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The Human Rights situation in Egypt and the case of Patrick Zaki

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ABSTRACT

Egypt has a very complex and articulated constitutional history. Over the years, the country has been endowed with various constitutional charters, sometimes on a temporary basis and sometimes under the illusion that it had finally reached full constitutional evolution. In 2011, following the "Arab Spring", a period of uprisings that shook the entire Middle East, Egypt embarked on a new and complex phase of constitutional transition and it only managed to adopt a new and "definitive" constitutional charter in 2014. With al-Sisi's rise to power and a new constitutional charter, disguised by the much-appreciated facade of secularist progressivism, the start of the massive and widespread repressive system still carried out by the Egyptian regime was officially inaugurated. Protagonists of repression are the National Security Agency, which carries out most of the arrests and torture, and the Supreme State Security Prosecutor's Office, i.e. the Anti-Terrorist Prosecutor's Office, which has more than tripled the number of cases it handles in the first five years of al-Sisi's presidency. The cases of Giulio Regeni and now Patrick Zaki, the former tortured and killed in circumstances that are still uncertain, the latter arrested and tortured without a fair trial and without evidence, have brought the issue of human rights violations in Egypt to the attention of foreign public opinion as well as Italian and European institutions. In spite of the mobilisations, especially on the part of public opinion and non-governmental organisations, in support of Zaki's release and the truth for Giulio Regeni, the reactions of the institutions seem to be timid and not very concrete. Italy, as well as the European Union, consider Egypt as an important trade partner and taking concrete decisions that may affect these relations seems to discourage the institutions themselves to do so.

The aim of this work is to bring to light the dramatic situation of human rights in Egypt, starting from its political and constitutional history and then analysing the situation of the country today. Specifically, this work will analyze the case of Patrick Zaki, an Egyptian student at the University of Bologna, who was arrested in February 2020 while he was returning to his home country, accused of publishing posts on Facebook that threatened national security.This case is emblematic of the situation the country is facing under the al-Sisi regime, a regime that spares no one and tries to silence in every way anyone who thinks differently from the imposed rules.

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INTRODUCTION

On February 7, 2020, Patrick Zaki, a University of Bologna student and Egyptian activist, was captured by Egyptian intelligence agents while on his way to Egypt to visit relatives. For about 24 hours no news of him was leaked either to his family or to the media; the news of his arrest was later disclosed by the Egyptian Initiative for Personal Rights[1], on February 9. The charges formulated in the arrest warrant are: threat to national security, incitement to illegal protests, subversion, spreading false news, propaganda for terrorism. Specifically, he is accused of some posts on Facebook; according to Egyptian governmental media, Zaki would be active abroad to make a thesis on homosexuality and to incite against the Egyptian state. According to his lawyer, he was blindfolded and tortured for 17 consecutive hours with blows to the stomach, back and electric shocks inflicted by Egyptian security forces, in addition to being questioned about his stay in Italy, his alleged connection with the family of Giulio Regeni, and his political commitment, being also threatened with rape. Since then Patrick Zaki is in the Tora prison awaiting trial, after several renewals of remand. According to human rights organizations there are between 60,000 and 100,000 Egyptian political prisoners currently held in detention and according to current laws preventive detention can last up to two years. What is striking is the repetition of arrests against students engaged in research projects or masters abroad; like Patrick Zaki, there are others. The latest is Ahmed Samir Santawy, an Egyptian student at Ceu University in Vienna, arrested on his return to Egypt and accused of joining a terrorist group and spreading false information dangerous to the State. More than a year after Patrick Zaki's imprisonment, what emerges from Cairo is the desire to leave no role for civil society; only the president and his supporters have a representative voice and all those who oppose him are accused of terrorism or acts that undermine national security.

In the first instance, the choice of analyzing Egyptian constitutionalism stems from the interest of examining the nature of a legal culture conceptually distant from that with which we are accustomed to compare ourselves as Westerners/Europeans/Italians, but close from the territorial and now social point of view, with the aim of understanding the historical, cultural and legal reasons behind the repeated violations of human rights that we are witnessing today. The intent is not to find a justification for the criminal acts of which the country has been stained and continues to be stained, because there is nothing that can justify the barbarity that we all know, but to objectively analyze the constitutional history of Egypt and the rules that allow the perpetuation of events such as those of Giulio Regeni and Patrick Zacki.

The first chapter will analyse Egypt's constitutional history from what can be considered the country's first Constitutional Charter to the difficult period of transition that followed the Arab Spring of 2011 and the current

[1] The Egyptian Initiative for Personal Rights, abbreviated as EIPR, is an Egyptian non-governmental human rights organization, founded in 2002, based in Cairo. EIPR specifically focuses on prisoners' rights, civil liberties, social and economic justice. It was founded in 2002 by Hossam Bahgat with the intention of complementing the work of similar organizations in Egypt, focusing in particular on personal rights and the right to housing. The association has also addressed the conditions of prisoners during the COVID-19 pandemic, the increasing use of capital punishment in Egypt, sectarian violence, and LGBT rights in Egypt.

regime of General Abdel Fattah al-Sisi. In addition to an analysis of the various constitutions that have followed one another in the country's history and the most important provisions contained in them, the chapter also includes brief digressions that help to better understand the cultural and political background against which the constitutional events are set. One example is the one on the question of the place of the Shari'ah in the system of legal sources, with particular reference to the role of the Supreme Constitutional Court as regards the interpretation of Islamic law; another digression is the one on the role of the military, which, since the Nasser era, has assumed an increasingly relevant and influential position in the society and politics of the country. The chapter closes with an analysis of the country's recent historical and political events that led to the approval of the 2014 Constitution; disguised by the much-appreciated facade of secularist progressivism, the new Constitution officially inaugurated the beginning of the impressive and widespread repressive system still carried out by the Egyptian regime today.

