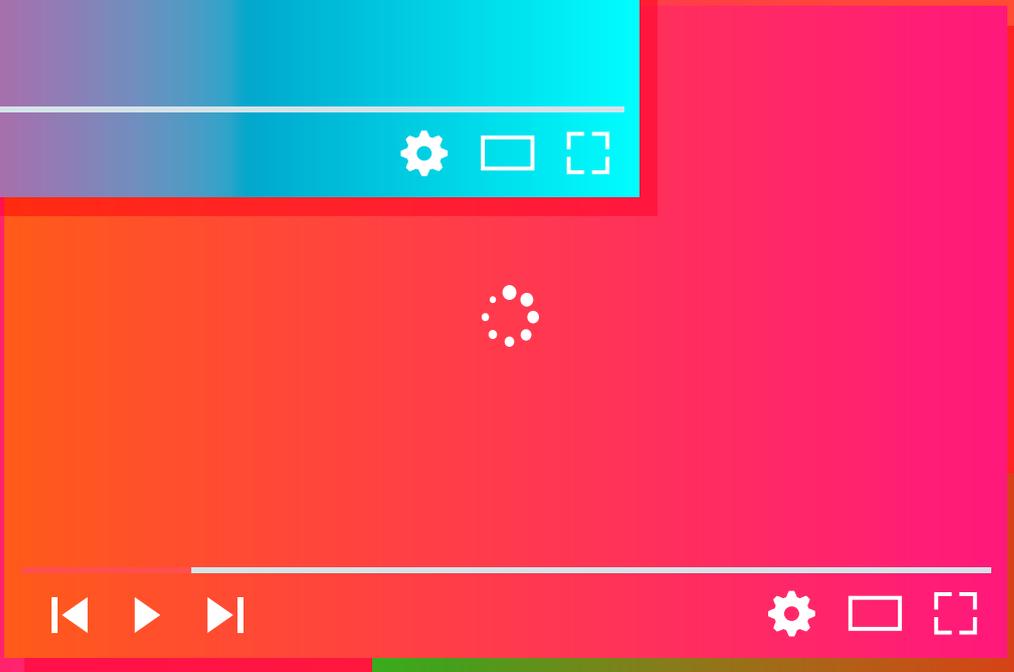
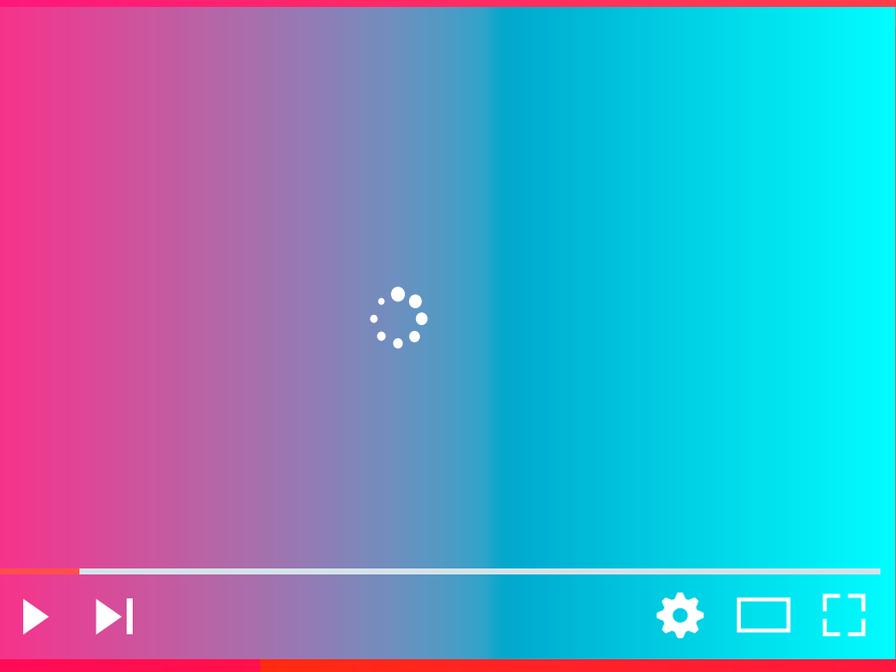


# By Court Ruling

## A reading in the “YouTube” block ruling



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## Introduction

In August 2018, President Abdel Fattah Al-Sisi ratified the Internet Technology Crimes and the Supreme Media Council laws, two laws that clearly establish the practice of blocking websites and monitoring communications in Egypt. Prior to the adoption of these controversial laws, the Egyptian legal environment lacked the legal cover and justification for the large-scale block policy by Egyptian authorities since May 2017, resulting in the blocking of nearly 500 sites, according to the latest AFTE report.

