the Council and one of its members. The president will also decide on nominations from the journalists and the media syndicates, and the Office of the House of Representatives. Thus, the only member that the executive authority does not intervene in his choice is the vice chairman of the state council, who is chosen by the Special Council for Administrative Affairs of the State Council.

This broad control of the executive authority on the formation of the Supreme Council violates the articles of the Constitution (211, 212, 213), which aimed at replacing the Ministry of Information with independent bodies. This ministry was part of the executive authority, and the Information Minister was also politically loyal the ruling authority.

The law regulating the press, media, and the supreme council for media regulation ignored the establishment of controls restricting the hegemony of the executive authority over the Council, such as requiring the approval of the Parliament of the appointment of members of the Supreme Council or the renewal of their membership. Although independent bodies are connected with state institutions, they must not be subject to interference or supervision by the executive authority, as both the legislative and judicial authorities supervise the work of independent bodies.

2. The coincidence between the duration of the work of the council and the duration of the parliamentary and presidential terms:

According to Article (76) of the law, the term of the Supreme Council for Media Regulation was set by four years, renewable once. This was contrary to the standards of independence of media bodies, as the duration of the Council's term should not coincide with the duration of the parliamentary or presidential terms. The reason for this is to ensure that such independent bodies are not affected by the government or political parties, and that their existence is not dependent on the entities appointing their members.

In view of the similar models, the six-year term of the French High Council for Audiovisual Communication (CSA) is longer than the parliamentary term (four years) and the duration of the presidential term (five years), while the BBC's membership term is five years, meaning that it is longer than the terms of the parliament and the government (four years).

The Egyptian legislator in the law regulating the press, media, and the supreme council for media regulation ignored these guarantees. The duration of the Supreme Council for Media Regulation was set to be equal to the duration of the presidential term (four years each).

- **Committees of the Supreme Council for Media Regulation**

Article (79) of Law No. 180 of 2018 allows the Supreme Council for Media Regulation to form among its members or other experts specialized temporary committees to perform some of the functions of the Council. Accordingly, the Council formed several committees, according to its official website, including: the finance committee and the legal committee.

There is also a complaints committee that receives public complaints against media content, whether on satellite channels, paper newspapers or websites, in addition to receiving media workers' complaints against any interference that hinders or affects the independence of their work, and they do so by means of an electronic form.

The monitoring committee monitors audience and media channels attitudes and their cultural and humanitarian needs. The monitoring committee conducts analytical studies on the content of the media programs and television drama. The committee also examines public opinion, which is similar to the work of the social media committee which monitors social media.

The standards committee is responsible for setting controls and standards for the practice of media work and establishing a code of professional ethics in association with the concerned syndicate, while the licenses and permits committee works to grant licenses and permits for all publications and satellite channels. Finally, there is a committee to train media professionals on media skills that promote media performance, according to the vision of the Supreme Council for Media Regulation.

The Council also issued several criteria for the media content of drama and sports, in addition to the formation of several other specialized committees that worked on issuing reports and lists of what they thought was a violation of public order or public morals, which led to the imposition of several penalties on journalists, media professionals and creators, all in the absence of the executive regulations.

Although the law granted the Council the authority to form temporary specialized committees, the Council deals with the committees it formed as permanent committees. This is the case with the drama committee, as statements of some Council members indicate that it will continue to work. The text of the article in question did not interpret what is meant by "temporary", which allowed the Council to form such committees without a specific time limit.

The Council also expanded in the formation of its committees, to the extent that the areas of work of a number of them were similar.

Second: A reading into the competencies of the Supreme Council for Media Regulation

The competencies of the Supreme Council for Media Regulation have several problems in terms of their nature, which do not provide guarantees for the protection of the freedom of media, on the one hand, and on the other hand in terms of overlap or conformity with the competencies of other existing entities. This is what the paper reviews hereafter:

- **Competencies of the Supreme Council for Media Regulation**

The Supreme Council for Media Regulation is the authority that licenses the practice of media work for the media outlet or the website. The Council may grant and renew licenses, examine requests for ownership transfer, monitor media content and press and media performance, etc. Law No. 180 of 2018 grants the Council a number of competencies, as follows:

First: Preventing and controlling publications, newspapers or materials, which have been published or broadcast outside Egypt, “for the considerations of national security”. This also applies to what constitutes “pornography”.

