Criminal defamation restricts the freedom of press ... the example of Ibrahim Eissa
Criminal defamation restricts the freedom of press …
the example of Ibrahim Eissa

Prepared By Mostafa Shawki

Publisher:
Association o Freedom of
Thought and Expression

info@afteegypt.org
www.afteegypt.org

Cover Design: Amal Hamed
Internal Design: Amal Hamed
Did Eissa commit an offense punishable by law?  6

Should we regard what happened to Eissa as an individual case?  11

The parliament is among the enemies of the press  14
Cairo appellate prosecutor released journalist Ibrahim Eissa, editor of “Al Maqal” newspaper, after interrogating him in the legal complaint filed by the parliament speaker, Ali Abdel Al, accusing him of insulting the parliament and its speaker. This followed a discussion in the parliament plenary session, commenting on “Al Maqale”’s issue dated 28th of last February, which carried some phrases, on its front page, that were considered by the MPs as an insult to the parliament. The majority of MPs decided to commission the parliament speaker to take legal action against Ibrahim Eissa as the editor in chief of the newspaper. However, the prosecution only released Eissa after interrogating him in another legal complaint submitted by lawyer Samir Sabry, accusing him of publishing false news with the aim of inciting sectarian strife, because Eissa addressed the issue of the church building law in an episode of his television program. Eissa left the prosecution office after paying a bail of EGP 5,000 over each complaint.

This is not the first time the parliament discusses taking a stand against journalist Ibrahim Eissa. The parliament plenary session discussed in mid-December of last year what the MPs considered an insult and affront to the parliament by Eissa, after he discussed in his TV program church building law, and the proposal submitted by a number of MPs to amend the duration of the presidential term stated in the constitution. Speaker of the parliament, Ali Abdel Al, commented, “What Ibrahim Essa said in his program, would subject him to the penal code”. He added that what he said is considered “crimes which amount to incitement to violence, and this is not a misdemeanor but a felony.” MP Mustafa Bakri demanded the “General Investment Authority”, to take legal action against the program entitled “With Ibrahim Eissa”, which is broadcasted on the satellite channel “Al Kahera Wel Nas”. Eissa apologized, for stopping this program early this year, which was attributed by many observers to the size of pressure applied to the management of the channel to stop the program. However, he continued to express the same opinions courageously through the “Al Maqal” newspaper, which he is heading. This was what Eissa confirmed in the statement in which he explained to the audience that the program stoped.

“Audience reacted to my program with great interest, amazing interaction, renewed controversy, and widespread discussion, making the program’s episodes more influential than just a television
program. This put burdens on the program and subjected it to pressures. And although it contributed to the widening of minds, it upset some people”, Eissa said in the statement. “And with all the love for those who loved the program and those who disagreed with its presenter, with all the respect to those who valued the program, and with all the understanding to those who were angered by the program, I accept that this is the right moment to stop the program. As I think that the course of events and the necessities of time lead me to leave the television as medium of expression to another stage, and to another time that may come”, he added.
Did Eissa commit an offense punishable by law?

Public debate often evokes the issue of freedom of expression and the determinants of licit criticism. And every time the dispute wideness around what kind of words could cause the imprisonment of its writer, or make him/her subject to law. Eissa’s case is a model for this debate, not only in its relation to freedom of expression, but it originally collide with the freedom of press and media, and raises the question of what are the limitations that could hinder this right or impose restrictions that will make it void of content.

The constitution contains more than one article on the right to freedom of expression and the right to freedom of publication and the press, including articles (65,70,71). It stressed the inadmissibility of imprisonment for crimes committed through publication, especially those concerning freedom of expression. Nevertheless, the Egyptian penal code stated in its articles (184,185), modified on 30 June 1996 and 15 July 2007 respectively, that:

"Whoever affronts or insults in any of the forgoing methods, the people’s assembly, the Shura council, or other regular organizations, the Army, the tribunals, the Authorities, or public departments, shall be penalized with detention and a fine of not less than five thousand pounds and not exceeding ten thousand pounds, or either penalties."

And also, “A fine not less than ten thousand pounds and not exceeding 20 thousand pounds shall be inflicted on whoever insults a public official or a person holding a public representative quality or in charge of a public service, due to the performance of his position duties or public service or public representation tasks. This shall all be subject to applying the second clause of the Article 302, if a linkage is established between the insult and a crime of defamation committed by the same indicated person against the very person affected by the insult crime."

However, the constitutional court confronted this matter strongly to show society and those responsible for legislation and law enforcers what comes within the framework of permissible
criticism and what goes beyond the scope of this concept and makes a person subject to the law. An example of its position from this issue is its verdict in the case No. 37 of the year 11, constitutional court judgment.

