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المجموعة المتحدة للقانون، المحامي بالنقض نجاد البرعي  
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**The Foreign Funding Case  
A legal position paper**

**A Reading in the Judgment of Cairo Criminal Court, the 15<sup>th</sup> Circuit of South  
Cairo, in the Felony no. 11120 for 2012 (*Kasr El-Nil* Department) and no. 10 for  
2012 (Middle Cairo Prosecution)**

**Known as the Case of Foreign Funding to Foreign NGOs**

**Legal Papers Series (10)**



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## **Preface:**

On Thursday, the 20<sup>th</sup> of December 2018, the 15<sup>th</sup> Circuit of Cairo Criminal Court, headed by Justice Mohamed Ali Mustapha Al-Fiqie and composed of Justices Mohamed Yehya Rashdan and Ossama Youssef Abo Sh'iesha', issued a ruling acquitting 41 defendants all of whom are workers of the Republican Institute for International Affairs, the National Democratic Institute, Freedom House Foundation, International Center for Journalists, and Konrad Adenauer Foundation of the charges of establishing and managing organizations of international nature without authorization, and of receiving and accepting money and benefits from institutions and organizations outside the Arab Republic of Egypt in a way that disrupts the sovereignty of the Egyptian state as direct result of their activities and the unlawful foreign funding they receive for practicing these activities in Egypt.

The judgment included a number of important legal principles which may not only help international or national organizations willing to work in the field of the development of the conditions of human rights and democracy in general, but also provide important assurances for workers in international and national organizations and institutions regardless of its legal nature. Although these principles are already established in the law, the government refuses – probably until now - to abide by them, and tries to ignore or escape them.

This judgment, and the principles it included, reaffirm that international cooperation for fostering democracy and human rights - in any form including financial forms - is important and necessary. It also affirms that international treaties signed by Egypt may be relied on in national courts and in their decisions, and that government may not benefit from its failure to answer those who seek authorization to establish organization, institutions, or other organizations.

The judgment we read and present its important principles here is written in 40 pages and constitutes important support to the work of civil society in Egypt.

## **First: Commentary on Facts and the Opinion of the Court in the Proofs**

The judgment reached a number of conclusions regarding the main proof evidence.

### **1. All proofs are Worthless, Threaten Democracy, and Contradict International Instruments Signed by Egypt.**

The judgment clearly states that “all the accusations that were stated by witnesses against the defendants and the organizations they work in (Accusations included the statements of Ambassador Fayza Abou Al-Naga and National Security and Intelligence officers, as well as the inquiries of National Security Apparatus, the Anti-Embezzlement



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and Damage to Public Money Department, the Administrative Control Authority, and the Intelligence, and the report of the Fact Finding Commission) were refuted by the Court which refused to rely on them because they are contradictory with the principles of democracy, and contravene the Egyptian state's commitment to international treaties and instruments that it ratified. Following ratification and publication in the Official Gazette, these instruments acquired the force of law. The judgment simply considered that inquiries of control agencies and statements of the officials of the Ministry of Foreign Affairs regarding the work of accused organizations disrespect rule of law, threaten the sovereignty of the state, and lead to instability are worthless talk. In fact, their statements and testimonies threaten democracy and disrespect international instruments that Egypt signed. <sup>1</sup>

## **2. Charges against the Workers in Non-Governmental Organizations are Unjust and Motivated by their Refusal to Stand in the Long Queues of Hypocrites.**

The judgment clearly stated that the reason workers in non-governmental organizations were accused of these unjust accusations is that they refused to join the government's ranks, or stand in long queues of hypocrites as it said: "Whereas it is established from the judgments of the Court of Cassation that the trial of the defendant is merely a message to all workers in civil and popular organizations who were besieged and confronted by the additional law that regulates the work of civil associations – a law that they strictly reject as it is contradictory to freedoms and nullified by the Supreme Constitutional Court.government's join the have toThis message tells them that they <sup>2</sup> ranks, obey its orders, and stand in the long queues of hypocrites, and swear that this government is democratic in order not to defame its reputation (which is necessarily

