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Egypt: Disciplinary action against judges a challenge to judicial independence

Amnesty International is greatly concerned about the independence of the judiciary in Egypt as disciplinary action is being taken against two senior judges on account of their criticism of alleged fraud and other irregularities during the country's recent parliamentary elections. As many as eight other judges will reportedly be facing disciplinary action on similar grounds.

Mahmoud Mekki and Hisham Bastawisi, vice-presidents at the Court of Cassation, stood before a disciplinary board in the High Court Building (*Dar al-Qadaa al-'Ali*) in Cairo on 27 April 2006 on account of their outspoken criticism of the irregularities that marred parliamentary elections in November and December last year and their pressing for an inquiry into alleged electoral fraud where a number of judges close to the government are said to have been complicit. The hearing was postponed until 11 May in order to allow the defence team representing the two judges to examine the case files.

The disciplinary action against Mahmoud Mekki and Hisham Bastawisi represents a serious challenge to judicial independence in Egypt at a time when there is growing tension between the authorities and the Judges Association about a new draft law on the role and the authority of the judiciary. Amnesty International fears that such an action is linked to their strong vocal stance calling for more independence of the judiciary and condemning the lack of transparency by the authorities concerning the draft law.

Amnesty International regrets that Mahmoud Mekki and Hisham Bastawisi are being disciplined for fulfilling their professional duties with integrity and reporting on electoral fraud as well as for exercising their fundamental right to freedom of expression. In addition, some of the members of the disciplinary board have publicly condemned statements made by the two judges, adding to concerns that they may not receive an impartial hearing.

International standards related to safeguarding the independence of the judiciary and to fairness of proceedings, including disciplinary proceedings against judges, underscore that all disciplinary proceedings shall be fair and determined in accordance with established standards of independence and impartiality. Furthermore, judges, like other citizens, are entitled to exercise their right to freedom of expression, afforded to them in the Egyptian Constitution and the international human right treaties to which Egypt is a state party.

Amnesty International considers that taking disciplinary action against Mahmoud Mekki and Hisham Bastawisi, or intimidating other judges for fulfilling their duties or for freely expressing their views, would violate the Egyptian Constitution and international standards. It would also be inconsistent with the Egyptian authorities' duty to ensure the independence of the judiciary. The authorities should initiate a transparent consultative process to review the law on judicial authority. Amnesty International is also urging the

authorities to release all those who were arrested merely because of peacefully demonstrating in support of the judges and to investigate police abuses.

Based on Amnesty International's concerns about continuing threats to the independence of the judiciary in Egypt, the organization calls on the Egyptian authorities to extend immediately an invitation to the UN Special Rapporteur on the Independence of the Judges and Lawyers to visit Egypt.

Background

Many judges demonstrating against the referral of Mahmoud Mekki and Hisham Bastawisi before the disciplinary board were confronted by heavy police security, obstructing their march from the Judges Association building to the High Court and sealing off the whole area. Security officers also hit with sticks a number of people who turned out to support the judges, preventing them from approaching the Judges' Association building and at least 50 people, including political activists, were arrested.

Eight other judges will reportedly be facing disciplinary action for having publicly criticized voting irregularities during parliamentary elections. They include Muhammed al-Khidhiri, Ahmed Mekki, Yahya Galal, Ahmed Saber, Hisham Ginina, Issam Abdelgabbar, Naggi Derbala, and Hossam al-Ghiryani.

Mahmoud Mekki and Hisham Bastawisi had their judicial immunity lifted on 15 April 2006. They are both members of the Judges' Association, a professional association that represents thousands of judges across the country. The Association refused to sanction the results in a number of voting stations following the vote-rigging reported by more than 100 judges. Under the Egyptian Constitution, judges are vested with the power to supervise elections and endorse its results.

Many members of the Judges' Association have been very vocal about the lack of transparency with which the Egyptian authorities have been handling amendments to the draft law on judicial authority. The draft law was originally submitted by the Judges'

Association in a move to guarantee the independence of the judiciary. It sought to increase the number of elected seats in the Supreme Judiciary Council (the body that oversees the nomination, appointment, placement and promotion of judges) and to allow the election of the head of the Court of Cassation, who will also serve as head of the Council. The composition of the Supreme Judicial Council is currently decided by the Ministry of Justice.