In its ruling, the court stated that criticizing public work through the press or other means of and tools of expression is a guaranteed right for every citizen, and that the freedom to express and circulate opinions should be allowed, which prevents, any restraints or prior limitations on the publication of opinions. It is a freedom required by the democratic system. It is not intended merely for the critic to express himself, but its ultimate goal is to reach the truth by ensuring the flow of information from its diverse sources and across the various borders, and presenting it in open horizons where opinions may coincide in some respects, or collide in essence, so the light of truth is evident through this encounter.

The court did not stop here, as it ended its ruling by saying: “the exaggeration in some opinions should by no means entail hindering its circulation. The constitutional protection of the freedom of expression, and its ultimate goal in criticizing public officials, requires that everyone should have access to the facts related to public affairs and to the necessary information, and that they should not be prevented from it to avoid the suspicion of exposing reputations”. The court stressed “the right to flow of information and criticism of public figures by reviewing and evaluating their behavior, which is a right stemming from the vigilance of citizens concerned with public affairs”.

The constitutional court also established a very important principle and that “it is also true that the sever nature of the punishment imposed by the state on those who violate its system does not provide sufficient security to safeguard it, and that it is dangerous to impose restrictions that impede freedom of expression and prevent citizens from exercising it. The path to national safety lies in ensuring equal opportunities for open dialogue to confront forms of suffering -different in its dimensions- and determining the appropriate solutions stemming from the general will. Thus it was logical, and even inevitable, that the constitution sides with the freedom to debate in every matter related to public affairs, even if it includes a sharp criticism of those in charge of public work.”
However, we must not lose sight of the fact that the right to freedom of the press must be compatible—before anything—with all other rights and freedoms. The reconciliation or balance here between these rights or liberties does not mean derogating from any right to the account of the other, but rather to define a precise area for each of these rights. The protection guaranteed by the constitution to freedom of expression is limited if it loses its social value or if its practice is accompanied by dangers that threaten the freedoms of citizens for no legitimate reason.

Based on the above, the right to criticism is distinguished from the offenses of insult and defamation by an important criterion regarding whether the words used describe a specific event or incident or behavior taken by these entities, or does it refer to the persons who did these acts and harm their reputations. In this the Egyptian court of cassation states that the concept of criticism “is to express an opinion in a particular matter or act without prejudice to the person who did the act in order to defame him or to degrade his dignity. If the criticism exceeds this limit, it should be punished as an act of insult or defamation, according to the specific case. “

The supreme constitutional court has also emphasized that the constructive nature of criticism—which the constitution is keen to emphasize—requires that criticism should not be based on opinions that lack social value, or comment on an incorrect fact that is the result of hearsay, illusion or imagination, or only stems from personal grudges, or merely aims at the exposure of reputation. Constitutional protection also does not extend to opinions that promote unlawful acts with obvious risks to which a vital interest is exposed.

Here, the law gave the court a very wide scope to estimate the criminal intent and intention of the journalist. And despite all the limits that the constitutional court tried to establish to limit this discretionary scope of the “subject court”, this is no longer sufficient. Modern laws have embarked on a philosophy of writing detailed laws that minimize the potential space of the “subject court”. The United Nations Special rapporteur on freedom of opinion and expression called on states to clearly and formally abolish all criminal defamation laws in favor of civil defamation ones. He stressed that the criminal libel laws constitute an unjustifiable danger to the right to freedom of expression.
It is as if the court is well aware of the fact that those who seek hard to prevent and restrict do that in order to preserve their positions, they blindly defend authority regardless of its orientation as long as they are beneficiaries, so it says, “It is therefore not permissible to assume in every incident assigned to anyone in charge of a public position, that it is a false incident, or that there is an ill-intention. Also the opinions published regarding anyone who is in charge of a state position, should not be assessed separately from the public interest, and citizens should always be allowed to discuss these incidents and discover its reality”.

In conclusion, Eissa did not commit a mistake, but the parliament committed a crime in regards to the right to freedom of expression, and before that the right to freedom of the press. This is not the first time, and Ibrahim Eissa is only one of many who have been targeted by the fires of the parliament against anyone who criticizes it.

There is no greater proof of the parliament’s attitude towards the of freedom of press, than the fierce attack towards Al-Ahram organization and its chairman in the its plenary session on February 28, as the Parliament speaker, Aly Abdel Al said, “We are a generation that grew up on the writings of the giants of that national institution, which produced most of the newspapers in Egypt and abroad. And for some person to become chairman of board of this institution and be negligent in taking action against those who make mistakes, this is the major disaster”. This statement came in response to the crisis that broke out between the parliament and Al-Ahram over the dismissal of MP Mohammed Anwar Sadat.

