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Egypt: Sustained attacks against judges must stop

The ICJ today called on the Egyptian authorities to put an immediate end to their campaign to muzzle judges through unfair and arbitrary “unfitness” proceedings.

The Disciplinary Board, in hearings that tried dozens of judges at the same time, declared a total of 41 judges “unfit” for judicial office in 2015, forcing them into retirement.

The Supreme Disciplinary Board is currently reviewing these two cases.

The ICJ is concerned that many of the judges that have been subjected to these proceedings are leading advocates for judicial independence in Egypt and that the proceedings before both the Disciplinary Board and the Supreme Disciplinary Board were not fair.

Further, the cases stem from the judges' exercise of freedom of association, belief, assembly and expression, and it appears that the Disciplinary Boards did not act in accordance with relevant international standards in this regard.

“Ending judges’ tenure following mass proceedings that are both arbitrary and unfair is inconsistent with Egypt’s obligations under international law,” said Said Benarbia, Director of the ICJ Middle East and North Africa Programme.

“With these assaults on individual judges, the Egyptian authorities are ensuring that their ongoing, sustained crackdown on fundamental rights and freedoms is extended to the very institution that is supposed to protect such rights and freedoms- the judiciary,” he added.

In the “July 2013 Statement Case”, 56 judges were subjected to disciplinary proceedings, following the Military seizure of power in July 2013, for endorsing a statement that called for the 2012 Constitution to be restored, for a dialogue between all stakeholders to be established within the framework of constitutional legitimacy, and for the right to peaceful demonstration to be respected.

The ICJ considers the statement to have been made consistent with the judges' right to freedom of expression and association, exercised in a manner that preserved the dignity of their office and the impartiality and independence of the judiciary.

However, on 14 March 2015, the Disciplinary Board found that 31 of the 56 judges were not fit to hold judicial office and in effect removed them from office by forcing them into retirement.

The Board found there was not sufficient evidence that the other 25 judges had in fact endorsed the statement.

The ICJ is concerned that the procedures and hearings before the Disciplinary Board and the Supreme Disciplinary Board have not satisfied international standards of fairness.

In many instances, judges were not adequately notified of the dates of the hearings or of the courtrooms where such hearings took place.

In Egypt, judges facing disciplinary hearings are entitled to have another judge represent them; however, many of the judges were not permitted by Board officials to bring their representative to the hearings, without any reason being given for barring the representative, or because no representative could be secured as a result of fear of reprisals.

Further, many judges were not provided with adequate time and facilities to prepare their defense.

In the another case, the "Judges for Egypt Case", each judge had limited time to make his case before the Board during the hearings, though they were granted the right to submit at the final hearing written pleadings of no more than two pages .

At the final hearing in the case, while the judges waited all day in the Board's premises, the hearing was held in the absence of all but one of them.

Furthermore, the Board refused to collect the written pleadings without giving any reasons.

On 22 February 2016, after protesting against the adjournment of his hearing, Judge Amir Awad was arrested and placed under detention for four days by the office of the prosecutor.

He is charged with insulting a public employee and forcibly entering his office.

"Both cases have been tainted by failures to ensure the fairness of the proceedings. The Egyptian authorities must nullify all decisions to remove judges resulting from these proceedings and put an immediate end to all forms of intimidation against and persecution of judges," Benarbia added.

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Background:

International standards such as the UN Basic Principles on the Independence of the Judiciary provide that judges, like other individuals, are entitled to freedom of expression, belief, association and assembly, to be exercised in a manner that preserves the dignity of their office and the impartiality and independence of the judiciary. Judges should be subject to suspension or removal only for reasons of incapacity or behaviour that renders them unfit to discharge their duties, and all disciplinary, suspension or removal proceedings should be determined in accordance with established standards of judicial conduct. A charge or complaint made against a judge in his or her judicial and professional capacity should be processed expeditiously and fairly under an appropriate procedure, and the judge has the right to a fair hearing.

The "July 2013 statement case" relates to a statement reportedly endorsed by 75 judges and read out on 24 July 2013 in Rabaa Square, Cairo, following the ouster of President Morsi.

The statement noted the removal of Egypt's elected President, the suspension of the Constitution, the dissolution of the elected parliament, the closure of media outlets without judicial decisions and the thousands of deaths and injuries to individuals. The statement also reaffirmed the role of the judges in upholding and protecting "citizens' rights and freedoms" from every infringement and declared that the judges endorsing the statement:

- are not involved in politics and do not support any particular side;
- reject the destruction of the democratic gains since the revolution of 2011 including the election of a President and adoption of a Constitution by fair and transparent popular vote;
- call for the reinstatement of the Constitution;
- call on the State and all political factions and parties to engage in a dialogue within the framework of constitutional legitimacy; and
- call for respect of the right to peaceful demonstration while rejecting violence in all its forms.