



**Problems of getting access to information
in "Supreme State Security" cases**

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Methodology

This paper relies on the legal analysis of the articles of the Criminal Procedures Law and the law regulating the legal profession in Egypt .It reviews international covenants related to the right to a fair trial .It also reviews the problems that AFTE’s Legal Aid Unit team faced before the Supreme State Security Prosecution ,as well as the investigations the prosecution conducted with activists Alaa Abdel-Fattah ,Mohamed Al-Baqer and Mohamed Ibrahim) Oxygen.(

Introduction

Violation of the right to freedom of information affects the guarantee of civil, political, economic, social and cultural rights, as access to information is essential for citizens to defend their rights and seek legal means to guarantee them. In Egypt, there is no legislation that guarantees the right to access information, although this right is stipulated in Article 68 of the constitution. Moreover, various laws restrict access to information, as a result of the dominant philosophy of withholding information adopted by the Egyptian legislature over the past decades.

On the other hand, state institutions, including judicial bodies – such as the Supreme State Security Prosecution – obstruct the implementation of laws that guarantee lawyers and citizens’ right to access information for the purpose of litigation and legal defense. This places additional burdens on the shoulders of groups interested in democracy and human rights, such as political activists, researchers, creative people, and social media users who suffer prosecution for criticizing public policies, and are subsequently denied access to information about cases in which they are imprisoned. That is what this paper attempts to address.

In the first axis, the paper reviews the obstacles facing lawyers in getting access to information before the Supreme State Security Prosecution. These include the prevention of lawyers from obtaining copies of case papers, communicating with the defendants, and knowing the places where the defendants are detained, or the legal texts on which the accusations are based.

In the second axis, the paper reviews the laws that guarantee the lawyers' right to access information, which are systematically violated by the Supreme State Security Prosecution. The paper presents a real model of the cases undertaken by AFTE’s Legal Aid Unit, in order to highlight the effects associated with withholding information from lawyers, taking the case of activists Alaa Abdel-Fattah, Mohamed Al-Baqer and Mohamed Oxygen as an example.

In conclusion, the paper stresses the need to review the performance of the

Supreme State Security Prosecution, and to change the practices that conflict with the right to freedom of information.

First axis: Obstacles to lawyers' access to information before the Supreme State Security Prosecution



AFTE’s Legal Aid Unit undertakes the legal defence of dozens of defendants in opinion cases before the Supreme State Security Prosecution. Lawyers face several obstacles in this regard, including:

1. Prevention from getting access to any of the case papers:

The State Security Prosecution usually investigates the defendants after they are arrested by the police. During these investigations, the prosecution denies the lawyers access to all the investigation papers, whether during the first session of investigation with the defendants, or during the supplementary sessions. Investigation papers include arrest warrants, defendants’ statements, statements of witnesses or other defendants in the case, investigation reports conducted by the National Security police, any technical reports prepared in the case, or any medical reports on the defendants’ condition resulting from the prosecution’s request for a medical examination of the defendants or referring them to the Forensic Medicine Authority or the prison hospital to check their health condition or the injuries they sustained.

The Supreme State Security Prosecution denies lawyers access to these papers for security reasons related to the confidentiality of the investigations, although the concept of confidentiality does not apply in any way to the law-

yers’ work. This, accordingly, does not allow lawyers to perform their work, especially the provision of legal arguments based on a full understanding of the course of investigations.

Thus, the lawyers undertake the defence job without getting access to several reports in the case, such as the report of inferences, the arrest report, the arrest warrant issued by the prosecution, and the investigation report prepared by the National Security police, with all details from the date of writing the report, the time period during which the investigation was conducted, the time period during which the incidents listed in the case took place, and the date on which the Public Prosecution issued the arrest warrant. This, accordingly, empties the legal argument of its content.

The lawyers are also prevented from attending the initial session in which the prosecutors interrogate the defendants before the actual investigation begins. The Supreme State Security Prosecution takes these illegal measures to control the course of the investigation.

2. Preventing communication between the lawyers and the defendants:

Defendants are prohibited from communicating with their lawyers before the start of investigation. They are even prevented from asking the prosecution to allow the lawyers to attend the investigation sessions and defend their clients. The Supreme State Security Prosecution prevents the lawyers from meeting with the defendants before the start of the investigation, obtaining information about the status of defendants and the procedures taken with them, and explaining their legal argument.

3. Knowing the place where the defendants are detained:

Knowing the defendants’ place of detention is basic information that must be shared with the defendants’ lawyers, whether before or after the defendants appear before the prosecution. In most cases, the Supreme State Security Prosecution imposes secrecy on the place where the defendants are held, despite the fact that the Public Prosecution has the authority to monitor places of detention, issue a detention order, and know where the defendants are detained. The place of detention is known only through the defendants themselves after they are transferred to a certain place of detention, or by repeating the question about their whereabouts to the Interior Ministry’s Social Protection Sector.