The parliamentary attack on Al-Ahram evoked widespread anger in the press, especially among journalists and officials of Al-Ahram, including the chairman, Ahmed Al-Najjar who directed scathing criticism to the parliament speaker on Facebook. Abdel Hadi Allam, editor in chief of Al-Ahram newspaper, was also furious. Things were made worse by Abdel Al’s statement at the end of the plenary session, as he said: “there is a newspaper which distorts the image of the parliament, although the state is financing it”. “We are financing Al-Ahram, and it is distorting our image”, he added. However, Abdel Al rejected the proposal of MP Mustafa Bakri to sue Al-
Ahram Foundation and its chairman, saying, “the position of the parliament speaker is bigger than the trivialities and we should not pay attention to it. This council does not comply with some of the desires that some of the delinquents call for. This council purifies itself. There are no traders, nor thieves in it. It came through free and fair elections, and I am the head of this council, I came from Upper Egypt”.

However, Abdel Al's attitude was not the same when it came to prosecuting Ibrahim Eissa, who was attacked at the same session. The parliament decided after voting to ask the speaker to take legal action against Eissa.

This clearly reflects the extent to which the parliament accepts criticism in general, whether through a private or even national media. It points the fingers of accusation to the law of institutional organization of media, which was issued by the Parliament and was widely opposed by the press and media community.

Back to the supreme constitutional court, it pointed out that the constructive nature of criticism does not warrant the need to monitor every word in any publication, and to evaluate it -separate from its context- by strict standards, since what a person may see as right, may be wrong in the eyes of others. No doubt that the defenders of their views and beliefs often resort to exaggeration, and if freedom of expression is to breathe, some degree of transcendence must be tolerated.
Should we regard what happened to Eissa as an individual case?

The issue is not Ibrahim Eissa or any other, but it is related to those windows that the authority is trying to close in the public sphere and the increasing exclusion, marginalization, prevention and restriction of all opposition voices, specifically the attempt to domesticize all media platforms containing opinions that may not appeal to the state institutions. Thus, what happened with Eissa cannot be separated from the status of press and media freedom in Egypt. Last year witnessed the climax of tension between journalists and state institutions. On May 1st, 2016, a police force stormed into the journalists’ syndicate, for the first time since its inception in the early 1940s, and arrested journalists Amr Badr, editor in chief of Yanair electronic portal, and Mahmoud Al Sakka, journalist in the electronic portal. This sparked a major crisis between journalists and the state, which ended with referring Yahya Qalash, head of the syndicate, and two board members for an urgent trial on charges of harboring fugitives and spreading false news (regarding the incident of storming into the syndicate). The court sentenced them to two years in prison and EGP 10,000 bail for each defendant, to stop the execution, which is also the first time in the history of the syndicate.

Many commentators attributed the tension between journalists and state institutions, as well as the unrest and randomness of the press and media field, to the absence of legislations to regulate the press and media activities which were stipulated in the constitution of 2014.

Another round of tension between journalists and different state authorities started when the parliament passed the law on the institutional organization of the press and information. The parliament ignored the unified law of press and media, which was prepared by the committee of the 50 for the preparation of press and media legislation which was widely accepted by the press and media community. The committee worked for two consecutive years, and negotiated with the governments of Ibrahim Mahalb and Sharif Ismail. The unified law was expected to be discussed
and approved by the parliament. When this did not happen it caused widespread anger and discussions among press and media professionals. The goal of splitting the law into two different laws and tampering with the articles relating to the formation of bodies, was seen by some as aiming to restore the state's grip on the means of press and media expression and even the whole work of journalism instead of achieving the first and most important goal of establishing these bodies and that is to give them more freedom and independence in performing their roles.

In the same context, the Association for Freedom of Thought and Expression (AFTE) monitored at least 438 cases of violations of the freedom of the press and media and its workers in 2016 only. The executive authorities (security / government officials) had the lion's share of 226 violations, while the judicial authorities committed 69 violations.

Among the most prominent and most significant violations at the level of repressing various opinions was refraining from publishing the article of the Chairman of the Board of Directors of Al-Ahram, Ahmad Al Sayyid Al Najjar, in which he expressed his opinion concerning the issue of the maritime demarcation agreement with Saudi Arabia, according to which the islands of Tiran and Sanafir would be placed under Saudi sovereignty. Al-Ahram published an apology in its issues published on April 11 and 18, 2016 by Al-Najjar apologizing for not writing his weekly article. Al-Najjar surprised everyone by posting his article on his personal Facebook page under the title “Tiran and Sanafir and the rules of establishing the homelands and countries”. It may be rare, if not exceptional, that Al-Ahram would block an article by its chairman.