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1 The judgment exactly stated the following: "Whereas what is established in the jurisprudence of the Supreme Constitutional Court that the 'presumption of innocence' is essential to individuals and may not be taken from them either in the pre-trial stage, or during trial and all its stages. This entails that it is prohibited to refute the presumption of innocence without definite evidence to concretely prove the charges. This is not affected by the statements of the rest of witnesses in investigations, and the outcomes of the inquiries of the National Security Sector, the Anti-Embezzlement and Damage to Public Money Department, the Administrative Control Authority, and the reports of the Fact Finding Commission and the Egyptian General Intelligence Agency, as well as the statements of different agencies, and the results of the Public Prosecution's Inspection of some of the premises of the organizations that are the subject of the case papers. The Court rejects the above-mentioned evidences because they are not consistent with the principles of democracy and the Egyptian state's commitment to international instruments and treaties it ratified which acquired the force of law after being published in the legally prescribed manner." The Judgment, page 39.

2 The law referred to here is Law no. 153 for 1999 regarding Civil Associations which was ruled unconstitutional.



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their own reputation as well), and that they may not say that there was fraud in elections, political activity is restricted, or the resources of the country are stolen and exploited!”<sup>3</sup>

### **3. Foreign Funding is the Basis for all Non-Governmental, Governmental or Quasi-Governmental Activity, and It Is Essential to the Rise of Egypt.**

The ruling exactly said that “There is almost no non-governmental, governmental or quasi-governmental activity in any field that is not funded by foreign aids and grants. Sometimes, there are deviations or clashes between these activities and official directions so that these activities are not consistent with the expectations and compromises wanted by the state. In such case, storms erupt destroying many rights and duties, and the state resorts to repressive measures that prove – every single time– more harmful to the reputation of Egypt than any objectionable intellectual position, wrong stance or intervention from a foreign party. Amid incitement campaigns, a lot of nonsense is reiterated about secrets and reports sold to foreign entities. However, it is well known that informational and commutation revolution, and state’s attitudes regarding everything including economic and banking conditions, Islamist activities and movements, and positions and stances of political parties are not secrets that are worthy of being sold and bought. Everything is published online. Aids and agreements given to Egypt don’t come from void.”<sup>4</sup>

### **4. Foreign Funding is not an Act of Spying or Trafficking. Using these Words to Describe It Aims at Inciting the Public Opinion against the Defendants. The Foreign Support Received by NGOs registered in Egypt during the Three Years Preceding the Judgment is Incomparable to the Foreign Support Received by the government in One Project.**

The judgment stated that “the Egyptian state and its different apparatuses and institutions receive different forms of foreign funding from various countries, the last of which is receiving a grant from the USA regarding the improvement of health conditions of target group issued by a Decision of the President of the Arab Republic of Egypt no. 174 for 2018, which was published in the Official Gazette on 18/10/2018, amounting to a total of thirty five million USD via the USAID. Moreover, the Minister of Social Solidarity stated in newspapers on 13/9/2018 that foreign grants to civil associations reached in less than three years the amount of three billion and ninety

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3 The Judgment, Page 38.

4 The Judgment, Page 38.



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million EGP, and that the number of associations reached fifty five thousand associations, institutions, and branches of different kinds.”<sup>5</sup>

## **Second: Legal Principles Established by the Judgment**

The judgment established a number of important legal principles as follows:

### **The First Principle:**

**The government may not benefit from its failure to reply to those who request the establishment of organizations and associations in the time prescribed by law. If it refrains from doing so, the association or organization, whether it is foreign or international, is considered registered pursuant to the law.**

The Court considered that the expiration of 60 days from the date on which the accused international organizations submitted their registration requests to the Ministry of Foreign Affairs (the entity specified by Law no. 84 for 2002 to receive registration requests from international organizations) is sufficient to consider them registered by force of law based on the provisions of article 6 of Law no. 84 for 2002, which stipulate that “the administrative authority is obliged to register the summary of the internal constitution of the association in the special registry for this purpose within 60 days of the date on which the representative of the founders of the association submits the registration request accompanied by the documents mentioned in article five of this Law. If sixty days passed without doing this, the registration is deemed effective by force of law.” The Court considered that the mere submission of request without

