

UK: Egyptian national “unlawfully detained” after intervention by Prime Minister

“We should use whatever assurances the Egyptians are willing to offer, to build a case to initiate the deportation procedure”

Tony Blair’s office

In July 2004, Mr Youssef, an Egyptian national, won his High Court case against the government for false imprisonment after Justice Field ruled that the final two weeks of his near ten-month detention, between 1998 and 1999, were unlawful. Of particular interest, in this case, are the Prime Minister’s frequent interventions against the advice of his Home Secretary, Jack Straw, and officials. As documentation cited in the judgement shows, Youssef remained in detention along with three other Egyptian nationals, after 3 June 1999, largely because of the Prime Minister’s intransigence regarding the legal requirements of the case. Furthermore, the case serves to demonstrate the role of political considerations in handling cases sensitive to bilateral relations between two countries, arguably at the cost of the detainee.

The power to detain is predicated on the ability to deport, but to do so the government would need to fulfil its responsibility of ensuring that the Article 3 rights (of the Convention for the Protection of Human Rights) of the defendants would not be breached. Thus they would either have to be removed to a safe third country or assurances would be required from the Egyptian government that Youssef would not face torture or other human rights violations should he be returned. Moreover, these assurances would need to satisfy a court both of their validity and comprehensiveness. This was never likely to be an easy task in the face of a damning Amnesty International Country Report and a UN Committee Against Torture report, from May 1996, which claimed “that torture is systematically practised by the security forces in Egypt” and argued “the Government should make particular efforts to prevent its security forces from acting as a State within a State, for they seem to escape control by superior authorities”.

The detention of the four men was justified only whilst there existed a legitimate chance of either one of these eventualities taking place, but arguably, by 3 June, there was not. The Home Secretary, clearly aware of the now precarious legal basis for their detention, was ready to release the four men and accordingly asked the Prime Minister for a decision within 48 hours as to whether he wished to pursue the matter personally with the Egyptian President. Blair’s response, coming 11 days later, “must have come as a considerable shock to both the Home Office and the FCO” (Foreign & Commonwealth Office) according to the judge. Blair intended to replace a carefully constructed package of assurances designed to fully guarantee the upholding of Article 3 with a single “no torture” assurance. Moreover, Article 3 itself is non divisible. A “no torture” assurance is incapable of also covering the “inhuman or degrading treatment” aspect. Within 48 hours, two negative letters from the FCO had undermined the proposal but it still took almost a month for the detainees to be released.

What the judge termed an “entirely new strategy” was also entirely unworkable. Not only would a single assurance never have a chance of satisfying a court, but the Egyptians had already indicated that the idea of a written assurance itself was objectionable. Just like his proposal to take the matter up personally with the President of Egypt, Blair failed to acknowledge that not only had the issue of assurances already been considered at the highest level by officials in the Home Office and Foreign Office, but their reluctance to support his idea stemmed from the potential for humiliation should the case

go to court - a likely rejection, should they proceed with the one assurance, on the basis of Egypt’s human rights record, would be embarrassing. Moreover, even had they provided all of the original assurances there was still no guarantee a British court would be satisfied of their validity. This was not an issue the Egyptian government felt at ease with. In fact, as the FCO minute dated 15 June shows, the pursuit of a single assurance would have been equally embarrassing for the British government. Having sponsored an EU resolution encouraging countries to reject extradition requests when no legitimate assurances against the employment of capital punishment were in place, the Prime Minister would now be guilty of encouraging just such a transgression.

But crucially the decision and responsibility lay with the Home Secretary, not the Prime Minister, and having adopted a pragmatic stance to the case throughout he was now at fault for entertaining Blair’s unworkable proposal. It was not even a suggestion he could entertain because of the obligation to satisfy the detainees’ Article 3 rights. If somehow he did not know this himself, then he should have been quickly enlightened by the FCO letters and advisors within his own Office. Accordingly the judge found that “by 18 June 1999 the Home Office knew that the chances of persuading a court as to the adequacy of a single non-torture assurance were bleak indeed”. It took him an inexplicable length of time to make, what should have been, an easy rejection of the proposal. The judge held that the Home Secretary should have reached a decision by 25 June at the very latest.

Of particular interest is the question of what motivated Blair’s proposal and caused the delay in the release of the detainees. It seems that as soon as it became clear that the removal of the men was unlikely, the question of how to present their release became paramount. The case became largely about managing relations with the Egyptians and minimising political embarrassment, as clearly expressed in the Prime Minister’s Private Secretary’s 14 June letter in which he outlines Blair’s desire to let the courts shoulder the burden of release. We would assume that the Prime Minister would not willingly seek the deportation of the men in spite of the clear Article 3 risk, so the only rational explanations are either that he was trying to abdicate responsibility or that he was woefully ill informed. Either way, the legality of detention was not of principal concern; rather the interests of the state dwarfed those of the individual.

Chronology of key correspondence

- 6 May 1994 Youssef arrives in the UK, claims asylum and is granted “temporary admission”.
- 23 September 1998 Youssef is detained, along with three other Egyptian nationals, under the Prevention of Terrorism Act and questioned about links with Egyptian Islamic Jihad.
- 27 September Youssef is released and immediately rearrested under powers contained in the Immigration Act and detained on the basis of national security “pending a decision to give or refuse him leave to enter”.

