The Court of Cassation Upholds the Prohibition of Arbitrary Interference in the UDHR

Mohamed Emad
Human rights | Nov 12, 2003

Appeal No. 30508 of Judicial Year 72

Court of Cassation

Judgment of 12 November 2003

On 12 November 2003, the Court of Cassation upheld the prohibition of arbitrary interference with a person’s privacy, family, home, or correspondence, as enshrined in Article 12 of the Universal Declaration of Human Rights (UDHR). The Court affirmed this principle in the context of reviewing a criminal case concerning drug possession.

On 1 October 1998, a police officer stopped the defendant at a traffic checkpoint and asked for his driver's license and vehicle registration. The suspect smelled strongly of alcohol and was unable to respond. He attempted to flee, but the officer pursued him and asked again for his driver's license and vehicle registration. When it was discovered that the defendant did not have the requested documents, the officer apprehended him, searched him and his car, and found a quantity of narcotic substance “hashish”. The officer then took him to the police station, where a medical examination revealed that he was under the influence of alcohol.

In October 1998, the Public Prosecution accused the defendant of acquiring and possessing, with intent to traffic, a quantity of narcotic substance (hashish) in circumstances other than those authorized by law. The defendant was referred to the Giza Criminal Court for trial.

On 16 May 2002, the Giza Criminal Court convicted the defendant of acquiring and possessing, without the intent to traffic, (hashish) and sentenced him to three years of hard labor, imposed a fine of fifty thousand Egyptian pounds, and ordered the confiscation of the seized drugs.

On 25 May 2002, the defendant lodged an appeal before the Court of Cassation arguing, *inter alia*, that the aforementioned judgment had erred in law. He contended that the officer’s actions were arbitrary and in violation of Article 66 of Law No. 66 of 1973 (Traffic Law) and **Article 12 of the Universal Declaration of Human Rights (1948).**

The Court of Cassation accepted this plea, stating that:

Whereas the Universal Declaration of Human Rights (1948) provides in Article 12 that: "No one shall be subjected to arbitrary interference with his privacy, family, home, or correspondence, nor to attacks upon his honor and reputation," and that everyone has the right to the protection of the law against such interference"

Whereas Article 41 of the Constitution of the Arab Republic of Egypt provides that: "Personal freedom is a natural right and is inviolable"

Whereas caution must be exercised in interpreting criminal laws, and precision in their interpretation is essential; where the wording of the law is clear, it may not be departed from by way of interpretation or construction; thus, there is no scope for judicial discretion in the face of an express provision; and whereas it is established that, in interpreting legal rules, recourse to general laws cannot be made when specific provisions regulate the matter, as specific laws restrict general laws, constitute exceptions thereto, and provide the framework for their interpretation.;

Whereas Article 66 of Law No. 66 of 1973 (Traffic Law) specifically regulates the procedures applicable in cases of suspected driving under the influence of alcohol, granting the driver the choice either to accompany the police for a medical examination or to refuse, in which case his license shall be withdrawn; it is therefore impermissible to arrest him or compel him, upon such refusal, to undergo that procedure.

Whereas the appellant stated, as attested by the police officer, that he refused to accompany the officer, which pursuant, to Article 66 of the Traffic law, required the officer to draw up a report of the incident to initiate the procedures for the administrative withdrawal of the driving license.

Accordingly, the arrest and search of the appellant are invalid due to the lack of a legal basis and thus constitute an arbitrary act.

Printed from EGYPIL.com