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<sup>5</sup> The judgment exactly said: “Thus, and based on the above and on what was stated by the witnesses and approved by most dependents, foreign funding is not a legally criminalized act as it comes from financial aids from foreign entities like the USAID. So, labeling the present case by this name makes good and desirable international fund for fostering relations among peoples and nations an act comparable to spying or trafficking or any other labels that are usually used to incite the public opinion and mobilize it against the defendants. The Egyptian state and its different institutions and apparatuses receive different forms of foreign funding from various countries, the last of which is an agreement to receive a grant from the USA for the improvement of health conditions for the target group issued by Decision of the President of the Arab Republic of Egypt no. 174 for 2018, which was published in the Official Gazette issue no. 42 on 18/10/2018 with a total amount of 35 million USD via the USAID, and the Ministry of International Cooperation is responsible for the supervision of this agreement. Moreover, the Minister of Social Solidarity stated in newspapers on 13/9/2018 that foreign grants for civil associations in less than three years amounted to three billion and ninety million EGP, and that the number of civil associations and institutions in Egypt exceeded 55,000 associations, institutions and branches of the different types.” *See* the Judgment, Page 39.



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objection and the passing of the statutory period make the organization registered by force of law. So, those responsible for it may not be charged with the establishment and management of organizations that are not authorized in Egypt.”<sup>6</sup>

### **The Second Principle**

**The fact that official governmental bodies dealt with the association or the organization bestows legality on their work as public existence without any objection means that the state approved their work.** The judgment considered that the High Electoral Commission’s allowance to some of the defendants, in their capacity as workers in these organizations, to observe the parliamentary elections in 2011 is a proof of their legality and the lawfulness of their work.<sup>7</sup>

<sup>6</sup> The Judgment stated that “based on the above, and by applying article six of the above mentioned Associations Law on the facts of the case, it is evident from the documents submitted by the representatives of the defendants that the International Republican Institute has previously submitted a request to the NGOs Sector in the Ministry of Foreign Affairs to register the Institute. Likewise, the Freedom House Foundation submitted a request to the Deputy Assistant Minister of Foreign Affairs for the Affairs of NGOs to agree on establishing a branch of the organization in Egypt, and a letter was addressed to the organization from the Deputy Assistant Minister of Foreign Affairs stating the approval of the Minister to the organization’s request according to the terms and conditions mentioned therein, which were approved by the organization in another letter. Thus, based on the submission of these requests and lack of objection on the Part of the Ministry of Foreign Affairs within sixty days of the date of the submission of the request, , the establishment and management of these organization is deemed approved pursuant to the law. Moreover, the Ministry of Foreign Affairs had already positively replied to the request of Freedom House pursuant to the stated terms and conditions, and the said organization agreed to all the terms and conditions mentioned in the approval letter. Moreover, the witness, Marawan Zaky Badr, stated in the investigations that many of these organizations applied to the Ministry of Foreign Affairs to sign a standard agreement but he does not know how this ended, and that this is within the sole competence of the Ministry of Foreign Affairs. He also stated that according to his personal information most of these organizations did not receive replies to these requests. Moreover, the witness, Ossama Abdel-Moniem Shaltout stated in the investigations that in 2015 the two organizations (the Democratic Institute and the Republican Institute) submitted requests to establish their branches in Egypt, then the Freedom House submitted the request to establish their branch in Egypt. This shows that there is no crime of establishing and managing organizations of international nature without authorization from the Egyptian government as shown in the papers.” See the Judgment, page 37.