The absence of legislative regulation of government practices, any government, especially when it is so extensive in its encroachment on the rights of citizens, entails judicial intervention to read, refute and put a limit to such practices. A number of cases have been filed before the Administrative Court concerning the block of certain sites. Among these cases are the ones by Mada Masr to demand the disclosure of the reasons and grounds for blocking their website inside Egypt. However, all cases are still pending before the administrative courts. We have not yet been able to clarify the position of the administrative judiciary on the government's campaign against websites.

However, another case concerning the blocking of the YouTube site has been completed, and a final judgment has been issued by the Supreme Administrative Court that has enabled us to understand a little about the administrative judiciary decision in this regard. The relatively long period of litigation (the case was held in 2012) enabled us to observe the changing attitude of the Egyptian judiciary and its view of these practices. This change coincided with the development of the position of the executive authority.

A lawsuit against the block of YouTube was filed on September 18, 2012, in which the plaintiff challenged the negative decision<sup>1</sup> by the NTRA to refrain from taking the

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 1. Challenging negative decisions is the case when the law has imposed on the administration / government to take a certain decision without any minimum assessment in this regard, and to prove with certainty that it has been asked to take the decision it must take, that it has failed to implement the rule of law, remained passive and did not seek to make the decision imposed on it by the legislator. Its failure would be then a refusal to carry out this duty which constitutes a negative decision that can be annulled in an appeal. In other words, it must be

necessary legal measures to block the YouTube site and the links to a video that was deemed offensive to the prophet. In the first session of the lawsuit, the plaintiff presented a CD containing various sections of the video, explaining that these clips are being circulated under different titles such as MUHAMMAD MOVIE TRAILER, innocence of Muslims, the film insulting the prophet. Accordingly, the Administrative Court of Justice ruled that YouTube was banned for a month. Despite the recommendation of the Supreme Administrative Court's board of governors to revoke the first instance ruling, the first chamber of the Supreme Administrative Court (called the Department of Rights and Freedoms) approved the final ruling.

During the course of its consideration, the lawsuit went through several litigation stages, through which the judicial authorities expressed their opinion on the subject of the case. They unanimously agreed that the abusive links should be blocked and disagreed with regard to blocking the entire site. In addition, this phase witnessed major changes in the attitudes of courts as regards the expansion of internet monitoring, although there are clear breaks and leaps that can be identified by reading the evidence that judicial authorities relied on to block the site. The issue here is not only about the legal grounds in the narrow sense – i.e. a quote of the text or the legal ground – which was adopted in the block decision to withhold, but is rather about how to read and apply the text and sometimes strengthening it under the provisions of international covenants and conventions.

This paper attempts to review what is stated in the case papers in various degrees of litigation, starting from the Administrative Court to the appeal submitted to stop the execution of the judgment, the report of the Commission of Commissioners and the ruling of the Supreme Administrative Court. The paper also gives some attention to some of the judgments issued in a number of cases related to the blocking of sites or

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proved that the subject concerned has appealed to the administrative body to request the issuance of the decision that the laws and regulations dictate and that the administration abstained from making that decision.

cut of telecommunications services, which were considered by administrative courts.

Chapter I addresses the different stages of the proceedings, while the second chapter presents the reasons for the judgment. The 3<sup>rd</sup> chapter pays more attention to clarifying the principles established by the provision.

## Chapter One

### Stages of litigation

#### The lawsuit on the administrative justice platform

A lawsuit was filed against YouTube on September 18, 2012, which, as we have pointed out, was an appeal against the negative decision by the administrative authority (in this case in the NTRA) to refrain from taking legal action to block the site because of the screening of a film offensive to the Prophet. In the first stage, the plaintiff submitted a CD containing sections uploaded on the website, which he considers to be offensive to the Prophet, explaining that these sections are circulated under different headings such as MUHAMMAD MOVIE TRAILER, Innocence of Muslims, the film insulting the prophet.. Through the questions posed by the presiding judge during the hearing, the NTRA defense felt that the court deplored the failure of NTRA to take action on this incident.

The court adjourned the case to January 12, 2013. Prior to this hearing, the NTRA addressed a number of service providers to take necessary action. During this period, it also established a website entitled: Protecting Egypt, through which similar links could be reported<sup>2</sup>. During the hearing, NTRA's defense submitted a case file on seven books dated 9 January 2013 from the National Telecommunications Regulatory Authority (NTRA) to the Internet service providers in Egypt, as stated in the portfolio, which included a warning to implement the NTRA's decision to compel companies to block the link of the offensive film to the Holy Prophet on Google and YouTube and prevent access to it from within the Arab Republic of Egypt, provided that these companies clarify actions taken by them in this regard and complete the process of blocking and notify NTRA of any difficulties they encountered in implementing this decision.