Second: Granting and revoking licenses for the media, newspapers or websites, which are managed inside or outside Egypt.

Third: stopping the activity of any newspaper or media outlet or blocking a website, in case they did not obtain a license, or if the license is not valid. The Council may revoke the license if it considers that the press or media outlet or website is based on discrimination, regional fanaticism, anti-democratic activity, a clandestine activity, or incitement to pornography, hatred or violence. In addition, offenders are subject to criminal penalties stated for such crimes in other laws.

Fourth: Although the law regulating the work of the council is only meant to regulate the work of newspapers and media outlets, the Council interferes with personal websites, personal blogs or personal electronic accounts with followers amounting to five thousand or more. The council may stop or block such personal accounts in case of publication or dissemination of false news, material inciting violation of the law, violence or hatred, or discriminate between citizens, or calls for racism or intolerance, or includes insults to individuals or disrespect of divine religions or religious beliefs.

The law assigns these powers to the Supreme Council without clear definitions or controls in practice, which allows it to arbitrarily abuse its authority. The law is based on the philosophy of restricting and controlling the affairs of the media rather than organizing them, which makes the procedures for challenging the Supreme Council's decisions before the judiciary restricted by legal provisions, which does not guarantee freedom of the media.

There are no fundamental differences in the competencies of the Supreme Council for Media Regulation between the current law No. 180 of 2018 and the previous law No. 92 of 2016, which was the basis for establishing the Supreme Council. However, Article 19 of the Law No. 180 of 2018 allows the Council to issue a decision to block a website, blog or personal account that violates the provisions of the law.

Here the parliament sought to make the Supreme Council for Media Regulation a body responsible for comprehensive monitoring of internet users; a competence that was not included in the articles of the institutional organization of the media law that was canceled.

On the other hand, the law has placed central control over press sites on the internet by placing them within the scope of the media outlets subject to its provisions. The law allows the competent court to block such sites as a punishment for violating the nature of the licensed activity, according to Article 105.

- **Conflict / conformity of the competencies of the Council and the competencies of other entities**

During the Council's exercise of its competencies, it appeared that more than one entity has competencies identical to the Council's, whether with regard to censorship or prevention or issuing specific charters. The paper addresses this aspect as follows:

- 1. The Supreme Council for Media Regulation and the Media Syndicate:**

Article (70) of Law No. 180 of 2018 stipulates that the Supreme Council has the authority to express opinions on the draft laws and regulations related to its field of work and to set controls and standards for the practice of media work and the establishment of the Code of Professional Honor in association with the concerned syndicate, which are the same competencies contained

in the previous law No. 92 of 2016, in article (4).

These competencies provoked a conflict between the Supreme Council and the Media Syndicate. In May 2018, the Supreme Council for Media Regulation issued a code of professional conduct for sports media. However, the head of the Media Syndicate Hamdi Al-Konaisi announced that the Media Syndicate is the only entity entrusted with issuing the media charter of honor and the code of professional conduct, by virtue of Law No. 93 of 2016 on the Syndicate of Media.

At the time, Al-Konaisi denied what had been raised about the Syndicate's intention to file a lawsuit against the Supreme Council for Media Regulation for issuing the code of professional conduct. There is no doubt that granting the Supreme Council roles related to regulating professional rules in the press and the media wastes the competencies of the concerned syndicates that should determine the rules of the profession, independently.

2. The Supreme Council for Media Regulation and the General Authority for Censorship of Works of Art:

The Articles of the law regulating the press, media, and the supreme council for media regulation did not grant the Council competencies in regard to censorship of drama. The Council has the authority to establish the necessary controls and standards for media and press outlets, as well as the advertising and media content, in accordance with Articles 70 and 71 of the law. Despite this, the Supreme Council formed a drama committee, which submitted several reports and recommended sanctions for what it called "the black drama list," which includes TV series that violate the committee's standards.