The aim of the second chapter is to illustrate the dramatic situation of human rights in Egypt, starting from some preparatory issues in order to introduce the real focus of the chapter; in particular, the theme of the prohibition of torture conceived by almost all international and regional instruments aimed at protecting human rights is first introduced, functional to address in the last chapter the specific case of Patrick Zaki, who was subjected to arrest without trial and inhuman torture. The chapter then attempts to explain how it is possible that Egypt, despite being a party to numerous international human rights treaties, manages to violate these norms without suffering any consequences. In the final paragraphs, the focus will be on the latest Universal Periodic Reviews of the UN Human Rights Council with particular reference to the Egyptian situation; specifically, the 2014 Universal Periodic Review and the latest 2019 Universal Periodic Review will be considered, from which it emerges an attitude of indifference by Egypt towards the recommendations received and commitments made in this regard. Finally, the chapter will end with a brief analysis of Egypt's relations with the European Union and Italy, highlighting mutual interests, mostly economic, that often overwhelm and overshadow emergency situations, such as the human rights situation in the country, which cannot and must not continue with the indifference of the international community.

Finally, the third chapter analyses the specific case of the imprisonment of Patrick Zaki, Egyptian activist and student at the University of Bologna, starting with a brief personal biography of the student, and then moving on to the NGO that Zaki belonged to before his arrest, the Egyptian Initiative for Personal Rights, addressing the issue of NGOs and the treatment they receive from the Egyptian authorities. In the final paragraphs, the focus will shift to the "national security" system, which has become the legitimisation for the constant abuse of those who dare to oppose the regime or those who simply decide to think differently from the one imposed; in particular, thanks to a report made by Amnesty International and other sources, we will try to better understand what the Supreme State Security Prosecutor's Office and the National Security Agency are and how they operate, bodies that were created to protect national security but which in reality are nothing more than a device to repress any form of dissent or counter-current thought.

Hence the method followed in this work, which translates an approach that is first of all historical, and which is aimed at deepening the origin of the constitutional system of Egypt, but which does not fail to refer to religious, sociological and political as well as legal issues, through which the main stages of the evolution of this system are retraced, to get to the real core of the work, namely the situation of human rights in Egypt.

1. EGYPTIAN CONSTITUTIONALISM

This chapter aims to retrace the fundamental stages of Egyptian constitutional history, bringing out the various historical and political dynamics that have accompanied the constitutional evolution up to the present day.

The constitutional history of Egypt begins in 1882, when the country was occupied by Great Britain, although it still remained formally part of the Ottoman Empire. In this period were advanced the first reforms of western style with the adoption of the first constitutional charter, influenced by the British presence. This is the so-called fundamental ordinance of the Chedivate of Egypt, which at the time was an autonomous tributary state of the Ottoman Empire; in 1879 there was then an unsuccessful attempt to promulgate a constitution due to the limited scope of the latter, which was actually more of an organic law of the Chedivate Advisory Council than a real constitutional charter. In 1922, Egypt was only formally granted independence as it remained under de facto British control.

The constitutional period from 1923 to 1952 can be defined as "the age of legal experimentation", in which the first real form of Egyptian liberal constitutionalism, one of the most paradigmatic legal experiences for the whole area in which Egypt is inserted, was initiated. As we know, the distinction and balance between military political power, on the one hand, and religious authority, on the other, have marked the history of modern Egypt since the beginning, when, in the eighteenth century, the country was ruled by the military caste of the Mamluks, while jurisdiction was in the hands of local Ulamā[2]. The Constitution adopted on April 19, 1923 constituted the moment of symbolic rupture with the institutional organization prevailing up to that time; that is, for the first time, the legal system was characterized by a different interpretation of Islamic law, which was inserted into a "positive" system. In so doing, Islamic law, of divine source, was inserted into a "secular" system, of human origin, according to the principle of *state law*, making sharia[3] a branch of the positive legal system. Another important aspect of the Constitution of 1923 was the introduction of the first Codes inspired by the European model, such as the Civil, Commercial and Criminal Codes. The wave of westernization brought by the constitutional charter of 1923 also concerned the jurisdictional system, with the creation of new "national" Courts and the downsizing of the competence recognized to the Sharaitic Courts, until their final suppression in 1956. As we will discuss in more detail in the following paragraphs, in the Egyptian case, the Shariah source has however continued to condition national legislation, the latter being bound by the obligation to seek conformity with Islamic law. The constitutional modifications that have come into force in

[2] In the Muslim world, the learned in the religious sciences (theology, law, etc.), that is, especially theologians and jurists, outside of any sacred character.

[3] In the Islamic and Koranic lexicon it is the "revealed way", and therefore the sacred law, not elaborated by men but imposed by God. The sharia is interpreted and developed by Islamic law starting from its canonical sources, which are the Koran and the sunna, then resorting to additional tools (together they constitute the so-called *usul al-fiqh*, "the roots of law") for everything that is not said explicitly and unambiguously in the sources, within the scope of human possibilities and taking into account the inevitable approximation. Sharia extends to every human act, from the individual and inner ones, linked to devotion and worship, to the outer ones, which include all the activities related to social interaction, from the personal sphere to the community and the political one. Each act can be classified according to a scale of acceptability with respect to religion, which sees in the first place the obligations of faith (the so-called "pillars of Islam"), at the last the forbidden acts.

the last decades have also further strengthened the role of the religious factor in the public scene, becoming a decisive subject for the future of the country, both on the socio-political and juridical levels.