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2. Link to the offensive video <https://bit.ly/2tSlfjd>

However, the discussions at this session gave the clear impression that the court was not satisfied with the actions taken by the NTRA in relation to the case in question. This is evidenced by the discussion between the court and the defendant, who blocked the entire YouTube site until it removed all the offensive contents of the said film and any videos or films against Islam and the Prophet were removed, because it is impossible to partially block sections on YouTube since the site and its followers are copying the offensive film to the Prophet under various titles on the site and thus it is impossible to delete and prevent these sections offensive to the Prophet, without complete blocking of YouTube.

It was clear during the discussion between the presiding judge and the plaintiff that the court had established its faith in the case. It asked him to amend his requests to block the YouTube site completely for one month. On this basis, the court reserved the case for judgment on February 9, the date it actually passed its ruling.

### **Supreme Administrative Confirmation of First Instance Judgment**

The first chamber of the Supreme Administrative Court considered the appeals that were made against the ruling of the Administrative Court to block YouTube and referred the case to the Committee of Commissioners for the preparation of a legal opinion.

The report responded to questions posed by the appeal papers presented in the case, and the report succeeded in one way or another to move the debate on the legality of the blocking procedure to a clearer area, highlighting the absence of a binding legal basis for the Egyptian authorities to take blocking action. The report pointed out at first that there were both the formal and objective elements to be provided in the challenged decision. It indicated that the legal basis that could be relied upon to take a blocking decision had been determined by the provisions of many international treaties that all appropriate and effective measures should be taken to combat intolerance, and eliminate all discrimination based on religion and belief, and that no one may be subjected to coercion that would impair freedom to profess a religion or belief. The report pointed

out that the violations attributed to the site of “YouTube”, in case proven, encroach on the freedom of belief of more than a billion and a half billion Muslims in the world in general and Muslims in the Egyptian state in particular in their belief in Islam and the abuse of their religion represented by the Holy Prophet.

Accordingly, under the international treaties referred to, there remains an obligation on the part of the NTRA to protect religious beliefs in general and to protect others from embracing what they chose without being coerced, insulted or subjected to any coercion, especially that coercion in the field of communication is considered a moral coercion, the effects of which surpass physical coercion with serious consequences that affect national security of the Egyptian state; that encroaching on the belief system of Egyptians results in undermining the state and the collapse of its pillars, exposing Muslims and Christians to a sedition, the result of which is known only to God. Accordingly, the responsibility of NTRA to regulate communications is a national, religious and humanitarian duty that entails the necessity of intervening to perform its duties on the grounds that it is necessary it enforces its powers in the face of the aforementioned violation, even in the absence of a legal claim.

However, the report of the state council commissioners noted that despite all the above, “the harm of total closure of YouTube will prejudice the freedom of thought and expression in addition to prejudice services provided by YouTube that serve other areas, including dissemination of the peaceful teachings of Islam; also that closure of YouTube will result in major damage that may amount to losses of hundreds of millions of pounds, according to the administrative body”.

After the deliberation of the proceedings, the Supreme Administrative Court issued its ruling at the end of May 2018, which ended up accepting the two appeals in form and rejecting their subject <sup>3</sup>, which means supporting the ruling of the Administrative Court.

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3. The two appeals refer to the one made by AFTE and that by NTRA of the ruling of the Administrative Court of Justice.

The Supreme Administrative Court neglected the second half of the report of the State Commissioners, which it set aside and adopted in its judgment the same grounds on which the Administrative Court's decision was based. It found that both Article 67 of the Telecommunications Regulatory Act and Article 19 of the International Covenant constitute the legal basis, which obliges the administrative bodies of the State to take action to decide on the block. However, the supreme administrative ruling has carried signs and perhaps clear messages, since it explicitly states that there are no provisions in the Egyptian laws regulating the blocking of websites. However, this should not be an obstacle to the administration to impose its control and to confront situations that threaten national security. However, the court did not succeed in establishing a clear definition of the concept of "national security". It went further and demanded the enactment of laws to criminalize any broadcast that would undermine beliefs and religious constants.

## Chapter II

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### How do we read the judgment?

*“The Court, in view of the above, is aware that this judiciary is not only to confront circumstances in the present, but rather to deter, correct and warn those sites and anyone who wishes to tamper with religious and spiritual beliefs and constants of the Egyptian people, in order to provoke hatred and animosity among the people., with a view to cause divisions into conflicting parties and factions”*

From terms of the ruling of the Supreme Administrative Court regarding the blocking of “YouTube”

The reasons for the ruling of the Administrative Court of Justice in February 2013 as well as the reasons for the ruling of the Supreme Administrative Court reveal efforts by the two judicial bodies to find an acceptable legal basis and justification that can be used to conceal the conservative moral motive, which is the source of YouTube blocking judgment and other links and sites that display the abusive film (unspecified in terms of judgment). The court used controversial and vague legal provisions such as Article 67 of the Egyptian Telecommunications Regulatory Act. The Court also used some of the texts of international instruments signed by Egypt and became part of its national legislation, such as Article 19 of the International Covenant on Civil and Political Rights, which provides an aesthetic character to a provision that clearly violates rights protected by the provisions of the Egyptian Constitution.

