



From Vienna to Tora..

A legal reading of the case of researcher Ahmed Samir Santawy

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and Expression (AFTE)

Publisher:

Association of Freedom of
Thought and Expression
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هذا المصنف مرخص بموجب

رخصة المشاع الإبداعي:

النسبة، الإصدار ٤.٠.



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Methodology

The Association for Freedom of Thought and Expression (AFTE) presents a detailed reading of Case 774 of 2021 (Emergency State Security Misdemeanour Court in the First Settlement), registered under No. 877 of 2021 (Supreme State Security), in which the Emergency Supreme State Security Court sentenced researcher Ahmed Samir Santawy to four years in prison and ordered him to pay a fine of 500 pounds on charges of publishing false news on a Facebook account attributed to him. This paper analyzes the available official papers of the case, in light of the relevant legislation. It also explains the pleas made by the AFTE lawyer.

Background

Santawy has been held in a cell in Tora al-Mazraa prison since the security forces prosecuted him a year ago. He forcibly disappeared, then was remanded in custody for allegedly spreading false news. He was beaten in prison by an officer, and then he was involved in a new case facing the same charges.

Santawy is still held in pretrial detention on charges of spreading false news on a Facebook account attributed to him. He was sentenced to four years in prison in another case, which prompted him to go on a hunger strike for nearly 40 days in protest against the sentence issued against him without solid evidence of indictment. He has been deprived of healthcare as well as the rights guaranteed by the Prison Regulation Law. The concerned authorities paid no attention to his complaint and his demand to implement the law.

Santawy, 30, is a researcher and anthropology student at the Central European University (CEU) in Vienna, Austria. His research focuses on reproductive rights and the status of abortion in Egypt between law, Sharia (Islamic law) and society.

Santawy returned to Egypt in mid-December 2020, on a vacation that was supposed to be short, to visit his family and see the sun that he missed in Vienna. Upon his arrival at Sharm el-Sheikh airport, he was detained for two hours and questioned unofficially about the reason for his travel and his study.

Although Santawy was released and allowed to enter Egypt without any indication of charges, the security authorities continued to prosecute him without a declared rationale. Five weeks after his detention at the airport, security forces raided his family's house on 23 January 2021. Although he was not there in the house, the security forces searched the place and took copies of the IDs of those who were in the house. They also seized the surveillance cameras in the house without legal justification, in violation of articles 50 and 51 of the Criminal Procedures Law.

The security forces asked Santawy's family to tell him to go to the Fifth Settlement police station upon his return. Indeed, Santawy went to the police station on 30 January, but he was asked to leave and come back on Monday, 1 February 2021.

He went to the police station again on time, but he was detained without being informed of

the reason or the date of interrogation. He was taken to a number of Interior Ministry headquarters, and his family knew nothing about him. He was prevented from communication with the outside world, and denied the help of a lawyer. He remained forcibly disappeared until he appeared before the Supreme State Security Prosecution on 6 February 2021 in connection with Case 65 of 2021. He faced charges of joining a terrorist group with knowledge of its purposes, spreading false news that could harm security and public order, and using a social media account for the purpose of spreading false news.

The prosecution showed Santawy some screengrabs of posts on a Facebook account attributed to him, which cannot be considered real official evidence, but he denied his connection to that account. During the investigation, Santawy complained to the Public Prosecution that he was subjected to ill-treatment and physical torture during his forced disappearance. Santawy's defence panel asked the prosecution to refer him to the forensic medicine department to prove that he had been physically assaulted, but the request was ignored. At the end of the investigation, the Public Prosecution remanded Santawy in custody for 15 days pending investigation.

During a hearing on 22 May 2021 before the State Supreme Security Prosecution in connection with a new case carrying No. 877 of 2021, Santawy told prosecutors that he had been beaten the previous day by the deputy warden of Liman Tora prison. His lawyers requested his transfer to the forensic medicine department to examine his injuries.

This time, the Public Prosecution allowed his transfer to the forensic medicine department to examine his injuries, their causes and the date of their occurrence, but nothing new has happened so far. Santawy faced the same charges he had in the first case, including joining a terrorist group and spreading false news that could harm security and public order.

After the hearing, the prosecution remanded Santawy in custody for 15 days pending investigation into the second case. Thus, he was remanded in connection with two cases on the same charges, in clear violation of Articles 454 and 455 of the Criminal Procedures Law, which stress that a person may not be tried twice in the same case.