The censorship of the Drama Committee of the series shown on TV is contrary to the provisions of Law No. 430 of 1955, which gives the Central Administration for the Control of Audiovisual Works of the Ministry of Culture the authority to control TV drama. The same law clarifies the procedures necessary to obtain the license for broadcasting drama series. The Central Administration is entitled to withdraw the broadcasting license after its approval.

Thus, the Central Administration for the Control of Audiovisual Works alone has the competency of the pre and subsequent censorship of dramas. This indicates that the Supreme Council for Media Regulation seized the competency of the subsequent censorship of dramas shown on television channels, without legal basis.

3. Gag orders between the competencies of the Public Prosecution and the Supreme Council for Media Regulation:

In the incident of Hospital 57357, the Supreme Council for Media Regulation referred to the provisions of articles (2), (3) and (26) of Law No. 92 of 2016 concerning the organization of the press and the media. The articles prevent the broadcast or publication of press or media materials for a specific period or permanently in the event of the violation of the standards of the profession, or the non-compliance with the requirements of national security.

Therefore, the Supreme Council for Media Regulation issued a gag order in the case of Hospital 57357, when writer and scenarist Waheed Hamid published articles discussing financial and administrative irregularities in the hospital. As a result, the Public Prosecution summoned the head of the Council, Makram Mohammed Ahmed, to question the decision, which the Public Prosecutor's Office considered a violation its jurisdiction as the entity responsible for the gag orders. Makram Mohammed Ahmed said, at the time, that he will ask the concerned parties to clarify and interpret the text of Article (26) of the law, confirming the legality of his decision.

In an earlier publication, AFTE considered these decisions are legally flawed in many respects. The publication stated that: "the law gave the Supreme Council for Media Regulation the right to prevent publishing or broadcasting any content deemed to be in violation of the principles of the profession and its ethics or considered to be harmful to the national security. Here lies the whole problem; that in the absence of clarity of the legislative text it becomes subject to interpretations according to passions, and orientations. This is exactly what happened in the case of the supreme council's decision to stop publishing about the issue of hospital 57357".

Thus, the conflict of competencies between the Public Prosecution and the Supreme Council for Media Regulation regarding the gag orders is still existent. Law No. 180 of 2018 grants the Supreme Council in Article 94 the competency to "prevent publication or broadcasting of the media material for a specified period or permanently."

Third: The most prominent policies and practices of the Supreme Council for Media Regulation

The statements made by officials from the Supreme Council reflected the unilateral orientations of the Council, which do not allow impartiality in the regulation of media affairs. Moreover, the Council's practices during its first term have imposed extensive restrictions on the freedom of the press and the media. The Council has set several criteria and conditions for media content, as well as blocking and imposing fines on journalists, media professionals, programs and media outlets. The paper addresses several points in this regard, as follows:

- **Political bias to the current authority**

The problems of Egypt need an extension of the presidential term,” said the head of the Supreme Council for Media Regulation, Makram Mohammed Ahmed, in a press statement that coincided with the demands by several MPs to amend the constitution in order to extend the presidential term and give the president Sisi a chance to stay in power after the end of his second term. Makram also praised, in most of his statements and interviews, the achievements of the President during his tenure. In one interview, Makram Mohammed Ahmed described the opponents as “a group with a loud voice who stands against the state with rumors claiming that they represent the opposition.”

In a statement by the member of the Supreme Council, Hatem Zakaria, he addressed the conflict between the Egyptian authorities and the BBC after the latter published a report on the status of human rights in Egypt. In his statement Zakaria explained that “the blocking of the website may be a solution to deal with such crises,” because of the discontent of the Egyptian authorities of what he described as “false news” broadcast by the BBC concerning the Egyptian state. He also demanded to send “letters of blame to the channel’s office and to summon the head of the office to investigation.”