The Court tried from the outset to examine how to justify restrictions on freedom of expression and was able to find it in article 19 of the International Covenant on Civil and Political Rights - one of the most conservative and reactive articles of the International Covenant – which allow states to impose constraints on some rights and

freedoms protected by the covenant, on condition that those restrictions be “specific” and “necessary” for the respect of others and their reputation or for the protection of national security, public order, public health or morality. Thus, the Court created a legal case in which a legal rule exists that provides for the possibility of imposing a restriction on freedom of communication and freedom of expression, with a necessary situation requiring the implementation of this provision, providing the aim is protecting national security, public order, public health or morals.

Based on these premises, the Court relied on the text of article 67 of the Telecommunications Regulatory Act<sup>4</sup>, which allows the competent authorities of the State to subject to its management all telecommunications services and networks in the event of a natural or environmental disaster or in cases where public mobilization and any other cases related to national security. The Court relied on the text even though it addresses specific exceptional situations that did not apply, nor were they related to the merits of the case. The text did not expressly mention the possibility of measures that would impose restrictions on freedom of communication, such as “blocking”, and the term “subjecting to its administration” is vague. The court also relied on other provisions of the Telecommunications Law that have no connection with the merits of the case. The text merely gives some powers, some of which are related to national security. The court took this to mean that the authorities have the right to block websites.

The Court sought to strengthen the text of article 67 by trying to portray the incident as beyond the scope of protection relating to freedom of expression and freedom of communication. The Court established that this was not the freedom of expression governed by the “theory of liberty”, which was based on the right to know as a natural right and is not subject to censorship or restriction of any kind, and subsequently the right of the individual to establish newspapers and satellite channels without a license

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4. Article 67 of Law No. 10 of 2003 on the regulation of telecommunications “The competent authorities of the State shall subject to its administration all telecommunications services and networks of any operator or service provider and shall call upon its personnel operating and maintaining such services and networks in the event of a natural or environmental disaster or in cases In which public mobilization is declared in accordance with the provisions of Law No. 87 of 1960 referred to and any other cases relating to national security» .

or permit, but is rather governed by the theory of “social responsibility,” which is the theory that challenges the theory of freedom, which means, according to the Court, that all forms of media have a responsibility, which is a right, duty and responsibility at the same time as well as commitment to objectivity and true information.

Thus, the ruling concluded that both Article 67 of the Telecommunications Regulatory Act and Article 19 of the ICCPR provided a legal basis for the Egyptian authorities to take action to infringe on freedom of expression “blocking YouTube site and abusive links” and that these authorities violated this rule when failing to take action it should have taken (the blocking).

The importance of this ruling is that it takes a new course in violation of the provisions of various degrees of administrative courts in relation to cases of blocking / closing sites. The number of such cases has increased recently, especially those relating to the blocking of social networking sites. Contrary to the ruling we are currently dealing with, most of the administrative courts circuits have rejected most of these cases, indicating that the court’s ruling came to diverge from the course usually taken by administrative courts. In a subsequent ruling on the YouTube case, the second chamber of the Administrative Court in 2015 issued a ruling<sup>5</sup> rejecting a lawsuit demanding the banning of Facebook. The ruling discussed the importance of social networking sites. The court said: “The decline by the administration (i.e. the state) to close Facebook does not constitute a negative decision within the meaning of the Law of the Council of State promulgated by Act No. 47 of 1972, so that the case lacks an administrative decision that can be challenged.

The court pointed out that the self-censorship of users of social networking sites is the most effective way to remedy some of the practices of the users of these sites who diverge from the norm, “and this self-censorship only applies to responsible freedom, which glows in self-protection in order to prevent those who prey on public freedoms.”

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5. The second chamber of the administrative court has been in charge of processing lawsuits related to communication instead of the 7th chamber since.....

It stressed that the press and audiovisual media have a basic duty to raise the quality of media service and the fullest expression of the basic social and cultural needs of the people, which could affect it either positively or negatively. Individuals are attracted to the highest quality media and the ones that are most able to express his needs. In response to some of the “Facebook” pages that showed irregularities, the court recommended that the ideal solution in those cases is to hold their owners accountable.

The Supreme Administrative Judgment issued in May 2018, which supported the ruling of the Administrative Court of Justice in February 2013 banning YouTube for a month, opens the door for administrative courts to rely on the court’s interpretation and establishes the precedence of site blocking judgments. The ruling also supports, theoretically, the blocks undertaken by Egyptian authorities during the previous two years.