First: Report to the Public Prosecutor

According to the official papers of the case, a freelance lawyer filed an official complaint against Santawy and three others on 7 April 2021, through an electronic report sent to the Public Prosecutor carrying No. 15662 of 2021. The report was the main reason for filing the lawsuit.

The lawyer said the reason for submitting his complaint was slander and defamation via social media. Accordingly, the Public Prosecutor's office decided to refer the complaint to the technical office, and treated the lawyer as the second witness in the case. On the following day, 8 April 2021, the Supreme State Security Prosecution held its first hearing on Case No. 877 of 2021 with the lawyer.

When questioning the lawyer about the content of his complaint, its reason, and the publications in question, he said that he had a Facebook account and that he saw "accounts

that publish false news with the purpose of causing troubles and chaos in the country and harming the state institutions". He said these accounts belonged to Santawy and three others. He noted that Santawy was not on his friends list, but one of Santawy's posts appeared on his account and he browsed Santawy's account, which he said was open and available to everyone. He added that he printed the posts contained in the Facebook accounts in question because they were open and available to everyone.

What kinds of posts will I see in News Feed on Facebook?

Posts that you see in News Feed are meant to keep you connected to the people, places and things that you care about, starting with your friends and family.

Posts that you see higher in News Feed are influenced by your connections and activity on Facebook. The number of comments, likes and reactions that a post receives and what kind of post it is (e.g. photo, video, status update) can also make it more likely to appear higher up in your News Feed.

Posts that you might see higher in News Feed include:

- A friend or family member commenting on or liking another friend's photo or status update.
- A person reacting to a post from a publisher that a friend has shared.
- Multiple people replying to each other's comments on a video they watched or an article they read in News Feed.

Bear in mind that you can also sort your News Feed to only see recent posts or posts from Favourites, but News Feed will eventually return to its default setting. If you feel that you're missing posts you'd like to see, or seeing posts in your News Feed that you don't want to see, you can adjust your settings.

According to Facebook, the posts that appear to users are determined by adjusting the settings, which means that each user can control what he sees. Moreover, the posts that appear are influenced by the user's connections and activity on Facebook, which means that the lawyer saw the posts that he attributed to Santawy either because he deliberately searched for them or one of his friends on Facebook shared them, which he did not mention during the hearing. Most likely, the lawyer searched for Santawy's account on purpose and not by chance, as he claimed.

In his report to the Public Prosecutor, the lawyer said that the account in question belonged to Ahmed Samir Abdel-Hai Ali, which is the full name of Santawy, although the account he referred to carries the name of "Ahmed Samir Santawy".

The lawyer submitted his complaint to the Public Prosecutor because he saw that the posts that he attributed to Santawy "would cause a major crisis among the people and would lead them to lose confidence in the government". When asked about the content of his complaint, the lawyer said: "I was really upset because the posts were false and would lead anyone who reads them to lose confidence in the government... and would cause panic and fear among the people". Thus, the complaint was based on the lawyer's con-

cerns and assessment, without the existence of a specific crime.

According to the official papers of the case, the lawyer handed the prosecution 25 papers, including eight photocopies of Facebook posts attributed to Santawy. The prosecution attached the papers to the case and sent them to the General Department of Information Technology. It also assigned a specialized expert to examine the Facebook posts in question to know the date of their publication, who managed those accounts, whether they were available to everyone, and whether the posts contained false news or promoted the ideas of terrorist groups.

Second: Investigations

When issuing its ruling, the court relied on investigations conducted by a police major in the National Security Sector, and at the same time considered him the first witness in the case (attesting witness). The major stated in his testimony that Santawy posted false news on his Facebook account claiming the outbreak of Covid-19, the government's failure to take precautionary measures to confront the pandemic, the killing of prisoners Essam El-Erian and Mohamed Mounir inside their cells, and that citizens were imprisoned without legal evidence, tortured and murdered, and state institutions were involved in the murder of Italian student Giulio Regeni and others.

In implementation of the Public Prosecution's decision, the National Security officer conducted his investigations using confidential sources and the information available to him. He claimed that Santawy was "a member of the Muslim Brotherhood" group, without providing any evidence for his claim. The officer said he managed to identify the Facebook account that Santawy used in committing the crime attributed to him, noting that the account was open to the public. However, the officer did not provide a valid link that could be related to that alleged account, nor did he provide official digital evidence to prove his claim.