4. Knowing the charges and the relevant penalties stated in law:

The Supreme State Security Prosecution deliberately conceals the charges levelled at defendants. Most of the investigations the State Security Prosecution conduct with defendants are vague and do not reveal the charges the defendants face or the relevant penalties stated in law.

The legal approach adopted by the investigation bodies is not clear, whether the charges are related to the penal code or other laws. The charges are usually general, have more than a legal designation, and are not linked to specific incidents.

5. Knowing the dates of investigation sessions or detention renewal sessions:

Lawyers suffer from a lack of information about the investigation sessions, which makes attending these sessions dependent on their constant presence at the headquarters of the Supreme State Security Prosecution, and not the notification that the defendants would have their first investigation session. Further investigation sessions or detention renewal sessions are held suddenly without notification as well.

These obstacles violate international standards and Egyptian law, and this is what the paper addresses in detail in the second axis.

Second axis: The prosecution's violation of law that guarantees access to information



Article 68 of the Egyptian constitution states: “Information, data, statistics and official documents are owned by the people. Disclosure thereof from various sources is a right guaranteed by the state to all citizens. The state shall provide and make them available to citizens with transparency. The law shall organize rules for obtaining such, rules of availability and confidentiality, rules for depositing and preserving such, and lodging complaints against refusals to grant access thereto. The law shall specify penalties for withholding information or

deliberately providing false information. State institutions shall deposit official documents with the National Library and Archives once they are no longer in use. They shall also protect them, secure them from loss or damage, and restore and digitize them using all modern means and instruments, as per the law.”

The law stipulates the right of defendants and their defence lawyers to photocopy and review all case papers, whether during the preliminary investigation before the Public Prosecution or the investigating judge, or during the final investigation before the court examining the case.

With regard to the preliminary investigation, Article 84 of the Criminal Procedures Law states that “the defendant, victim, civil rights plaintiff and those responsible for civil rights may, during the investigation, request the issuance of copies of any type of document at their personal expense, unless the investigation is conducted in the absence thereof based on a relevant decision”.

Article 125 of the Criminal Procedures Law also states that “the lawyer shall be allowed to inspect the investigation on the day prior to interrogation or confrontation unless otherwise decided by the magistrate. In all cases, the person accused may not be separated from the lawyer thereof during the investigation”.

This was also confirmed by Article 52 of the law regulating the legal profession, which states: “Lawyers have the right to view the lawsuits and judicial documents and obtain the data related to the lawsuits they are working on. All courts, prosecution offices, police departments, Notary Public offices and other entities before which the lawyers exercise their profession, shall provide them with the facilities required to carry out their duty and enable them to access view the documents, access the data and attend the investigation sessions with their clients in accordance with the provisions of law. Lawyers’ requests may not be rejected without legal justification. All that is taking place in the session shall be documented in the minutes.”

During the investigations for which experts are assigned, the experts must be allowed to view the reports filed in the case. Article 88 of the Criminal Procedures Law stipulates that “the person accused may seek the assistance of a consultant and may request that the consultant inspect the documents and everything presented to the expert appointed by the magistrate provided that no delay in the proceedings of the case is caused”.

Paragraph 3 of Article 14 of the International Covenant on Civil and Political Rights states: “In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality:

(a) To be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him;

(b) To have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing."

The International Covenant on Civil and Political Rights has the force of law, as Egypt signed it on 4 August 1967, and it was published in the Official Gazette on 14 January 1982, in accordance with Articles 151 and 225 of the Egyptian constitution.

The aforementioned texts stress that defendants have the right to view and photocopy the investigation papers because this is related to their right to a fair and just trial. It is clear from these texts that there is a difference between viewing and photocopying. Of course, enabling the defendants to photocopy the papers gives their lawyers more time to prepare their legal argument. Meanwhile, reading the papers without photocopying them – although it is an important guarantee to know the course of the case – is not enough, especially in cases that have many papers.

In the following axis, the paper addresses in detail the case of activists Alaa Abdel-Fattah, Mohamed Al-Baqer and Mohamed Oxygen, and the impact of obstructing the aforementioned texts on the lawyers' work and the defendants' right to a fair trial.

Third axis: The case of "Alaa Abdel-Fattah, Al-Baqer and Oxygen" as an example of hindering the right to access information



Although the three defendants Alaa Abdel-Fattah, Mohamed Al-Baqer and Mohamed Ibrahim (aka Oxygen) were tried on the same charge (spreading false news), their path to the Emergency State Security Court was not the same. Each of them was targeted and arrested in a different way.