## Chapter III

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### Principles of the Court Ruling – Adaptation of the Law and Hostility towards Freedom

The rule laid down in its terms several principles - perhaps new to the courts of administrative justice – which call for attention and criticism, which we shall discuss in detail:

#### - **Blocking websites, between national security and freedom of expression considerations**

The Supreme Administrative Court and before it the Administrative Court of Justice ruled to block the YouTube site and the links and sites of the offensive film to allegations of protection of national security, social peace and national unity. The Court considered that protection of social security has priority over freedom of opinion and expression, and thus should be the prime concern and that there is no way to balance national security with any other considerations.

**First**, the Court did not seek to define clearly the concept of national security and social security. The absence of a specific definition indicates that there is no clear definition in the law of such terms. The court is thereby obliged to present a clear definition order that the administrative body is aware of its failure or reluctance to undertake its mission.

Moreover, ignoring previous judicial precedence should be based on clear texts and concepts. If the Supreme Administrative Court wants to establish a new principle, it must first outline the nature of the protected right and how it has been balanced against other rights, and respond to earlier judgments that gave precedence to the protection of constitutional rights over considerations of national security, as stated by

the Administrative Court of Justice in the “closure of Facebook” case, where the ruling stated:<sup>6</sup>

*“The safety of national security is not about severing the society, separating its elements one from the other, isolating its citizens in isolated islands. Security means communication, consultation and dialogue, and no one in a democratic society can claim the exclusive right to maintain the security of society. The safety of the country’s national security is achieved only by the ruling authority’s sincere expression of the hopes and aspirations of the people in accordance with the social contract, which the political, economic and social system has established, as well as respect for the rights and freedoms of citizens, and it is incumbent on the state to provide a cultural and information environment that involves exchange of all forms of information and knowledge in various forms and types without blocking or banning or cutting off the means of communication necessary therefore, and the first of these means undoubtedly are social networking sites, including “Facebook,” which includes many pages that contribute to the establishment of the spirit of knowledge and information exchange in various walks of life”*

However, the Supreme Administrative Court here merely used vague and literary statements such as: “The offensive film on YouTube and other websites has had major impact on national internal security, where some of the nation’s enemies have taken advantage of this seditious film as a means of feeding Sectarian strife with the intention of inciting citizens against each other and striking national unity to harm the unity and safety of the homeland and its citizens, in addition to the demonstrations and acts of violence that swept many parts of the country condemning this offensive film, which insulted Islamic sanctities and injured the modesty of Muslims and Christians, which led to clashes between protesters and security forces and resulted in injuries on both sides» .

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6. Explanation of the ruling by the second chamber of the administrative court in case 97978/68 J.

**Second:** In discussing the importance of national security, the Court did not try to balance between what it called considerations of national security and constitutional rights that would be curtailed as a result of blocking measures. The Court favored the former without clarifying the criteria and the legal basis on which it built its doctrine. The court said:

*“In light of all the above, the State represented by NTRA should quickly block this offensive film immediately from YouTube and all websites. If this is not possible, according to the report, it would have to block the whole of YouTube and every site through which this offensive film can be reached to achieve security and social peace among its people and to warn those sites that its first priority is the safety of its people and beliefs; and so if necessary, the block should not be for a temporary but indefinite period”.*

The judgment shows the Court’s unwillingness to explore possibilities for finding solutions that may balance or disengage these conflicting considerations. The Court’s position was contrary to the attempt of the State Commissioners’ report to strike a balance between these considerations, which, in its report to the Court, provided a detailed legal opinion on the subject of the case:

*“Considering the balance between the two matters, we find that the complete closure of YouTube will undermine freedom of thought and expression in addition to prejudice the services provided by YouTube and serve other areas, including the dissemination of the tolerant teachings of Islam in addition to the dire material consequences of blocking the site, which may amount to losses of hundreds of millions of pounds, according to the administrative body”.*

### **-The judgment erred in the interpretation and application of the law**

As noted above, the judgments in the YouTube closure case were based on the provisions of the Egyptian Telecommunications Regulatory Act and Article 19 of the ICCPR. However, the researcher finds that the court erred in interpreting and applying the above texts as follows:

The provisions of the Egyptian Telecommunications Regulatory Law did not include provisions that speak explicitly about the blocking of websites because, like most Egyptian legislations, they are characterized by lack of determinants and purposes. In addition, the basic annexes to the legislation do not include memoranda, discussions and preliminary drafts that enable the interested party to identify the motives of the legislator. All of this led to different estimates and interpretations of the legal texts, which often enabled the authorities to exploit the matter and to take actions that were subject to illegality. Other courts also relied on them to issue rulings expressing their conservative orientation.