In the following chapter, the attention is focused on the analysis of Egyptian constitutionalism according to a historical perspective, starting from the Constitution of 1956 and then analyze the characteristics of the Constitution of 1971, with a particular focus on the role of the Supreme Constitutional Court and the question of the place of sharia in the system of sources. The role assumed by the Court is very interesting for the purposes of analysis, as it has managed to fill the gaps of a legislative system deficient and interested only in maintaining the status quo, identifying an innovative interpretive practice, through which to admit a balance between the values "secular" and those sharaitici protected in the Constitution, avoiding the theocratic drift of the system itself. The historical excursus finally comes to our days, with an analysis of the constitutional transition that followed the Arab Spring of 2011, from the Presidency of Mubarak to that of Al Sisi.

1.1 From the Constitution of 1956 to the Provisional Constitution of 1964[4]

In Egypt, the end of the monarchy was formally declared on June 18, 1953, when, following a coup d'état by a group of young officers (revolution of 1952), the republic was proclaimed; the "free officers" replaced the British, in the system of power built by the latter in the colonial period. In the first months after the coup, the free officers placed at the top of the system of public powers the Council of Revolutionary Command (CCR), which was entrusted with the task of reorganizing the country both economically and politically: were dissolved all parties of Egypt "pre-revolutionary" and always in 1953 was adopted a new provisional Constitution. [5]The Muslim Brotherhood was the only political force that survived the dissolution of parties and supported Gamal Abdel Nasser in the battle to replace Naguib. Following a popular plebiscite to support his presidency, Nasser came to power in 1954 and in 1956 was approved the new Constitution that replaced the provisional constitution of 1953.

The 1956 Constitution proclaimed Islam as the state religion and Arabic as the official language. In 1957, the 350 members of the National Assembly were elected, which was revoked shortly thereafter when Egypt and Syria created the United Arab Republic of Egypt (UAR) and a provisional Constitution was established. The Provisional Constitution of the United Arab Republic or Constitution of 1958 in essence, was the constitution for the short-lived political union between Egypt and Syria; at the time, many among the Arabs hoped that the new entity would become the nucleus from which the realization of the pan-Arab dream would begin: a state comprising the entire Arab nation with the rebirth of its people attached. The provisional

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[4] Campanini, M., (2005), *Storia dell'Egitto contemporaneo: Dalla rinascita ottocentesca a Mubarak*. Roma: Lavoro.
Sbailò, C., (2012), *Principi sciaraitici e organizzazione dello spazio pubblico nel mondo islamico: il caso egiziano*. Padova: CEDAM.

[5] Organization founded in 1928 in Egypt by Hasan al-Banna, with the aim of bringing Islam back to the center of the political and social life of the Muslim community. Structured as a grassroots movement, influenced by scouting and mystical brotherhoods, the Muslim Brotherhood took part in the struggle for Egyptian independence until the 1952 coup d'état. Persecuted and banned by G.A. Nasser, they spread to neighboring Arab countries, where they founded movements similar to or affiliated with the organization. Sadat gradually readmitted them into public life; since 1984, with H. Mubarak, the Muslim Brotherhood entered the Egyptian Parliament, mediating between moderate and more radical Islamism.

constitution established a unitary state between what had been the Republic of Egypt and what had been the Syrian Republic, even if the two parts maintained a certain degree of their own identity. Under the provisional constitution, the National Assembly was vested with legislative power, the Council of Ministers and the President of the Republic with executive authority and, of course, judges with judicial authority. The National Assembly, which met for the first time in July 1960 and lasted for only one year, consisted of 400 Egyptian and 200 Syrian members. The provisional Constitution defined the Republic as democratic, independent, sovereign, and its people as an integral part of the Arab people; the Constitution also indicated the basis of the society in social solidarity, in the organization of the national economy "*according to plans conforming to the principles of social justice and having the purpose of developing national production and raising the standard of living, in the inviolability and at the same time in the social function of property, and in social justice as the basis of taxation and public taxes*". The equality of all citizens before the law was affirmed, "*without distinction of race, origin, language or religion*", the prohibition of extradition of political refugees was established, the safeguard of liberty was assured "*within the limits of the law*", the principle of non-retroactivity of penal law and that of *nulla poena sine lege were* sanctioned. However, the hope of a pan-Arabist dream was suddenly shattered on September 28, 1961 when a group of Syrian officers, disappointed with the union, promoted a coup d'état and proclaimed the separation of Syria from the RAU.

Once the United Arab Republic dissolved, apart from the fact that Egypt kept the official name of the United Arab Republic until 1971, the constitutional charter in Egypt was replaced in 1962 by a Presidential Constitutional Proclamation and then by a new United Arab Republic Constitution. In particular, the National Assembly approved the document on 25 March 1964 and despite Nasser's intentions to consider it as a definitive document, the 1964 Constitution ended up being provisional as well. The new Constitution of 1964, strengthened the principles of the previous one, confirming the Republican form of State and the centrality of the figure of the President of the State, in the presence of a single party and a single ideology of State, the Arab socialism. Although promulgated one year after the death of President Nasser, the constitutional charter of 1964 maintained some of the principles of the previous constitutional order, including the reference to socialist ideology; however, authoritarianism was limited through the introduction of some constraints on the decision-making power of the President.

In the following paragraph, we will take a step back and try to briefly focus on the role and influence that the army had on the political and social sphere as early as Nasser. It will then continue with the historical analysis of Egyptian constitutionalism starting from the end of the Nasser era and the beginning of the Sadat era.

