

Annulment of Arbitral Award against Egyptian Satirist Bassem Youssef

Ismail Selim
i.selim@tamimi.com

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On 6 January 2016, Cairo Court of Appeal annulled an EGP 100 million award against the famous satirist Bassem Youssef and his TV show production company Q-Soft, thereby giving both of them a new lease of life (Cairo Court of Appeal, 7th Circuit – Commercial – 6 January 2016 – Lawsuits No 11,12,14 of Judicial Year 13). This article reports on the decision and its implications. Prior to joining Al Tamimi and Co., the author of this article was part of Q-Soft's legal team before the Egyptian courts.

Background

The dispute arose out of a contract dated 25 July 2012, whereby Q-Soft licensed Capital Broadcasting Center ("CBC") to exclusively screen episodes of Bassem Youssef's satirical show starting from 11 November 2012 for the duration of pre-determined screening seasons.

The satirical show, "El Bernameg", was an unprecedented success, providing humorous criticism in 2012 and 2013 of the ousted President Mohamed Morsi, who was a senior leader of the Muslim Brotherhood. Despite numerous complaints lodged by pro-Morsi activists (which led to criminal investigations against Bassem Youssef), El Bernameg's team sustained its satirical criticism until the Muslim Brotherhood Regime fell as a result of unprecedented protests which started on 30 June 2013.

After a four-month break, Bassem Youssef resumed his show in October 2013, with an episode that stirred popular criticism as it appeared to satirise the Interim Egyptian President and the very popular Minister of Defence. Public opinion was divided among those who still supported El Bernameg as a matter of freedom of expression and those who disliked it for patriotic reasons. As a result, CBC decided to stop airing it on its channels and Q-Soft served a notice of termination of its contract with CBC.

The Arbitration

In accordance with a clause providing for arbitration in the event of disputes, Q-Soft submitted a Notice of Arbitration against CBC to the Cairo Regional Centre for International Commercial Arbitration ("CRCICA"). Q-Soft sought compensation of EGP 1.9 million for the damage caused by CBC's breach of the contract and its decision to stop screening episodes.

CBC filed a counterclaim before CRCICA against both Q-Soft and Bassem Youssef seeking a compensation of more than EGP 363 million for their non-compliance with the terms of the contract, their intentional failure to submit the scripts of the remaining episodes to the channels' administration, and their breach of the channels' content/screening policies. Bassem Youssef denied the jurisdiction of the Tribunal and did not submit any claim.

The arbitral tribunal issued its award on 10 November 2014. It decided, by majority, to reject Bassem Youssef's claim regarding the tribunal's lack of jurisdiction and to dismiss Q-Soft's claims as well as "Bassem Youssef's claims" (though the latter did not seek any remedy save for its objection to the Tribunal's jurisdiction). The tribunal decided to uphold the counterclaim and ordered that Q-Soft and Bassem Youssef were to each pay CBC EGP 25 million in compensation and another EGP 25 million in

moral damages (a total of EGP 100 million in damages plus interest).

Annulment Proceedings

Annulment proceedings were brought by Bassem Youssef and Qsoft before Cairo Court of Appeal.

On 6 January 2016, Cairo Court of Appeal annulled the arbitral award on two major grounds. The first ground was that the damages had been awarded without stating reasons. The other ground was that the award was a 'breach of a constitutional right to freedom of expression'.

Opting to condemn the award itself rather than the majority of the arbitral tribunal, the Cairo Court of Appeal endorsed the latter ground explicitly rather than Q-Soft's main ground for annulment which was based on arbitral bias or partiality being contrary to procedural public policy. Q-Soft and Bassem Youssef had aimed to demonstrate that the majority of the arbitral tribunal was, for ideological reasons, irritated by the content of Bassem Youssef's satirical TV show. They referred to the following paragraph of the award as evidence of bias:

"[various types of medias] whether visible, audible, readable or electronic should be united on preserving the interests of the country, and aim to be Egypt's safeguard, to consider the exceptional and serious circumstances that Egypt is going through at this period, and to adopt the media charter of honor and code of ethics and the values of our community, and to refrain at this period from using any methods that aim to achieve temporary material gains at the expense of the interests of a homeland that must survive and remain".

Again, Cairo Court of Appeal opted not to explicitly address the alleged ideological partiality or bias of the arbitral tribunal but rather emphasised the lack of reasoning of the award on damages and relied on the constitutional right of freedom of expression by stating that:

"It is not permissible—under the veil of discretionary power—to alter the principles set by the Constitution or to separate such principles from the purpose of their enactment or their final objective. Constitutional principles are not enacted in alienation, merely as philosophical principles, and hence, they do not exist in a vacuum. The objective of constitutional principles is general wellbeing as it guarantees in its substance an idea of fairness that is compatible to the modern democratic state which it aims to create and to ensure the welfare of its people.

The judgments of the Constitutional Court have confirmed that the freedom of expression of one's views and the ability to express such views either orally or photographically or by any other mean of communication, is described in the Constitution as the "Mother" of rights, in the absence of which, no open dialogue exists. The safeguards provided for by Constitutions in relation to freedom of expression is constituted on the guarantee of the expression of views, ideas, and their articulation to others, in order to expand horizons and to increase the sources of knowledge to all. Freedom of expression is a supreme value/principle, from which derogations are not permissible".

It is well known that Bassem Youssef is a major political satirist and harshly critical of the present Egyptian President and others. Nevertheless, the 7th Commercial Circuit of Cairo Court of Appeal confirmed the independence of the Egyptian Judiciary by annulling the arbitral award on the basis of constitutional rights pertaining to public policy. By setting aside this award, the Cairo Court of Appeal affirmed their pro-arbitration stance by safeguarding the reputation of arbitration from an award grounded in arbitral bias.