The vision of the administrative courts of the provisions of the Telecommunications Regulatory Law was not always homogeneous, and there were always different visions regarding the provisions of Chapter Six, entitled “National Security and Public Mobilization”, especially articles 67 and 64, in view of the vague and interpretable wording of the said texts. The Court of Administrative Justice and the Supreme Administrative Court have adopted the establishment of their rules to compel NTRA authorities in this case to take action under the provisions of article 67, where the two courts held that the legal basis for the blocking was found in the text of this article.

*A close examination of the provisions of the Telecommunications Regulatory Law indicates that the provisions of the law do not contain the word “blocking” in any of its provisions. This is what the Administrative Court agreed with when it said in one of the lawsuits that called for the blocking of a site in*

*2006<sup>7</sup>: “In terms of reviewing the Egyptian legislation related to the regulation of telecommunications and information technology (including Presidential Decree No. 379 of 1999, Law No. 15 of 2004 regulating the electronic signature and the establishment of the Information Technology Industry Development Agency (ITIDA)), there is no specification neither of the cases that call for blocking nor of the competent authority therefore. Those laws also did not include texts that permit governmental bodies to decide on the block or ban websites in general or in Egypt in particular”.*

This was confirmed by the judgment by the Supreme administrative court in the You Tube case when it stated that: “The Egyptian legislation, including the Telecommunications Regulatory Law, did not specify the cases that require the blocking of websites.” However it added. “However, this does not violate the right of government agencies and the NTRA to do so when there is prejudice to the national security or the supreme interests of the state, including those organs of authority in the field of administrative control to protect public order in its three aspects, public security and public health and public tranquility of citizens under the supervision of the judiciary”.

With regard to the reliance on article 19, paragraph 2, of the International Covenant, the provision had been superficially used, ignoring the purpose behind it, nor had the Court acted in respect of the implementation of the second paragraph of the said text, which had been commented upon by the Human Rights Committee<sup>8</sup> concerning the application of Article 19, especially the second paragraph, which regulates restrictions on freedom of expression.

Paragraph 3 explicitly states that the exercise of the right to freedom of expression entails special duties and responsibilities. For this reason, two exclusive areas of restriction of

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Case no. 34781/58 J administrative court filed by Ahmed Haridy in his capacity as chair of the board of the .v  
 .web based EIMithaq El Arabi newspaper contesting the negative decision to block the site  
 Human Rights Committee, 102nd session, Geneva, 29 July 2011, General comment no. 34, article 19, .^  
 .AFTE, replacing comment no. 10 in the 19th session

the right are permitted, either in respect of the rights or reputations of others, or in the protection of national security, public order, public health or morals. However, when a State Party imposes restrictions on the exercise of freedom of expression, such restrictions may not jeopardize the right itself. The Committee points out that the relationship between right and limitation must not be reversed between rule and exception. The Committee also recalls the provisions of article 5, paragraph 1, of the Covenant, which states that “Nothing in this Covenant may be construed to imply that any State, group or person has the right to engage in any activity or to carry out any act aimed at the destruction of any of the rights or the freedoms recognized in the present Covenant or to impose restrictions on them which are broader than those provided for therein”.

Paragraph 3 provides for specific conditions and allows for the imposition of restrictions only if they are subject to these conditions: they must be “defined by the law” and imposed only for one of the reasons set forth in paragraph 3 (a) and (b), and be compatible with evaluations strictly related to necessity and proportionality (2). No restrictions may be imposed on grounds other than those specified in paragraph 3, even if these grounds justify the imposition of restrictions on other rights subject to the protection of the Covenant. Restrictions may only be applied for the purposes for which they were established and should relate directly to the specific purpose on which they were founded.

**The Committee has set specific conditions for the implementation of the restrictions contained in article 19, paragraph 3, of the International Covenant:**

- Restrictions must be defined by the text of the law “The need for a legal basis”. Since any restriction of freedom of expression constitutes a serious derogation of human rights, the establishment of restriction in traditional, religious or other customary laws is incompatible with the Covenant.

- For the purposes of paragraph 3, the rule to be considered “law” must be formulated with sufficient precision so that the individual can control his behavior accordingly and must be made available to the general public. The law may not confer upon the persons responsible for its implementation absolute discretion in restricting freedom of expression. The law should provide sufficient guidance to those who carry it out to enable them to properly check the types of expression that are subject to restriction and those that are not subject to such restriction.
- The laws restricting the rights contained in article 19, paragraph 2, including the laws referred to above, should not only be consistent with the strict requirements of article 19, paragraph 3, of the Covenant but must also be compatible with the provisions, objectives and purposes of the Covenant.
- The State party has a duty to establish the legal basis for any restrictions on freedom of expression.
- Restrictions should not be excessive. In its general comment No. 27, the Committee noted that “restrictive measures must be consistent with the principle of proportionality, must be appropriate for their protectionist function and must be the least intrusive means compared to other means that can achieve the desired result and must be proportionate to the interest which should be protected. The principle of proportionality must be respected, not only in the law that sets out the framework of limitations but also in its application by administrative and judicial authorities, and the principle of proportionality must also take account of the form of expression in question as well as the means of its dissemination. The covenant is exceptionally important for freedom of expression in cases of public debate, which in a democratic society involves figures present in the public and political spheres.
- When a State Party invokes a legitimate basis for restrictions on freedom of expression, it must demonstrate in a specific and well defined manner the specific nature of the threat and the need for and the appropriateness of the

specific action taken, in particular by establishing a direct and clear link between expression and threat.