1.1.2 Consolidation of the army's control over the political process [6]

During the '40s of the twentieth century, Egypt witnesses several popular uprisings due to the poor distribution of wealth and land ownership: there is in fact a rich landed aristocracy that owns huge expanses of land and a

[6] Hashim, A. S., (2011), *The Egyptian Military, part one: from the Ottomans through Sadat*. Middle East Policy.
Kordunsky, A. e Lokesson, M., (2013), *The Egyptian Military's Huge Historical Role*. National Geographic.

much larger layer of the population that belongs to the lower-middle class. In the years leading up to 1952, there is a growing awareness, among opposition parties and movements (an example is the Muslim Brotherhood) and the military apparatus, of the need for land reform and other measures to improve social welfare. As far as the military is concerned, it is not homogeneous, but composed of different groups; first of all, the high ranks are crossed by a very strong corruption: in fact, until the '30s, the recruitment of officers and promotions in the Armed Forces under the monarchy were determined more by birth and contacts than by merit. A second segment of the military apparatus, on the other hand, is made up of men from social strata of the population who see the monarchy as a corrupt institution subservient to British power. This group is aware of the social decline of the country. To this must be added the fact that the monarch at the beginning of the 50's took control of the Armed Forces, taking charge in this way of the power of appointment and dismissal of its members, as well as the power to make promotions and appoint the commander in chief of the Armed Forces. All this does nothing but increase corruption within the military apparatus. This is one of the factors that makes a certain feeling of bitterness grow at the time within a part of the Armed Forces. Therefore, a part of the officers, those who did not support the monarchy, were aware of the need for change; among these, in the 1940s a group emerged, that of the "Free Officers", which brought together army officers belonging to the lower-middle class and took it upon themselves to speak on behalf of the whole society. The revolt of 1952, therefore, is not carried out by a single group, but rather is the result of a union between different groups, from which emerges that of the "Free Officers" that, following the expulsion of King Fārūq, takes power and leads to the birth of what Sayigh (2012a, p.3) will define "Republic of Officers". On July 23, 1952, the "Free Officers" seized the leadership of the Armed Forces and arrested all the generals, forcing King Fārūq to abdicate. The group of colonels leading the coup take control of the country, establishing the Council of the Command of the Revolution (CCR), a government council with executive power, composed of 14 members. This Council, in 1953, abolishes the Constitution of 1923, dissolves the Parliament and abolishes all political parties, thus gaining full control of the state. It must be considered that in the CCR there is no civil personality and that this Council, from the beginning, strives to get rid of those figures who were corrupt or who had been part of the old leadership close to the monarchy, fearing that they could be a threat both to their power and to the creation of a new institutional order. Already from these first measures, it can be seen that the military apparatus was committed to guarding and strengthening its position within the new political order, eliminating civilian personalities and all those perceived as "inconvenient" subjects. A further factor demonstrating the consolidation of political control by the military apparatus and the president is shown by the fact that following the appointment of Ǧamāl ʿAbd al-Nāṣir as president in 1956, there is the emergence of what Sayigh (2012a, p.3) calls the "Republic of Officers": in particular, the Armed Forces are seen as those charged with transforming society through the "revolution from above" enacted by the president: in the 1950s, supporting land reform and the nationalization of the industrial sector, while in the 1960s promoting socialist policies. A

confirmation of this is given by some data that state that, in the period 1954-1962, about 1500 officers were appointed to prominent positions in institutions not related to the military. Moreover, this heavy reliance on military personalities in prominent positions isolates even more the ruling leadership of the "Free Officers" from the population, in whose name they rule the country. An example of the military's infiltration of the civilian bureaucracy can be found in the Administrative Control Authority (ACA), an institution created in 1958, tasked with fighting corruption both throughout the state and within the state apparatus. The only exception is the Armed Forces, which are not subject to any civilian control; the only control they are subject to is that of the president, who however until the election of Muḥammad Mursī in 2012 has always been a man from military ranks. The position of president of this organization and its highest administrative positions have always been occupied by personalities belonging to the Armed Forces.

Already in the same year of the coup, the military puts in place some economic measures, such as land reform and a policy of nationalization of enterprises. One of the first tasks of which the CCR takes charge is to promulgate a land reform for the benefit of the poor classes who are in difficulty as a result of the treatment received by King Fārūq and the privileges that the monarch grants to the aristocracy and large landowners, to the detriment of the poor class. This reform aims at the confiscation of the lands of the aristocracy and then their redistribution to the poor peasants. In this way, on the one hand, the Council weakens the landed aristocracy by depriving it of its land, and, on the other hand, it gains consent, support, and gratitude from the lower-middle class of the Egyptian population, through the concession of the confiscated lands to the large landowners. Another measure taken by the military apparatus concerns the nationalization of industrial properties in the hands of local and international entrepreneurs in the country, with the aim of decreasing Egypt's economic dependence on foreign countries. With this, the army presents itself as the "vanguard of progress" and social justice within Egypt. Indirectly, this policy of nationalization benefits the military, because businesses confiscated from foreign companies are then given to the military apparatus to manage. This can be seen especially since the 1960s with the adoption of socialism in Egypt during the presidency of Ǧamāl ʿAbd al-Nāṣir. With this new type of economy, the Egyptian state seizes all economic resources and creates several state-owned enterprises. However, rather than a socialism driven by "class conflict" in order to redistribute wealth, it is driven by the state's need to accumulate money. These nationalized enterprises are dedicated primarily to the industrialization of the Egyptian economy and are managed and administered by army officers, who are not suitable for such work: they have received a "military" training, which has nothing to do with the economic-administrative and managerial field, and therefore lack the skills to manage and administer this type of activity. In addition, the State implements the policy of Import Substitution Industrialization (ISI), a strategy that aims to replace previously imported products with locally produced ones, with the aim of decreasing dependence on foreign countries and increasing domestic economic production. It could be said that the Armed Forces benefit indirectly from the ISI strategy because they have control of numerous state-owned enterprises that implement this policy.

So, from these brief historical digressions, we have tried to better understand how the army began to play a predominant role in Egyptian society and how Nasser laid the groundwork for what would become a true "state within a state" in Egypt's material constitution.