Such statements show the lack of commitment by the head of the Supreme Council and some of its members to the political neutrality that is supposed to be exercised by the members of the independent bodies. It can be said that the Council turned into a mere follower of the executive authority, seeking to support its policies and to attack its opponents.

- **Referral, suspension and prevention decisions**

The practices of the Supreme Council for Media Regulation were characterized by extreme arbitrariness towards the media and its workers, using the wordings of the law regulating the press and the media and the Supreme Council, which came very loose. The Council also benefited from the absence of the executive regulation of the law -which has not yet been issued- to impose sanctions. The Supreme Council for Media Regulation issued decisions to suspend many programs and refer their presenters to their syndicates, either because of violating the moral code or for national security reasons, despite what came in one of the Council's statements to the media, which said: "No decision has ever been issued that carries any suspicion of an attack on the right to expression."

According to AFTE's sixth annual report (2018), AFTE recorded 43 violations of freedom of information by the Supreme Council for Media Regulation, representing 42% of the violations recorded by the association during 2018. Of these violations, Al-Masry Al-Youm's editor in chief was referred to an investigation by the Journalists' Syndicate in April 2018 because of one headline by the newspaper saying: "The State Mobilizing the Electorates". The journalist who wrote the report was also referred to investigation by the syndicate. The Supreme Council forced the newspaper to publish an apology to the National Electoral Commission in the same place, in the same size, and to pay a fine of 150 thousand Egyptian pounds.

With the pretext of the code of ethics, the Supreme Council for Media Regulation suspended several television programs and referred their presenters to investigation by their syndicates. For example, "Al Wasat Al Fani" program, which was broadcast on "Al-Hadath Al-Youm" channel, was suspended for two weeks, because of the outfit of an actress that she wore in one of her movies and the program showed a clip from it. The program's presenter, Ahmed Abdel Aziz, was referred to investigation by his syndicate. The channel was warned that if the incident was repeated, the Supreme Council for Media Regulation would impose a fine.

In October 2018, Mortada Mansour was prevented from appearing in the media by a decision by the head of the Council, based on the Council's statutory role in "maintaining national security requirements", and also to prevent Mansour from instigating the Egyptian sports fans. The decision came after the submission of two complaints to the Supreme Council.

But the ruling of the administrative judiciary in the case 24105 for the year 73, regarding the prevention of Mortada Mansour from appearing in the media, stated that the decision of the

head of the Supreme Council was contrary to the constitution and the freedom of opinion and expression that it guaranteed. It added that the decision is outside the scope of competencies assigned by law to the Council in the face of entities and press and media institutions, as the council used its competencies in confronting citizens, although it appears to address the media and newspapers. The ruling also criticized the absence of the executive regulations of Law No. 180 of 2018.

These various types of violations practiced by the Supreme Council for Media Regulation against the media and its employees indicate that the council often exceeded its legal competencies and mainly exercised its role of censorship and restriction, rather than organizing press and media affairs and protecting workers in this field.

Conclusion and recommendations

Through this paper, the Association for Freedom of Thought and Expression seeks to re-discuss the competencies and practices of the Supreme Council for Media Regulation and to indicate the extent of its impact on the freedom of media. AFTE directs the following recommendations to all concerned parties and groups active in the field of media freedom, in order to ask the Egyptian authorities to implement them:

First: To define the term “national security” mentioned in article (4) of Law No. 180 of 2018, by providing detailed national security considerations in accordance with the international covenants signed by Egypt.

Second: Canceling the competencies of the Supreme Council for Media Regulation, which conforms to the competencies of the Syndicates of Journalists and Media in the establishment of professional rules and standards, as stipulated in Article 70 of Law No. 180 of 2018.

Third: Ending the Council’s practices that are incompatible with the role of the General Authority for Censorship of Works of Art, including the abolition of the drama committee and stopping the interventions of the monitoring and complaints committees in dramas.

Fourth: Issuing the executive regulations of Law No. 180 of 2018 concerning the organization of the press and the media and the Supreme Council for Media Regulation.