The officer said the General Department of Information Technology was monitoring Santawy's account, but his report included only the posts the prosecution sent to the department. He confirmed in the report that the account was closed, without knowing the reason for that. Article 10 of the Executive Regulations of the Law on Combating Information Technology Crimes provides for the description and documentation of digital evidence through specific procedures, which was lacked in that report.

The stage of evidence collection and investigation is supposed to come after a crime has been reported, which means that the officer should conduct his investigation and collect information that explains how the crime was committed and identifies the perpetrator. This applies to cybercrimes, after a relevant judicial warrant is issued. In the case of collecting evidence about the accusations levelled at Santawy, it appears that the investigations began before a complaint or a report was filed, and without a judicial permission to do so, which invalidates the charges in the first place.

There is a clear contradiction between the statements of the National Security officer (the

first witness and the investigator) and the statements of the lawyer (the second witness). The lawyer told the prosecution that he had seen the posts in question through his Facebook account and followed their owners to find out that their accounts were open to everyone, without having any connection with them. This contradicts the report, which stated that there should be a link between the lawyer's account and the defendants' accounts so that he can read what they post on their pages.

It is clear that the lawyer was not aware of the content of the posts that he attributed to Santawy. When the prosecution asked him "whether it was true that Mohamed Salah was imprisoned without a crime", he said: "This is false news. I don't know Mohamed Salah, but for sure he was presented to the Public Prosecution, which ordered his detention, and he was released later."

The lawyer justified his confidence that the post attributed to Santawy about Mohamed Salah contained false news, saying this requires accountability for its publisher. "The prosecution does not order imprisonment or release unless the accused committed a crime. Therefore, the news that he [Salah] was imprisoned without a crime is false," the lawyer said.

In addition to the legal principle which states that every person accused of any crime is considered innocent until proven guilty, the investigations were not accurate, as the prosecution only requested a list of cases examined by the Supreme State Security Prosecution regarding Mohamed Salah. The investigation report did not mention that since Mohamed Salah was arrested in 2019, he has not been faced with any solid evidence proving his guilt. Salah was detained in violation of the law and subjected to beating and ill-treatment in the Dar al-Salaam police station after a decision was issued to release him.¹

In order to verify the news contained in the posts attributed to Santawy about Covid-19, the Public Prosecution assigned one of its prosecutors to check the World Health Organization's website, in light of the investigator's testimony. The prosecutor took only a screenshot of a piece of news published on the international organization's website on 26 March 2020, when the pandemic emerged in Egypt. The news, which the prosecution considered as evidence for the falsehood of the posts attributed to Santawy, stated that "after several days of intense meetings and field visits inside and outside Cairo, we see that Egypt is making tremendous efforts in combating the outbreak of Covid-19, and the government is making great efforts in allocating the additional human and financial resources needed to contain the outbreak".²

In an apparent irony, and after Santawy was jailed for spreading false news about the Covid-19 situation in Egypt, Minister of Health Hala Zayed announced on 23 August 2021 that the first Covid-19 infection had been detected in mid-July 2021³, despite repeated government denials in August, including denials by a member of the committee combat-

1 AFTE submits a report to the Public Prosecutor regarding the assault on journalist Mohamed Salah inside his prison, 20 January 2021, last visited on 25 December 2021, link: <https://aftegypt.org/legal-updates-2/legal-news/2021/01/10/20675-aftegypt.html>

2 Media Centre, World Health Organization, "WHO delegation concludes the work of the technical mission concerned with Covid-19 in Egypt", 26 March 2020, last visited on 25 December 2021, link: <http://www.emro.who.int/ar/media/news/who-delegation-concludes-covid-19-technical-mission-to-egypt.html>

3 Mariam Al-Khatry, Al-Watan, "The health ministry announces the arrival of the Delta Plus variant in Egypt: In mid-July 2021", 23 August 2021, last visited on 25 December 2021, link: <https://www.elwatannews.com/news/details/5653363>

ting Covid-19⁴ and the presidential advisor for health affairs⁵. Although withholding official information about the pandemic contributes to its aggravation and misleads citizens, the matter has not been investigated.