The intense political activity, smoking and a bad lifestyle undermined the state of health of Nasser, to which was added the weight of the defeat against Israel in the Six Day War, which deeply marked the last years of his life. Diabetic, hypertensive and with arteriosclerosis, he also had several heart problems. In order to cure himself he flew to Moscow where, in May 1970, he was persuaded to accept the US truce proposal for the war of friction against Israel. On September 27, 1970, Nasser urgently gathered in the Egyptian capital the Arab leaders to find a solution to the Black September in Jordan. The talks between King Husayn of Jordan and Palestinian leader Arafat were, literally, his last political effort, as he died suddenly the next day in the presidential residence of a heart attack. At his funeral in Cairo, attended by about five million people and all Arab heads of state, except the Saudi king Faysal. Nasser was buried in the al-Nasr mosque, which since his death took his name. After his death, took power the Vice-President Anwar al-Sadat, who together with Nasser had been part of the movement of "Free Officers".

1.2 The "permanent" constitution of 1971, cosmetic political pluralism, and the establishment of the Shūra [7]

With the rise to power of Sadat we enter a very important historical phase for Egypt, especially from the constitutional point of view; the new Constitution in fact, approved in 1971 by 99.9% of voters through a popular referendum, will be called the "Permanent Constitution" to distinguish it from the others, subject to sudden repeal. The permanent Constitution in fact, will remain in force until the revolution of 2011 and will be the only stable point of reference from a constitutional point of view.

As soon as he was proclaimed president, Sadat started a process of "de-nasserization", i.e. he started what everyone recognizes as a second revolution, removing, starting from May 1971, all politicians and military loyal to Nasser and opening to the West and private investors. The new system is therefore open to economic liberalism and sanctions the protection of important rights, including freedom of expression and opinion, freedom of association, the right to privacy and the right to emigration.

With Sadat's presidency, the Egyptian system recognized for the first time the principle of multiparty and political pluralism, assigning prerogatives previously attributed to the only existing party, even to other minor parties. However, this was a purely cosmetic move since, as we shall see, political pluralism was accompanied by a system of rigid control and restrictions. The[8]Arab Socialist Union, founded in 1962 by Nasser, was the

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[7] Baker, R. W., (1990), *Sadat and after: Struggles for Egypt's political soul*. London: Tauris.
Campanini, M., (2005), *Storia dell'Egitto contemporaneo: Dalla rinascita ottocentesca a Mubarak*. Roma: Lavoro.
Sbailò, C., (2012), *Principi sciaraitici e organizzazione dello spazio pubblico nel mondo islamico: il caso egiziano*. Padova: CEDAM.

[8] The Arab Socialist Union was an Egyptian political party, founded by Gamal Abdel-Nasser in 1962. It represented the party of Nasserism, or that political ideology based on Arab nationalism, Arab socialism, and pan-Arabism. It ruled Egypt as a single party under Nasser and under Sadat, being replaced in 1978 by the National Democratic Party.

only party that governed Egypt first under Nasser and then with Sadat. The latter embarked on the road of political pluralism initially through the subdivision of the Arab Socialist Union into three forums: the liberal-socialist forum, right-wing Islamist-oriented; the Arab socialist forum, center; the progressive-nationalist unionist forum, left-wing. In the 1976 elections, the three forums participated in the political elections with their own candidates and the results were obviously favorable to Sadat, in fact the Arab-Socialist forum took 81.8% of the vote. In 1977, Sadat decided the transformation of the forums in as many parties, giving the impression of being more and more willing to break with the past and open to political pluralism, but the truth was another. By transforming the three forums into political parties, Sadat passed at the same time a law imposing heavy restrictions on political pluralism (law 40/1977); a political party could not be established on religious, ethnic, racial or class basis; the political party also had to justify its existence, demonstrating the usefulness of its political offer; among other things, the parties would be examined by a commission headed by the secretary of the Central Committee of the Arab Socialist Union and composed of the minister of justice, interior and state along with three independent figures. So the commission had the task of supervising the observance of the law, as well as having the power to ban a party if it found any non-compliance with the law.
As far as the figure of the President is concerned, the permanent Constitution confirmed the authority of the latter, but it was established that he could not exceed the number of two terms at the helm of the country[9]. The Constitution of 1971 also introduced important innovations in the organization of the Parliament; in fact, the latter was originally a single-chamber Parliament, but in 1980 a Second Chamber was established, the so-called Shūra, on the model of the Islamic consultative assembly, next to the People's Assembly. Specifically, the Lower House (*Majlis al-Sha'b*, the House of the People) was founded in 1924, and the elected members were originally 444 with the addition of 10 members appointed by the President[10]. The second chamber, that is the consultative assembly (*Majlis al-Shura* or simply *Shūra*), was composed of 264 members, of which 88 were appointed by the President of the Republic, while 176 were elected for 3 years with a majority system with double turn. The Shūra, constituted an advisory body holding a wide political power that, according to what stated in art. 194 of the permanent Constitution, consisted in the possibility to "*propose studies and make proposals to preserve social peace and national unity of the country*". The Constitution provided that the Shūra was consulted on particular points such as: amendments to the Constitution, drafts and general plans for social and economic development, territorial integrity and sovereignty of Egypt, draft laws when requested by the President of the Republic, issues of general policy of the State or international policy when requested by the President of the Republic.
According to the provisions of the 1971 Constitution, Parliament did not interact with the executive and performed functions essentially of representation of the social body, in an eminently symbolic key.

[9] It was only in 1980 that the ban on re-election of the Head of State was repealed, and until 2005 the rule was that the President had to be appointed by the People's Assembly and then subject to confirmation by popular referendum.
[10] Following a June 11, 2009 amendment to Law No. 38 of 1972, 32 new constituencies were established, electing 64 additional parliamentarians, in which only women could run for office; the law itself also gave women the right to run for office in the other 222 constituencies; the number of elected members of the Assembly thus reached 518.