<sup>7</sup> The judgment exactly stated that “what is evident from the above and from the statements of the above-mentioned witnesses is that the Egyptian Ministry of Foreign Affairs was completely aware of the activities of the International Republican Institute since the date of application in 2006 and did not object for five years. This also applies to other organizations that submitted requests for such authorization. Moreover, the approval of the Ministry of Foreign Affairs of the request submitted by Freedom House, as well as the above-mentioned Egyptian German Protocol, constitute an explicit approval on the part of the Egyptian government to the work of the above mentioned German organizations, in light of the terms and conditions



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### The Third Principle

**Money received by workers in organizations or associations – even those that are not registered - are salaries for their work, which they spend on their livelihood or on lawful programs like the management of electoral campaigns. So, this makes them active actors rather than contributors to crimes of receiving foreign money.** <sup>8</sup>

### Concluding Remarks:

1. This judgment, along with the judgment acquitting Dr. Saad *Eddin* Ibrahim and workers in Ibn Khaldun Center for Developmental Studies by the Court of Cassation in appeal no. 39725 for the 72<sup>nd</sup> judicial year, and the judgment acquitting Aya Hegazy and seven other defendants on the 6<sup>th</sup> of April 2017 from the charges of human trafficking and establishment of an association contrarily to the provisions of the law, constitute a judicial rebuttal to all the accusations against civil society and people working in it by consecutive government and their supporters in the media.
2. Justice Mohamed Ali Mustapha Al-Fiqie is the president of the circuit of the Court that previously issued the acquittal judgment in the case of Aya Hegazy, and later in the foreign organizations case we are discussing here. The Court of Cassation headed by its President Justice Fathy Khalifa is the one that issued the judgment acquitting Dr. Saad Eddin Ibrahim and workers in Ibn Khaldun Center for Developmental Studies.
3. The three acquittal judgments required further and in-depth investigations in order to determine who fabricated allegations, incited the media against innocent people, and exhaust them in prolonged investigations and false accusations. However, this did not happen. Defendants were merely acquitted, and went out of a vicious circle in which they were put for a long time, and no one is interested in the state or in the judiciary to

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mentioned in the Protocol signed between Egypt and Germany. Moreover, the High Electoral Commission allowed some of the defendants, in their capacity as workers in these organizations, to observe the parliamentary elections in 2011, according to what is evident from the copy of the letter of the Ministry of Foreign Affairs to the High Electoral Commission regarding the authorization of the International Republican Institute to observe the parliamentary elections of 2011-2012, and copies of a number of cards issued for some of the defendants authorizing them to observe elections which are attached to the papers.”  
*See* the Judgment, page 37.

- 8 The Judgment exactly said: “Money received by the defendants are monthly salaries they receive for their employment in these organizations so that they and their families live, and it is also spent on programs conducted for political parties on how to conduct electoral campaigns, monitor elections, and raise the awareness of voters of the electoral process according to the statements of defendants in the investigations.”  
The Judgment, page 39.



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study what is said in the reasoning of these judgments. For example, Mr. Khaled Fayad, one of the defendants in Ibn Khaldun case, clearly accused the Deputy Prosecutor General who interrogated him, as well as the police officers and a lawyer brought by those officers of inciting him to testify against Dr. Saad Eddin Ibrahim and promising him that he will be considered a witness in the case. He also said that the Deputy Prosecutor General who interrogated him wrote all the statements by himself and made him sign them. However, no investigation has been carried out in these grave allegations. The Court merely omitted the statements he withdrew, but it registered his statements against the police officers and the interrogator.

Moreover, the United Group submitted complaints to the Supreme Judicial Council, headed then by Justice Hossam El-Gheriany, against the two investigative judges, Ashraf El-Ashmawi and Sameh Abou Zaied, for holding a press conference in which they accused workers in these institutions of wanting to divide Egypt. In this press conference, the two judges used maps designed for observation of elections to convince the public that these are the maps of division of Egypt, and they stated accusations to the defendants that were not written in the indictment they wrote. However, the complaint was neglected. Moreover, the United Group filed a report to the Public Prosecutor against the Minister of International Cooperation, Fayza Abou Alnaga; the Minister of Social Solidarity, Gouda Abdel-Khalek; and the Minister of Justice, Mohamed Al-Gendy in which it stated that the statements they make against the defendants in the Foreign Organizations Case constitute an unlawful pressure on the judiciary. No investigation was conducted in this report, but it was included in the case file.