- 3 December Special Immigration Appeals Commission judge refuses bail, having been told his application would be decided within three weeks.
- 14 January 1999 Home Secretary (HS) informed by advisors that there is no safe third country to which Youssef can be removed and that the possibility of returning him, and the three other detainees, to Egypt should be explored.
- 12 March Youssef's *habeas corpus* application is dismissed.
- 17 March - Text of requested assurances telegraphed to the British Embassy in Cairo. Included in the list are assurances against ill treatment whilst in detention, a fair and public hearing in a civilian court, access to legal representation and witness statements, that if convicted of a capital offence the death penalty would be commuted, and that during any term of imprisonment they would receive visits from British Government officials and independent medical personnel.
- 22 March - Egyptian Minister of the Interior rejects the request for written assurances arguing that they would "constitute an interference in the scope [of] the Egyptian judicial system and an infringement on Egyptian national sovereignty."
- 1 April - Letter sent to Prime Minister's (PM) Private Secretary (PS) from the Home Office (HO) informing him of initial rejection. Letter read by PM who wrote across the top "**Get them back**". He also wrote next to the paragraph setting out the assurances Egypt had objected to: "**This is a bit much. Why do we need all these things?**"
- 18 April - Youssef sentenced, in absentia, to life imprisonment with hard labour by an Egyptian Military Court.
- 19 April - Letter from the PM's PS makes clear the PM's view that the "demands" being placed on the Egyptians are excessive. The PM sees "*no obvious reason why British officials need to have access to Egyptian nationals held in prison in Egypt, or why the four should have access to a UK-based lawyer*".
- 5 May - HS responds emphasising that "*any weakening of what we request from the Egyptian authorities would reduce still further the slim chance we have of effecting the group's removal*". That there is "*ample evidence from a range of sources of serious human rights abuses*" and that "*it would be unreasonable to argue, without assurances, that the four would not face an Article 3 risk if returned to Egypt*". Furthermore he claimed that three of the four men had submitted plausible claims of suffering torture, and that there could be no flexibility on the issue of access if returned. Thus if such assurances are not given "*there is probably very little scope for pushing deportations any further*". PM writes on the letter: "**This is crazy. Why can't we press on? Let us see how Egyptians respond**".
- 28 May - letter from the PM's PS to the FCO maintains that the PM "*remains very keen for us to be able to deport the four to Egypt*" and that the next step should be for him to "*write to President Mubarak himself setting out our willingness to deport the four and the assurances we need to achieve that*".
- 1 June - Final request for assurances was met with rejection by the Egyptian government.
- 3 June HS writes to PM confirming that "*the Egyptians see no future in discussions on assurances*" and that "*you should now write to President Mubarak; but that you should not press him further about assurances.*" He affirms that:

Once there is no possibility of receiving assurances the men will have to be released as there would no longer be any basis for their continued detention or deportation. I can continue to detain the men while you consider the Foreign Office advice although an early decision within 48 hours would be appreciated.
- 4 June - PM's PS writes to the HS's PS and informs him that the PM has not yet reached a decision and wishes "*to reflect further, and to discuss with others*".
- 14 June - PM's PS writes to the Foreign Secretary's PS and informs him of the PM's view that:

We should use whatever assurances the Egyptians are willing to offer, to build a case to initiate the deportation procedure and to take our chance in the courts. If the courts rule that the assurances we have are inadequate, then at least it will be the courts, not the Government, who will be responsible for releasing the four from detention.

The Prime Minister's view is that we should now revert to the Egyptians to seek just one assurance, namely that the four individuals, if deported to Egypt, would not be subjected to torture. Given that torture is banned under Egyptian law, it should not be difficult to give such an undertaking."

Argues further that an independent expert witness would be needed to back up the suitability of such an assurance.
- 15 June - Minute from FCO official to head of North Africa Section in FCO's Near East and North Africa Dept alerting him of the potential political embarrassment if a death penalty assurance is not sought. This is because earlier in the year the government had co-sponsored a successful EU resolution at the Commission of Human Rights regarding the right to reject an extradition request in the absence of legitimate assurances that capital punishment will not take place.
- 16 June - Letter from Counter-Terrorism Policy Department of FCO to HO confirming the limitations of seeking a single assurance and arguing that there exists no realistic possibility of finding a credible independent expert to substantiate Egyptian assurances.
- 16 June Head of Egyptian intelligence confirms that any kind of formal written assurance is unacceptable.
- 18 June Application for *habeas corpus* made by one of the other Egyptian detainees adjourned for four weeks. Home Office directed to serve their evidence in reply in three weeks time, on 9 July.
- 23 June Telegram from British Ambassador in Cairo outlining Egyptian desire not to have a potentially embarrassing public discussion of Egypt's human rights record in the British courts.
- 5 July Minute from HO official to HS confirming that there has been no progress in discussions since 2 June, and that it is highly unlikely that the Egyptians would be willing to give even a single assurance.
- 9 July Youssef and the three other detainees are released.
- 30 July 2004 Justice Field rules that Youssef "*was unlawfully detained for the period 25 June 1999 to 9 July, a period of 14 days*".

(bold emphasis added)

Amnesty International 1997 Country Report

UN Committee Against Torture 3 May 1996

Judgement available: http://www.courtservice.gov.uk/judgmentsfiles/j2758/youssef-v-home_office.htm

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