The Committee followed up its report with a commentary related to the practice of restrictions on the Internet and social media, recommending that “No restrictions should be placed on the operation of websites, weblogs or other information dissemination systems through the Internet, electronic means or any other means, including support systems for such communication, as Internet service providers or search engines, only to the extent that they are compatible with the paragraph. Generally, the permitted restrictions should be content-specific. A general ban on the operation of certain sites and systems is incompatible with the second paragraph when it bans a website or systems from disseminating information of certain material for no more than criticizing the government or the social and political systems adopted by the government<sup>9</sup> .

In reviewing the contents of both the judgments of the Administrative Court and the Supreme Administrative Court concerning the block of YouTube, we find that both did not apply the rules of application of article 19, paragraph 2, of the International Covenant. The criteria require the availability of a legal text (national law) that gives the right to the administration to take the procedures of blocking, the absence of which was confirmed by the Supreme Administrative Court, which means the court has erred in invoking the text of the second paragraph of Article 19 and application of the text without the implementation of its controls.

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9. Item no. 43 of the report by the human rights committee in the above mentioned comment no. 34.

**-The ruling supported the legality of the communications cut-off during the January revolution**

The rule of blocking “YouTube” did not stem from mere facts related to a section of a video, about which people may differ in dealing with or addressing, but the court sought to erase all the effects of earlier provisions issued in the recent period related to the subject of communications. The judgments made in relation to the use of control or censorship of means of communication have been overruled. The ruling links various disconnected facts with no link other than the abuse by the authorities of the use of the articles and provisions of the Telecommunications Regulatory Act. The Court tried to emphasize this in various places, when it stated:

*“Without prejudice to this, the appellant said that the blocking of YouTube results in a loss of more than hundreds of millions of pounds. This is because the protection of Egyptian society from strife and unrest and the protection of its beliefs and religious convictions is more important than any other material consideration, especially when the Egyptian state felt that there could be a threat to national security - under other circumstances, did not hesitate to cut off communications and close the Internet with all its contents and stop the transmission of satellite channels, without caring about any material damage, as the security of citizens and the homeland is prioritized over any other consideration. It is the uppermost and most important priority for a modern state.”*

Notwithstanding the faulty logic underlying the ruling, the subject matter of the two lawsuits - that of cutting communication and that of blocking You Tube - are very different from each other. The cutting of communication was the result of a clear political will by the decision maker. in the You Tube case the court based its ruling entirely on the failure of the administration to block the site. The whole situation is very different and raises concern. Why does the court call upon the administrative body to take this course, and why take reference in the decision of the administrative

authority to cut off communications.

Some may find this unconnected and that the matter is a coincidence of no importance, but with some research we find that the department that issued the judgment of cutting YouTube is the same department that issued a ruling on March 24, 2018 annulling the ruling nullification the decision to disconnect communications during the January revolution. It was therefore logical that the court make a ruling in the YouTube case so as not to contradict its earlier decision and to perhaps emphasize its position on the role of the administrative authority in taking censorship actions, and perhaps to erase all the effects of the principles established by administrative courts in more than one incident in limiting the authority of the governing body to control communications.

One of the most important effects of the ruling is over ruling attempts by the Administrative Court of Justice to define the concept of national security during the consideration of the case of cutting communications during the events of January 2011. AT the time the court stated that the concept of national security:

*“Is neither vague nor loose nor subject to interpretation by the administrative authority. It is a clearly outlines concept of a precise meaning involving external threats, foremost military threats, based on the premise that securing state territory against foreign aggression and protection of its citizens against attempts of harming them and their property, beliefs and values, is the premise of loyalty granted by the people to the state in the social contract between them”*

The court went on to explain the different dimensions of the term national security. The court went on to say: “With the development of the concept of state capacity, the concept of national security expanded to the comprehensive capacity of the state to protect its values and interests from external and internal threats. That is why national security has political, economic, social, military, ideological and geographical dimensions.”