Alaa Abdel-Fattah (a programmer and human rights activist) had previously served a five-year prison term, and was serving a similar period of police monitoring at the Dokki police station, where he was arrested in 2019. Mohamed Al-Baqer (a lawyer and co-founder of the Adalah Center for Rights and Freedoms) was arrested during an investigation session with Alaa Abdel-Fattah, where he was doing his work as a lawyer. Mohamed Oxygen (a photojournalist and blogger) was arrested while undergoing a precautionary measure, which was decided by the Criminal Court in Case No. 621 of 2018 (State Security Prosecution), after he spent nearly 18 months in pretrial detention pending investigations into that case.

Oxygen was subjected to enforced disappearance for 18 days, before being brought before the Public Prosecution. This was the first violation of the right to access information, among other rights. Oxygen's family did not know that he had been arrested, his place of detention, the reason for his arrest, his health condition, or what he faced during the detention period.

The three defendants were listed in Case No. 1356 of 2019 (State Security Prosecution), in which they faced charges of joining a terrorist group and spreading false news that would disturb security and public peace. These are the same charges that Oxygen faced in Case No. 621 of 2018 and would face later in Case No. 855 of 2020, after he was released from pretrial detention in Case No. 1356 of 2019.

Opinion cases in which defendants are targeted for their political views mostly share the same accusations, which can be described as broad, meaning that they do not specify the criminal act or its elements. These accusations include joining a terrorist group, without specifying that group, its purposes, the terrorist acts it carried out, or the sort of the defendants' affiliation with that group or their role in it. This is what happened with the three defendants, as they faced charges of spreading false news, without specifying the news they published, the means of publication, or how that news disturbed security and public peace. By concealing this information, we can consider this as the second violation of the three defendants' right to access information.

Interrogation with the three defendants took nearly two years, during which neither the defendants nor their lawyers were able to view or photocopy any of the case papers. The lawyers were also unable to know the investigation procedures. Oxygen's lawyer could not attend the first investigation session with him.

During all the sessions of renewing his detention (ten in number), Abdel-Fattah tried to know the alleged false news he spread or the group the Public Prosecution accused him of joining, but in vain.

This complete concealment of investigation information caused the defendants' lawyers to be unable to present any serious legal argument.

As Abdel-Fattah and Al-Baqer were about to complete two years in pretrial detention (which is the maximum legal period of pretrial detention), the prosecution summoned the three defendants to resume investigation. It faced them with a number of their Facebook posts without informing them of these exact posts. The prosecution also faced them with the content of the technical evidence report on their Facebook posts, without showing them the report itself. The prosecution did not even specify which of the said posts was the subject of accusation of spreading false news.

After that, the Supreme State Security Prosecution decided to copy a new case from Case No. 1356 of 2019, namely Case No. 1986 of 2020, and then referred it to the Emergency State Security Misdemeanour Court under No. 1228 of 2021 (Emergency State Security Misdemeanour, Fifth Settlement), charging the defendants with spreading false news inside and outside the country, as per Articles 80 d and 102 bis of the Penal Code.

The Supreme State Security Prosecution concealed the reason for copying the case as well as the fate of the first accusation of joining a terrorist group. It also concealed the result of the prosecution's investigation into the rest of posts it faced the defendants with.

On 18 October 2021, the Emergency State Security Court held the first session of trial. The defendants' lawyers requested that Case No. 621 of 2018 (State Security) be included and that the defendants and their lawyers be allowed to photocopy the case papers, as Oxygen had earlier faced the same charges (spreading false news) in a previous case. Oxygen informed the Public Prosecution of the password to his Facebook account, through which he manages the “Oxygen Egypt” page, and therefore he is not responsible for the posts that were published after his investigation in April 2018.

The reason for the request was the lawyers' desire to know the measures taken by the Supreme State Security Prosecution regarding the examination of the said page and whether the news published during that period was the same news for which the defendant was brought to trial.

The lawyers also requested that Case No. 1356 of 2019 (State Security) be included, and that the defendants and their lawyers be allowed to photocopy its papers. The reason for the request was the lawyers' desire to know the measures the prosecution took during the investigation. They wanted to check whether the prosecution had examined the personal pages of the defendants

on social media or the platforms that the defendants were supposed to have used. They wanted to know the result of that examination and whether it was legal in the first place. They further wanted to know why only one charge – out of the charges stated in the investigation – was copied, and what about the rest of charges.

The lawyers requested that the defendants and their lawyers be allowed to photocopy the papers of Case No. 1228 of 2021 (Emergency State Security Misdemeanour, Fifth Settlement) so they can study the case and present the necessary legal argument.

