



Inter-Parliamentary Union

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Egypt

Decision adopted unanimously by the IPU Governing Council at its 213th session (Geneva, 27 March 2024)



Mostafa al-Nagar © Photo courtesy/Belady - An Island for Humanity, US

EGY-07 – Mostafa al-Nagar

Alleged human rights violations

- ✓ Enforced disappearance
- ✓ Threats, acts of intimidation
- ✓ Violation of freedom of opinion and expression
- ✓ Failure to respect parliamentary immunity
- ✓ Impunity

A. Summary of the case

Mr. Mostafa al-Nagar allegedly disappeared in the southern governorate of Aswan on 27 September 2018. His family and lawyers have been unable to contact him or obtain information on his whereabouts. They fear that he might have been arbitrarily arrested and held incommunicado.

The complainants allege that Mr. al-Nagar was a symbol of the 2011 revolution and a vocal critic of the Egyptian Government during his parliamentary term, which lasted from 23 January to 14 June 2012, when the Egyptian Parliament was dissolved in accordance with a ruling by the Supreme Constitutional Court. In December 2017, he was fined and sentenced to three years in prison for "insulting the judiciary" in a speech he reportedly delivered during a parliamentary sitting in 2012. In its ruling of 30 December 2017, the Cairo Criminal Court found that Mr. al-Nagar had committed two crimes in 2012 and 2013, the first of which consisted in insulting and defaming the

Case EGY-07

Egypt: Parliament affiliated to the IPU

Victim: male, independent member of the House of Representatives

Qualified complainants: Section I.(1) (a) and (d) of the Committee Procedure (Annex I)

Submission of complaint: February 2020

Recent IPU decision: March 2022

IPU Mission(s): - - -

Recent Committee hearing: Hearing with the Egyptian delegation to the 144th IPU Assembly (March 2022)

Recent follow-up:

- Communication from the authorities: Letter from the Speaker of the House of Representatives (March 2022)
- Communication from the complainants: March 2024
- Communication to the authorities: Letter to the Speaker of the House of Representatives (March 2024)
- Communication to the complainants: March 2024

courts and the judicial authorities with hate speech and disdainful speech, both published and via interviews on television and radio channels, as well as through social media. The complainants also allege that the court reportedly found that Mr. al-Nagar's statements during a parliamentary sitting of 2012 were also intended to defame and harm the judiciary and judges. Mr. al-Nagar did not serve his time in prison as he chose to go into hiding, although at the time it was clear to his family members where he was. He disappeared a few days before his appeal trial, which took place on 15 October 2018.

The complainants report that, on 10 October 2018, Mr. al-Nagar's family received an anonymous telephone call informing them that he was in police custody at Aswan's Central Security Forces Al-Shallal camp. Mr. al-Nagar's lawyer made a request to the Egyptian authorities for an official response concerning his client's alleged detention in the Al-Shallal camp, but no information was provided in this regard. Egypt's State Information Service denied playing a role in Mr. al-Nagar's disappearance and said in an official statement issued on 18 October 2018 that he had wilfully disappeared to avoid serving his prison sentence, describing him as a fugitive.

In their letter of 24 May 2021, the Egyptian parliamentary authorities indicated that the Egyptian Court of Cassation's decision of 15 October 2018 concerned the rejection of Mr. al-Nagar's appeal to have his original sentence set aside. The letter explains that the decision of the Court of Cassation to reject the accused's appeal against his original sentence was not because of his absence from the Criminal Court hearing. Egyptian law had been correctly applied, allowing the accused's defence to appear before the Criminal Court in his absence. As the Court had agreed to that arrangement, the ruling against the accused had therefore become a ruling *in absentia*; it had been the accused's right to appeal against it, in order to benefit from the different litigation levels to which he was entitled.

On 29 July 2019, the complainants filed a complaint at the Administrative Court of the State Council against the Egyptian Ministry of the Interior for allegedly failing to disclose Mr. al-Nagar's whereabouts or to make serious efforts to locate him. In its decision handed down on 18 January 2020, the Administrative Court of the State Council recalled the State's responsibility and indicated that the statement issued by the State Information Service was insufficient. The Court noted that the State and the police force, which in accordance with Article 1 of the Law on the Regulation of Police authority (Law No. 109 of 1971), "is a regular body of the Ministry of the Interior that performs its functions and exercises its jurisdiction under the leadership of the Ministry of the Interior", had the duty to locate disappeared individuals, especially when a complaint had been filed about their disappearance.

In their letter of 24 May 2021, the Egyptian parliamentary authorities expressed their views about the case. The authorities also added that the crime committed by Mr. al-Nagar was not related to his parliamentary mandate and that he was not prosecuted for the remarks he made in parliament. The parliamentary authorities argued that, between 2012 and 2013, Mr. al-Nagar and other individuals were accused of undermining the judiciary and judges through written articles and comments, remarks made during interviews and messages posted on social media containing false and hateful statements against the Egyptian courts and the judiciary. The authorities also indicated that parliamentary immunity should not protect members of parliament from prosecution when the crimes committed are punishable by law. The authorities stated that parliament was dissolved in accordance with the ruling by the Supreme Constitutional Court issued in the session of 14 June 2012 and that the effect of this decision is retroactive. The aforementioned had therefore never exercised, at any point in time, representational functions.