1.2.1 The question of the place of Sharia in the system of sources and the establishment of the Supreme Constitutional Court [11]

Prior to Anwar Sadat's regime, the Constitution had never established that Egypt was a religious country. When in 1971 Sadat promulgated the new Constitution, he introduced for the first time in the history of Egypt a clause stating that the country was Islamic and that Sharia, Islamic law, would be the source of Egyptian law. This was essentially a political maneuver, through which Sadat wanted to please the religious power, recently reinvigorated, and thought he could use Islam to neutralize nationalist and leftist ideologies. Unlike Nasser, therefore, the new president favored the rebirth of conservative Islamist movements (among all the Muslim Brotherhood) and unlike his predecessor he gave them back the dignity removed over the years by the late leader. The religious groups were granted new autonomy and Sadat, in order to emphasize the fact that he was on their side, learned to advertise himself as a believing politician, having an amendment inserted in the new Constitution that restored dignity to Sharia.

The question of the place of Sharia in the system of sources actually opened a much more complex debate than the simple insertion of a clause in the Constitution. In the debate that preceded this decision, jurists were divided into two opposing factions. On the one hand, there were those who, like Jamal al'Utayfi, a member of the Preparatory Committee of the Assembly, which, as we shall see, was set up to gather the opinion of the people, believed that the imposition of an Islamic orientation on the legislator would have encumbered the legal system, in contrast with Islamic teaching itself, which makes a clear distinction between general principles and rules that concretely regulate social life. In his view, the problems of the twentieth century necessitated extensive use of the critical region. On the opposite side, other jurists objected that the placement of Sharia at the top of the sources would not have hindered the progress and dynamism of legislation, since the control of the conformity of norms to Sharia principles would have been only subsequent to the issuing of the norms themselves and therefore would have been configured as a sort of subsequent control of constitutionality. Through a specially established committee that collected the opinions of Egyptians on this and other points of the constitutional project, a real popular "poll" was carried out; the result was that most Egyptians were in favor of the recognition of Sharia as the "only" source of law, as well as the recognition of Islam as the state religion and the adaptation of science and education to Koranic principles. Therefore, initially, in the final text, in art.2 of the Constitution, the principles of Sharia were defined as a "preeminent" source of legislation; in this way, it was avoided to bind in a direct and immediate way the legislation to the Islamic law, recognizing however to this last one an important role in the system of the sources. On May 22, 1980, through a new constitutional amendment, again on Sadat's impulse, the role of the Islamic religion was further strengthened; in fact, art.2 took on a clearer Islamic connotation and the principles of Sharia became

[11] Moustafa, T., (2007), *The Struggle for Constitutional Power: Law, Politics, and Economic Development in Egypt*. Cambridge University Press.
Sbailò, C., (2012), *Principi sciaraitici e organizzazione dello spazio pubblico nel mondo islamico: il caso egiziano*. Padova: CEDAM.

the "main source" of legislation and jurisprudence. So, the original text of Article 2 of the Egyptian Constitution of 1971, following the constitutional amendment of 1980, and still in force today states that:

"slam is the state religion, Arabic is the official language, and Islamic Shari'a principles are the main source of legislation."

In the light of the new provision, the Supreme Constitutional Court has been called upon several times to assess the legitimacy of the laws in force, based on their compliance with Sharia and therefore with the Constitution. With its jurisprudence, indeed, the Court has confirmed the principle that legislation must be Sharia-compliant, but has also established the need to balance the content of the constitutional provision with the principles and values protected in the Charter as a whole. The Supreme Court, as the highest body of constitutional justice in the Egyptian system, has thus managed to maintain political stability within the framework of the principles protected in the Constitution, including the preservation of democratic order and human rights, referring among other things to the legal standards adopted in the international community and drawing from them guiding principles not directly provided for in the Charter. This explains how its interpretative activity has become the real "bastion" of constitutionalism and of the formal and substantial recognition of rights in Egypt. It is, therefore, a significant jurisprudence in the approach to Egyptian constitutionalism even if it is made by a relatively young body. The Egyptian Supreme Constitutional Court (or *Al-Mahkamah al-Dustūriyyah al-'Ulyā)* in fact, was constitutionally provided only in 1971, replacing the previous Constitutional Court established by presidential decree in 1969. Its very functions and competences were regulated eight years later by the coming into force of the Constitution, and contained in the law number 48 of 1979, which affirmed the independence of the organ and defined its organization and powers in order to preserve it from any political interference. Specifically, Title V of the Constitution defines that the members of the Supreme Constitutional Court cannot be dismissed and that such members are chosen from the ranks of the judiciary, from among university law professors or lawyers practicing before the Court of Cassation or the Supreme Administrative Court. The President of the Court shall be appointed by decree of the President of the Republic; the members shall be appointed by decree of the President of the Republic, who, having obtained the opinion of the Supreme Magistracies, shall choose, from time to time, between two candidates, the first of whom shall be indicated by the General Assembly of the Court, and the second by the President of the Court itself. With regard to the interpretation of legislative texts, two conditions are necessary. First, that two or more judicial institutions have given different interpretations of the same normative text; second, that the importance of the text makes its interpretation by the Court obligatory. It is therefore necessary that the question be relevant as well as well-founded. The constitutional judge must also intervene in the presence of decisions of judges of last resort contradictory to each other and his decision is final and unappealable. The Court may declare unconstitutional any law or act having the force of law; the following may have access to the Court: the President of the People's Assembly, the High Council of Institutions of the Judiciary or the

Minister of Justice acting on behalf of the Prime Minister, the judges of merit and any natural or legal person involved in a trial before an Egyptian court. A law or an act having the force of law that has been declared unconstitutional by the Court shall cease to be effective from the day following the decision, with retroactive effects in criminal matters, but also in other areas relevant to the enjoyment of fundamental rights.

The Egyptian Constitutional Court belongs to the Euro continental tradition and not to the American one, as it is an ad hoc body created mainly to supervise the conformity of normative acts to the Constitution. As regards the modalities with which the control of constitutionality is exercised, whether "abstract" or "concrete", in the Egyptian case, similarly to what happens in the Euro continental elaboration of the constitutionality control, we have the co-presence of the two modalities, as the judgment refers both to the normative content of a norm referred to a factual situation, and to a norm considered independently from its application.