Third: Exceptional trial

On 26 May 2021, the Supreme State Security Prosecution referred Santawy, who was being held in pretrial detention, and three others (in absentia) to trial on charges of “spreading false news and rumors about the internal conditions of the country that would weaken the state’s prestige, harm its national interests, disturb public security and cause panic among the people”. The prosecution requested the court to punish the defendants as per the Penal Code.

On 11 June 2021, the first session of Santawy’s trial was held. He was tried in connection with Case No. 774 of 2021 (Emergency State Security Misdemeanour), registered under No. 877 of 2021 (Supreme State Security Prosecution). On 22 June 2021, the Emergency Supreme State Security Court sentenced Santawy to four years in prison and ordered him to pay a fine of 500 pounds.

The accusations levelled at Santawy lacked the elements of the two crimes attributed to him as per Articles 80 (d) and 102 (bis) of the Penal Code. Before issuing its final ruling on Santawy, the Emergency State Security Court did not pay attention to the argument made by his defence lawyers regarding the lack of intention in publishing the posts attributed to Santawy, if we assume that the posts in question were actually made by him. This remains inconsistent with any of the methods provided for in Article 171 of the same law.

Santawy was tried before the Supreme State Security Court under the emergency law. The court issued its final ruling, which is not subject to appeal, given that the court convened to decide on accusations that occurred under the state of emergency that had been in place since April 2017. On 25 October 2021⁶, President Abdel Fattah al-Sisi ended the country’s state of emergency after it had been renewed continuously for four years.

So, Santawy was tried before an exceptional court whose rulings cannot be appealed, in a clear violation of Article 97 of the Egyptian constitution, which prohibits exceptional trials. Moreover, the trial was marred by suspicions of invalidity, which makes the rulings more deserving of review, as the Supreme State Security Court did not convene or carry out its work in accordance with the law.

According to Article 154 of the Egyptian constitution, the period of the state of emergency shall not exceed three months, which can only be extended by another similar period. Therefore, the existence of State Security Courts is temporary and supposed to remain for a maximum of six months, in conjunction with the declaration of the state of emergency,

4 Bassam Ramadan, Al-Masry Al-Youm, “The health ministry reveals the truth of detecting the Delta variant in Egypt”, 10 August 2021, last visited on 25 December 2021, link: <https://www.almasryalyoum.com/news/details/2394848>

5 Bassam Ramadan, Al-Masry Al-Youm, “The presidential advisor for health affairs settles the controversy over the detection of the Delta variant in Egypt”, 18 August 2021, last visited on 25 December 2021, link: <https://www.almasryalyoum.com/news/details/2399788>

6 Al-Shorouk, President Sisi decides to abolish the state of emergency nationwide, 25 October 2021, last visited on 25 December 2021, link: <https://www.shorouknews.com/news/view.aspx?cdate=25102021&id=6c6079b4-49bf-484e-85f1-37-^a9e27bd6bb>

and then their existence becomes legally terminated. Article 19 of the Emergency Law states that in the event that the legal existence of the Emergency State Security Court ends, the cases that occurred under the state of emergency without being referred to the emergency court shall be referred to ordinary courts.

State Security Courts are not supposed to convene on their own. Rather, a decision should be issued by the President of the Republic or whoever he delegates to appoint members of these courts for a period of six months. This appointment ends automatically with the end of the state of emergency, and it can be repeated, even for the same persons, every six months. But the matter was different with regard to the Emergency State Security Court, which had existed for more than four years and sentenced Santawy to prison. Members of State Security Courts were appointed on 4 May 2017 by Prime Minister's Decision No. 840 of 2017, and these courts had existed for years. So, the existence of emergency state security courts without new decisions appointing their members is invalid, making the rulings issued by these courts null and void, as they were not held legally in a disciplined manner.⁷

Fourth: Why is Santawy still in prison?

In July 2021, Minister of Immigration Nabila Makram said that "Egyptian students abroad are the most dangerous segment of immigrants because they are exposed to false ideas from hostile trends"⁸. Then the minister denied her statement and rephrased it by saying that students abroad are the "most vulnerable group", not the most dangerous group as she previously stated⁹. However, the two statements seem to be correct, as the first came in line with a policy that appears to target Egyptian students and academics abroad, whether through security crackdown or direct targeting and restricting freedom through detention.¹⁰

The second statement, meanwhile, came in line with the danger that threatens Santawy, whose problem with the Egyptian security authorities began when he was asked about the reason for his study and travel. The issue ended up threatening his academic career after he was sentenced to four years in prison, something which will prevent him from obtaining the academic degree he was seeking.