Although the court expressed its understanding of the lawyers’ requests, it postponed the trial to 1 November 2021 and refused to include the required case files. It only allowed the lawyers to view the papers of Case No. 1228 of 2021 without photocopying them.

On 1 November, the defendants and their lawyers repeated their previous requests, stressing that viewing the case papers is not enough and the court's refusal to allow them to photocopy the papers may cause them to be unable to present an adequate legal argument. The court decided to adjourn the trial to 8 November so it can read the papers of Case No. 1228 of 2021.

During the 8 November session, the lawyers stressed the importance of having a photocopy of the case papers so the defendants can read the case and their lawyers can present a proper legal argument. However, the court did not respond to the requests and decided to postpone the trial to 20 December, without allowing the lawyers or the defendants to present any legal argument. On 20 December, the court sentenced Alaa Abdel-Fattah to five years in prison and Al-Baqer and Oxygen to four years each.

Immediately after the verdict was announced, the defendants' lawyers asked the court for a copy of the verdict, but the court told them that it had sent the verdict with the case file to the military governor, and therefore neither the defendants nor their lawyers were able to know the content or the reasons of the verdict.

Article 80 D of the Penal Code states: “Confining to detention for a period of not less than six months and not exceeding five years and a fine of not less than 100 pounds and not exceeding 500 pounds or either penalty shall be inflicted on each Egyptian who deliberately discloses abroad false or tendentious news, information or rumours on the country’s internal situations, which is all bound to weaken the country's financial credibility, dignity, and prestige, or exercises, by any method whatsoever, an activity that is liable to cause damage and harm to the country's national interests. Imprisonment shall be the penalty if the crime occurs in time of war.”

Article 102 bis of the Penal Code states: “Detention and paying a fine of not

less than fifty pounds and not exceeding two hundred pounds shall be inflicted on whoever deliberately spreads false news, data, or rumours that would disturb public security, cast horror among the people, or cause harm and damage to public interest. Imprisonment and paying a fine of not less than one hundred pounds and not exceeding five hundred pounds shall be the inflicted penalty if the crime occurs in time of war. The penalties prescribed in the first clause shall be inflicted on any one who obtains, personally or through an intermediary, or possesses written documents or printed matter comprising some of the provisions prescribed in the first clause, if they are prepared and provided for distribution or access by third parties. Also, whoever obtains or possesses any means and methods for printing, recording, or for public announcement, which are appropriated, even temporarily, for printing, recording, or diffusing part of the foregoing, shall be liable to the said penalties.”

The crime of spreading false news consists of three elements: a material element, which is the publication of news; a moral element, which is the intent to publish; and a special element, which is the intent to harm the national interests (or to disturb security or spread terror among people). Therefore, when the Public Prosecution refers a case to the court, it should give proof of the three elements based on the legal principle that says: the burden of proof is on the prosecution.

So, the defendants needed a copy of the case papers so they could refute the moral element of the alleged crime, by telling the court their real purpose behind publishing the news. They needed a copy of the case papers not only to know the news that the Public Prosecution claims to be false, but also to know the context of the publication and the result of the prosecution’s investigation into that context and what the prosecution presented to prove their intent and how that news harmed the national interests. The defendants also wanted to know the result of the prosecution’s investigation into the rest of the news they allegedly published on social media, which the Public Prosecution did not include in the case. They wanted to know why this particular news was selected from among other pieces of news and submitted to the court.

On 17 August 2021, the Supreme State Security Prosecution summoned Oxygen to resume investigation. It informed him that the “Oxygen Egypt” page was still publishing news. Oxygen said that since he was investigated in April 2018 in Case No. 621 of 2018, he lost control of the Facebook account and – accordingly – the page associated with it, noting that he was held for most of that period.

So, the defendant in the aforementioned case and his lawyer needed to know the measures the prosecution took regarding the Facebook page. They also needed to know why the Public Prosecution did not exclude the defendant’s personal Facebook account and presented it as evidence in the case examined

by the court.

Since the investigation started in September 2019 until a verdict was issued in December 2021, the State Security Prosecution and the Emergency State Security Misdemeanour Court in the Fifth Settlement have withheld the case papers, including the technical evidence examination reports and the investigation procedures. Thus, they violated the defendants' right to access information for the purpose of defending themselves.

Conclusion and recommendations

AFTE presents this paper to all those interested in getting access to information in cases examined by the Supreme State Security Prosecution, with the aim of encouraging the Public Prosecution to stop these violations, enforce the law and provide necessary guarantees to enable the defendants and their lawyers to obtain information about their cases.

The Supreme State Security Prosecution should review this practice immediately, and adhere to legal guarantees and relevant international standards in obtaining information related to the investigations it is conducting.