In conclusion, we can say that one of the fundamental characteristics of the Egyptian Constitutional Court has been its ability, shown from the beginning and confirmed over time, to leverage on doctrinal pluralism and the dynamism of Muslim law, interpreting, in anything but a passive sense, the principle of *dīn wa dawlah*[12], on the strength of the postulate that it is the Sharia itself to ask to be historically contextualized. Therefore, the court has played an essential role in the modernization and secularization of Islamic society, as well as in the preservation of the Shariah foundation of public power, enhancing the historical anchoring of the Qur'an's juridical nature to the intrinsic political nature of the debate on interpretation; it is not without significance, in fact, that, as we shall see in the following paragraph, the first question addressed by the Court concerned the interpretation of Article 2 of the 1971 Constitution, which identified the "principles" of Shariah as a pre-eminent source of legislation.

1.2.2 The Supreme Constitutional Court on Article 2 of the Egyptian Constitution [13]

In the early years of its activity, the Court has dealt with various issues such as the protection of private property, the *rule of law* and the balance of powers between institutions, thus protecting those constitutional principles that are the foundations of a democratic regime and the basis of the principle of the sovereignty of the people. The Court, at the same time, has advocated for itself competences not directly attributed to it, making the *rule of law* the main instrument for the protection of rights and for the incorporation in national legislation of the main international documents adopted in the matter. Therefore, if initially the main objective of President Sadat was to make the Court a jurisdictional body that would protect his liberal policy and guarantee foreign investments, with time it has managed to detach itself from this function only, becoming a

[12] The expression indicates that Islam addresses both religious and political affairs of the Muslim community. Used by contemporary Muslims to emphasize that Islam is not only a religion (*din*) in the Western secularized sense of the word, but that it also concerns matters of state and government (*dawlah*).

[13] Bernard-Maugiron N., Boyle K. & Sherif A. O., (2000), *Human Rights and Democracy: The Role of the Supreme Constitutional Court of Egypt*. Journal of Law and Religion.

Moustafa, T., (2007), *The Struggle for Constitutional Power: Law, Politics, and Economic Development in Egypt*. Cambridge University Press.

guarantee of protection of civil and political rights, of limitation of executive power in cases of violation of constitutional principles, falling into the most classic constitutional model of our days.

Within this evolution, central was the jurisprudence developed around Article 2 of the Constitution, within the framework of which the Court managed to outline an innovative theory. In essence, the Court established the unconstitutionality of the sciaraitic norms and their binding force "for the legislator alone", in the sense that it is the latter who is responsible for the formulation of the laws, in the light of the sciaraitic principles, according to the interpretation of these principles given by the Court itself; Therefore, the Court itself became the highest authority for the interpretation of the Constitution and for the definition of the relationship between the principles of Sharia and "secular" law, as well as the guardian of the organic nature and unity of the legal system and the coherence of the regulatory system, especially as regards the hierarchy of sources.

In applying article 2, the Court followed two guidelines, the first with respect to "time" and the second with respect to "purpose". With respect to "time," the Court established the principle of non-retroactivity of constitutional review of laws, whereby it immediately excludes the possibility of assessing the constitutionality of rules that came into force before the adoption of the constitutional amendment of May 22, 1980. The principle is presented for the first time in the so-called "*al-Azhar case*". In 1979, the leadership of al-Azhar University filed a lawsuit against their creditors, who had sued the university under Article 226 of the Civil Code, which sets a penalty for late payment. This was considered contrary to Koranic teaching. Al-Azhar basically asked the Court to annul that article, because it contradicted Article 2 of the Constitution. In this case, the Court excluded its jurisdiction by virtue of the principle of non-retroactivity of the Constitutional Charter, whereby a regulation cannot be subject to its review for violation of Article 2 if it predates the entry into force of the amendment. In other words, the compatibility of legislation with Sharia law can be admitted only for laws enacted after the entry into force of the 1980 revision, therefore the obligatory nature of Sharia law binds legislation only for the future, and a norm already adopted cannot be challenged on a constitutional level. It is up to the legislator, according to the Court, to provide for the amendment of those texts, adopted before that date, which appear contradictory to Sharia, in order to make national legislation compatible with the new constitutional provisions. The Supreme Constitutional Court, acted in some ways, to protect the authority and autonomy of judges and, above all, its power to intervene against the government and the Parliament in matters of fundamental rights.

With regard to the "purpose" of the norm, the Court establishes that the norms of Sharia must be divided into two principles: principles whose origin and meaning are absolute, definitive and peremptory and principles that are relative, flexible and non-peremptory and that reflect human judgment. Thus, the Court defines the relationship between divine and immutable sources and earthly and human interpretation, establishing that only those principles that belong to the hard core of Islamic law represent the general and perennial principles, whose immutable sources can neither be altered nor interpreted. As such they are outside the scope of *ijtihad*[14],

[14] *"Ijtihad"* literally means "to strive, to undergo hard work." In Islamic legal terminology it indicates the process of deducing *Shari'ah* laws from their sources.