In his testimony to AFTE published on October 24, 2016, Dr. Osama Al Ghazali Harb said that what happened with him was one of the direct effects of nationalized journalism. And that there is no respectable democratic society where there is still “nationalized press”. He stressed that the state owned newspapers and magazines in Egypt are nationalized and that editors are appointed by the president and therefore believe that they should publish only what the president “likes” and forbid what he does not like. Al Ghazali also made it clear that those who want to continue writing
to Al-Ahram must distance themselves from sensitive issues.

This came after Al Ahram refrained from publishing his article “The Virtuous City” on Wednesday, October 12, 2016 by a decision of the editor of the newspaper Abdul Hadi Allam. This was not the first banned article for Al Ghazali. His article entitled “No to Bashir” was banned on May 1. In it he discussed Egypt's relationship with the regime of Sudanese president Bashir and stressed that the Egyptian authorities should reconsider their relations with the Bashir regime and limit them. This is what prompted Al Ghazali to state in his testimony that “there is today clear control over the freedom of expression and freedom of the press and media in Egypt.” Al Ghazali completed 40 years in Al-Ahram with the beginning of 2017, during which he was the editor of the International Politics magazine for 20 consecutive years. He also presided over the Al-Ahram Center for Political and Strategic Studies.
The parliament is among the enemies of the press

Since the first moments of its first session, the parliament showed a very conservative reaction towards the media and the press in general. This was revealed after his categorical refusal to broadcast its meetings openly to the public on television, despite the provisions of the constitution in its articles (120, 68) which stipulate the principle of the publicity of parliamentary sessions. The constitution also confirmed that the information, data and official documents belong to the people, which prompted AFTE to file a lawsuit in the administrative court, against the president and the minister of legal and parliamentary affairs and the secretary general of the House of Representatives. AFTE demanded that the House of Representatives be required to broadcast the plenary sessions of the Egyptian parliament and establish a specialized website on the internet to publish and archive parliamentary sessions on a regular basis, in order to make them accessible.

In the same context, the parliament witnessed several incidents in which the rights of journalists and photographers to perform their work within the Parliament were violated. In one incident MP Mahmoud Khamis, attacked Ali Mohamed Tariq, a journalist in Al Watan newspaper while he was trying to get a statement from MP Tawfiq Okasha after he was expelled from the session.

Among these incidents also what happened on Sunday, January 17, 2016, when 12 journalists were prevented from entering the parliament on the grounds that they are not registered in the syndicate. The head of the syndicate assured the parliament speaker that they are members so they were allowed in the next day.

In his testimony to journalists against torture observatory, a photographer in Al Youm El Sabe newspaper said that parliament speaker Ali Abdel Al held the microphone before the beginning of the plenary session on Sunday, August 28, 2016 and said “photographers are forbidden from attending the plenary sessions permanently”, and ordered the evacuation of the hall from
photographers with the exception of the photographers of the general secretariat of the council, and allowed the parliamentary reporters to attend the sessions without taking any photographs. The reason behind this decision was a photo for Abdel Al sending a “kiss” to the MPs humorously. The photo was captured by Al Youm El Sabe photographer, and was circulated on social media mockingly, which made Abdel Al angry so he took the decision to prevent photographers

All these violations and many others have made the parliament among the list of enemies of the press. This is why we are well aware that the real threat is not the imprisonment of Ibrahim Eissa or the head of the syndicate of journalists, but rather the growing desire to muzzle the mouths, control the public domain and suppress press freedom. This is the issue that needs serious attention from the press community and all the believers in freedom of the press.

In conclusion, it should be noted that with every new violation of the right to freedom of press, sounds are louder, either resentful, or supportive of this violation, and the visions vary according to the positions of the person or institution violated. The civil space has not yet succeeded in formulating general principles to determine our position on all such violations, regardless of political or ideological differences with the person or institution whose rights have been violated.

The defense of the freedom of opinion and expression as a general umbrella and at the heart of which the freedom of press and media work entrusted with transmitting the truth and disseminating information to the public must remain a general principle in the eyes of all those interested in the public domain in Egypt. Any derogation from this right with prevention or restriction is a loss of democratic gains that should be addressed by all, regardless of the positions of the persons or entities violated. The real face of democracy is tested when it comes to whom we disagree with in attitudes and ideas.