In explaining those dimensions the court concluded that:

*“In the light of the foregoing, the legality of the decision to cut off telecommunications services and Internet services only provides a case of prejudice to the concept of national security in the aforementioned sense. Since it is clear from the documents that the decision to cut communications and Internet services did not seek to achieve the internal or external political dimension of national security, nor the economic dimension which means the development and use of all resources of the state to achieve its political goals and the social dimension by targeting the protection of social justice and reduce the differences between classes and the development of services and the removal of social injustice .. The resolution also did not aim at protecting the military dimension of national security by responding to the needs of defense, security and regional prestige by building a military force capable of meeting the needs of strategic military balance and defense deterrence at the regional level to protect the state against external aggression.. Nor was the decision taken to protect the ideological dimension of national security to face any external or internal security threats.. thus the decision subject to the appeal, apparently concealed by requirements of national security, is void of relevance.”*

Since the rule of cutting communications is one of the rare provisions in which the judiciary addressed the attempt to define the concept and dimensions of national security. The Supreme Administrative Court had to redefine national security from a perspective through which the practice of blocking communication services could be understood. However, the court's ruling regarding the block of YouTube has overruled the effects of the rule against the cut of communication including its definition of national security, with little or no addition, without making any effort to critique the earlier definition reached by the Administrative Court.

### **-Administrative Court contradicts itself**

The YouTube closure judgment raises questions about how to execute the judgment, questions that have been raised repeatedly during the different stages of the proceedings. In 2013, following the ruling of the Administrative Court of Justice, the National Telecommunications Regulatory Authority (NTRA) filed a complaint against the ruling, making observations regarding how the judgment is to be applied. In its appeal to the Supreme Administrative Court it said:

*“The error in the application of the law is in the commission of technical matters impossible for NTRA to do as the site ruled to be blocked is registered outside the Arab Republic of Egypt and belongs to the United States of America, which alone can close it, wither upon its own will or upon an American court ruling using cyber clouds that distribute the content from several locations to ensure efficiency of delivery, so that the transmission continues even if some of those sites have been stopped either by failures or blocking, and therefore all the Egyptian government could do is to block the link of the offensive film inside the Arab Republic of Egypt, which was already done by NTRA.”*

It is strange that the court of administrative justice, which issued a judgment of the first degree, and which considered the appeal, was convinced of this argument, accepted the appeal and ordered the suspension of the judgment on 10 March 2013, and said in the terms of its ruling:

*“The closure of the site in the current circumstances experienced by the country may lead to civil strife and public anger and demonstrations, because of the suspicion of encroachment on the freedom of opinion, and that the site ruled to be blocked (YouTube), is registered outside Egypt, and belongs to the United States, which alone has the ability to be close it, either on its own or upon an American judicial ruling, and therefore the judgment cannot be*

*implemented outside the borders of Egypt, and what can be done is the block of the offensive film inside Egypt.*

However, all this does not mean that the rule cannot be implemented by blocking the YouTube site inside Egypt, but the disagreement here is related to the language. The term “closing the site” and not blocking it is illogical since NTRA replied that this cannot be implemented outside the Republic of Egypt. However, it is possible to block the site inside Egypt, which is confirmed by the publication by NTRA in early 2013 of a link to report the links that show the film. In addition there is the actual block of more than 500 websites since May 2017 to this day without giving clear reasons and without an official announcement by the Egyptian authorities.

## Conclusion

In light of the government’s persistent attempts to impose strict censorship on Internet users, especially social networking sites, whether through actual practices or through the introduction of new laws, the YouTube closure ruling issued by a high court has had a very bad effect, since it overrules all steps taken by the administrative judiciary since the endorsement of the Egyptian communication law to reduce attempts by the executive authority to impose censorship on the Internet, the most important of which is the blocking of websites and the blocking of applications and voice services. Also, this judgment, issued at the time when the new laws governing the blocking process are being discussed, gives a negative message that suggests the judiciary’s complicity with the legislative and executive branches in attempts to narrow the scope of freedom of expression. On the other hand, the ruling closed the cases before administrative courts so far, which relate to the practices taken by the Egyptian government to block websites and some applications and electronic services during the past two years.

The Supreme Administrative Judgment which we are discussing is one of the steps that paved the way for new laws that grant the judiciary and the executive authority the right to block websites. The ruling appealed to parliament and the Egyptian government to enact laws allowing for blocking. “In this regard the court appeals to the state and its House of Representatives to enact legislation prohibiting and criminalizing any broadcast, whatever its means, that would undermine the beliefs and religious constants of the Egyptian people in order to preserve social peace and unity of the national fabric.” A few days after the ruling, Egyptian parliament in June this year, approved the law of the press and media, which organized the blocking of sites and electronic pages, where the text of Article 19 of the law authorized the Supreme Media Council to take action, including: blocking sites, blogs or personal accounts. In the same period, Parliament passed the Law on Combating Information Technology Crimes, which regulates the practice of blocking, starting from the point of decision-making to its enforcement and appeal.