During a hearing with the IPU Committee on the Human Rights of Parliamentarians at the 144th IPU Assembly in March 2022, the Egyptian delegation emphasized the importance of the Committee's work and elaborated on the views and arguments expressed by the authorities in their letter of 24 May 2021. The Egyptian delegation highlighted that the authorities were convinced that the case of Mr. al-Nagar should not be under consideration by the IPU as the aforementioned does not exercise, and has never exercised, any representational functions, according to the June 2012 Supreme Constitutional Court ruling. However, they were willing to engage with the Committee in good faith to clarify some issues.

The delegation also stated that, in response to the ruling of the Administrative Court of the State Council of 18 January 2020, the Egyptian authorities had exerted efforts to locate the absent person by taking several measures, including through distributing circulars with Mr. al-Nagar's details to all police stations in all Egyptian governorates seeking information on his whereabouts. The delegation also indicated that, despite the complainants' claim that Mr. al-Nagar has been subjected to enforced disappearance, there is no evidence that he is a victim of enforced disappearance and that such a

crime is subject to a set of criteria that have not been met in the present case. The authorities consider that Mr. al-Nagar is “absent”, given that he went into hiding in order to avoid serving his prison sentence, as indicated by his family members. The delegation stated that the representational functions of members of parliament would not allow incumbents to commit crimes, would not justify the commission of such crimes and would not present a barrier to bringing them before a criminal court. The principle of separation of powers would therefore not allow former and current members of the legislative authority to interfere in the work of the judicial authority; to insult or influence its members; or to launch media campaigns against them to influence their rulings and decisions. The delegation clarified that the criminal charges against Mr. al-Nagar were because of remarks he had made outside of parliament, not in a parliamentary context whatsoever, and reiterated that the complaint under consideration did not have any factual or legal foundation; rather, it was based on rhetoric that was dubious and void of any legal evidence.

In December 2022, the complainants stated that in 2018 Mr. al-Nagar’s lawyer had submitted a request to the Attorney General of Aswan, to track Mr. al-Nagar’s phone number (011555879436) to determine his last location. According to the complainants, such information should have been quite easy to obtain and would have shed light on Mr. al-Nagar’s whereabouts in 2018.

B. Decision

The Governing Council of the Inter-Parliamentary Union

1. *Deeply regrets* that the Egyptian House of Representatives has stopped responding to its requests for information since 2022; and *reiterates* that the Committee’s procedure is based on ongoing and constructive dialogue with the authorities, first and foremost parliament;
2. *Recalls* the measures taken by the authorities to locate Mr. al-Nagar, including the distribution of circulars with his details to several police stations in different provinces calling for information on his whereabouts; and *deeply regrets* that, despite its wish to receive written confirmation from the authorities concerned that such measures have indeed been taken and to be informed of the results yielded so far, this information has yet to reach the Committee;
3. *Stresses*, once again that, while the State of Egypt considers Mr. al-Nagar to be a fugitive and “absent”, it remains duty-bound to do everything possible to find him and that, by not taking serious measures to locate him, the authorities are wilfully denying justice to his relatives, who have the legitimate right to know about his fate; and *remains convinced* that the State of Egypt could exert further efforts to locate Mr. al-Nagar, particularly in light of the complainant’s request to track Mr. al-Nagar’s phone number to identify his last location;
4. *Urges*, once more, the authorities to take the appropriate measures to truly address the disappearance of Mr. al-Nagar and to find him, through a fully-fledged investigation into his whereabouts, regardless of his conviction and the fact that he did not serve his prison sentence; and *wishes* to be kept informed as a matter of urgency about steps taken in this regard;
5. *Reiterates its concern* that Mr. al-Nagar was convicted for criticizing the judiciary when he was a member of parliament, which is part of the legitimate exercise of his parliamentary mandate and should be protected by his parliamentary immunity; *affirms*, once more, in this respect that freedom of expression is one of the pillars of democracy, that it is essential for members of parliament, and that it encompasses all kinds of speech, the restrictions on which are defined by the core human rights conventions and related case law;
6. *Reiterates its wish* to receive copies of the decisions of the Cairo Criminal Court and Court of Cassation of 2017 and 2018, respectively, in addition to further information on the status of missing persons in Egypt, including the required criteria to be met for the authorities to initiate an investigation into the disappearance of individuals whose families have filed a complaint about their disappearance;
7. *Requests* the Secretary General to convey this decision to the competent authorities, the complainants and any third party likely to be in a position to supply relevant information on the whereabouts of Mr. al-Nagar;
8. *Requests* the Committee to continue examining this case and to report back to it in due course.