AFTE believes that the President of the Republic can rescind the sentence issued against Santawy, if he uses the broad powers granted to him under Article 14 of the Emergency Law. According to that Article, the president may:

⁷ Adel Ramadan, Legal Agenda, A fictitious end to the state of emergency in Egypt: The permanent convening of the Emergency State Security Courts as a model and evidence, 7 January 2019, last visited on 25 December 2021, link: <https://legal-agenda.com/%d8%a5%d9%86%d9%87%d8%a7%d8%a1-%d8%b5%d9%88%d8%b1%d9%8a-%d9%84%d8%ad%d8%a7%d9%84%d8%a9-%d8%a7%d9%84%d8%b7%d9%88%d8%a7%d8%b1%d8%a6-%d9%81%d9%8a-%d9%85%d8%b5%d8%b1-%d8%a7%d9%84%d8%a7%d9%86%d8%b9%d9%82/>

⁸ Cairo 24, Minister of Immigration: Students abroad is the most dangerous segment of Egyptian immigrants for being exposed to false ideas from hostile trends, 6 July 2021, last visited on 25 December 2021, link: <https://www.cairo24.com/1243564>

⁹ Masrawy, Minister of Immigration: Our children abroad are the most vulnerable group, not the most dangerous, 13 July 2021, last visited on 25 December 2021, link: https://www.masrawy.com/news/news_egypt/details/2021/7/13/2055818/-%d9%88%D8%B2%D9%8A%D8%B1%D8%A9-%D8%A7%D9%84%D9%87%D8%AC%D8%B1%D8%A9-%D8%A3%D8%A8%D9%86%D8%A7%D8%A4%D9%86%D8%A7-%D9%81%D9%8A-%D8%A7%D9%84%D8%AE%D8%A7%D8%B1%D8%AC-%D8%A3%D9%83%D8%A8%D8%B1-%D8%B4%D8%B1%D9%8A%D8%AD%D8%A9-%D9%85%D8%B9%D8%B1%D8%B6%D8%A9-%D9%84%D9%84%D8%AE%D8%B7%D8%B1-%D9%88%D9%84%D9%8A%D8%B3%D9%88%D8%A7-%D8%A7%D9%84%D8%A3%D8%AE%D8%B7%D8%B1?fbclid=IwAR1ycgTamemh154B73ZykflkQ4acE-ZelrgRzJsnY3K2_17BITPtZFOHT14

¹⁰ AFTE, "Won't stop" .. targeting Egyptian researchers abroad, 23 December 2021, last visited on 25 December 2021, link: <https://afteegypt.org/research/monitoring-reports/2021/12/23/27836-afteegypt.html>

- Commute the penalty or replace it with a lesser penalty, revoke all or some of the penalties of any kind, whether original, complementary or dependent, or suspend the implementation of all or some of the penalties.
- Revoke the judgment and drop the case.
- Order a retrial by another circuit of the Emergency State Security Court. In this last case, the decision must be justified.

Conclusion

According to the official papers of the case, there is no single incriminating piece of evidence against Santawy. He was exposed to multiple documented violations, none of which was investigated. So, Santawy's lawyer Ahmed Ragheb filed a grievance at the State Security Affairs Office on 25 August 2021. The grievance, which carried No. 5380, demanded that the ruling issued against Santawy be rescinded and the case be dropped. On 29 November 2021, after the abolition of the state of emergency in Egypt, Santawy's lawyer filed another grievance, No. 772.

The State Security Affairs Office is formed by the Prime Minister to review judgments issued in emergency state security cases. It has the authority to review judgments and write technical and legal opinions on them, before they are ratified by the President of the Republic or his representative.

None of the grievances has been decided upon so far. Also, none of the complaints and reports submitted by Santawy and his family, regarding the violations he has been subjected to over a whole year, has been addressed.

AFTE hopes that this legal reading of Santawy's case will help clarify how his right to a fair trial has been wasted and how he has been subjected to arbitrary detention, which comes as part of a continued crackdown on academics and researchers. AFTE urges all academic institutions and human rights organizations to continue their solidarity with Santawy and to demand the annulment of his prison sentence.