as their meaning cannot be altered to be adapted to the circumstances of the time. The Court recalls how there are, at the same time, principles that are the result of interpretation and are not completely absolute. In this field, interpretation is allowed, given their flexible nature, and allows them to adapt to changing circumstances, not being absolute in foundation. The only requirement is that *ijtihad* be exercised in accordance with the principles of Islamic law and according to the general ends established by it (*masaqid*[15]), being the ultimate goals to which the Islamic order aspires. Having respect for this, the legislator is free to intervene in different ways, in order to meet the needs of the community. The Court thus admits a margin of maneuver for the adoption of new legislation, within the indefinite principles of the sacred law, recognizing, as a corollary, the amendability of certain matters, including the discipline of women's rights and personal status, the main area in which are recognizable situations of discrimination perpetuated by the Islamic legal system. Following the reasoning of the Court, therefore, Shariah norms do not all have the same value. Some are definitive and as such irrefutable and unchangeable, and others are not. The former cannot be questioned by other sources, and for this reason the intervention of the human legislator by means of the *ijtihad* is not admitted in their sphere, while the latter are susceptible to possible interpretations and, for their nature, can change according to the time and space to which they refer and in which they are applied. Legislation must not contradict the principles relating to the first group, while it can abrogate the second, by means of a subsequent *ijtihad* conforming to the principles of Islam, ensuring the adaptability of the legal system to the various circumstances. The *ijtihad*, thus, becomes the instrument that guides towards the choice of the best applicable legal solution among the possible sharaitic provisions not having a definitive content. The relevant question to be established remains "when" and "if" ijtihad can be used, a decision that is the exclusive competence of the Supreme Court, which takes upon itself the authority to establish through its interpretative activity which principle is to be considered "definitive" and which "flexible" and consequently what can become the result of legislative work and what not. It is not the "definitive" nature of the norms per se that is in question, but rather the Court's interpretation of certain norms. This clarifies why, according to the Court, article 2 is not a "supra-constitutional" norm, but a provision that must be read in harmony with the entire constitutional text, since it is through the activity of interpretation that the constitutionality of a law is decided, should it violate the strong core of the defined principles of Islamic law.

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[15] The *maqasid* (lit. goals, purposes) or *maqāṣid al-sharīʿa* (goals or objectives of shariah) is an Islamic legal doctrine. Along with another related classical doctrine, the *maṣlaḥa* (welfare or public interest), it has come to play an increasingly important role in modern times. The notion of *maqasid was* first clearly articulated by *al-Ghazali*, who argued that the *maslaha* was God's general purpose in revealing divine law, and that its specific purpose was the preservation of five essential elements of human welfare: religion, life, intellect, lineage, and property. Although most jurists of the classical period recognized the *maslaha* and *maqasid* as important legal principles, they held different views regarding the role they should play in Islamic law. Some jurists regarded them as rational auxiliaries bound by scriptural sources (Qur'an and *hadith*) and *qiyas* (analogical reasoning). Others viewed them as an independent source of law whose general principles could override specific inferences based on the letter of scripture. While the latter view was held by a minority of classical jurists, in modern times it has been advocated in different forms by prominent scholars who have sought to adapt Islamic law to changing social conditions by drawing on the intellectual heritage of traditional jurisprudence. These scholars have expanded the inventory of *maqasid* to include shariah objectives such as reform and women's rights (Rashid Rida); justice and freedom (Mohammed al-Ghazali); and dignity and human rights (Yusuf al-Qaradawi).
Source: wikipedia

Therefore, the Court establishes that Article 2 forms together with the other constitutional provisions an organic whole, so that the control of constitutionality is such as to ensure the pre-eminence of the constitutional provisions with respect to those of the other sources, guaranteeing the protection of the principles provided, such as individual freedoms and the balance of powers between the different branches; secondly, the Constitution imposes the compatibility with the Islamic principles to the national legislation, which implies the need to distinguish which principles of the Religious Law can be applied by legislation, because they are not peremptory. Among other things, the Court places its action within the Islamic tradition, recalling those Sharaitic principles that recognize the activity of interpretation as a sign of divine benevolence, which encourages Muslims to discuss in order to diminish human error. For centuries, jurists in the legal schools have questioned the nature of divine commands and the behaviors that faithful Muslims must perform in order to fulfill God's dictate, building an Islamic theory crystallized in the *Fiqh*[16] . In the modern era, it is up to contemporary jurists to ask themselves whether the assumptions of the classical theory are compatible with the current needs, so that the Court imposes itself as a "secular" institution, dedicated to the guarantee of the Constitution and at the same time, as a "sharaitic" institution, to which it is up to interpret the sources of the Islamic tradition, ensuring the "dialogue" between the two subjects.

In conclusion, this line of interpretation shows how article 2 does not represent a threat to the constitutional text, since no provision can be isolated from the others, confirming how Sharia, if considered in an open logic, is not an obstacle to the development of modernization logic that can bring these systems closer to the concept of *rule of law* typical of Western systems.

1.3 The Mubarak presidency between repression of the oppositions and unconstitutional electoral reforms [17]

Hosni Mubarak, after having held the position of vice-president alongside Sadat, came to power shortly after the assassination of the latter in 1981. His beginnings were characterized by signals in a liberal sense and his first initiatives bore the sign of a hardening of the fight against extremism, which in turn supported the exaltation of the role of the leader and his position at the top of the State and the government party. One of the first measures adopted by Mubarak was the institution of the state of emergency that would remain in force for three decades, that is for his entire mandate.

Mubarak's presidency began in continuity with his predecessor. In the wake of what Sadat had done, in fact, Mubarak tried to counter the spread of Islamism in Egyptian society through electoral legislation. In 1983 in fact, were reintroduced new state controls on parties to prevent the reorganization of Nasserists, communists and Muslim Brotherhood and also, was launched a new electoral system with amendments to the electoral law

[16] *"Fiqh"* literally means "knowledge" and in Islamic terminology indicates the science of Islamic laws. The *"Faqih"* is the expert in *Fiqh*. The terms *"Mujtahid"* and *"Faqih"* are therefore equivalent.

[17] Sbailò, C., (2012), *Principi sciaraitici e organizzazione dello spazio pubblico nel mondo islamico: il caso egiziano*. Padova: CEDAM.

Sbailò, C. (2011), *L'Egitto tra mutamento di regime e transizione costituzional*. Diritto Pubblico Comparato ed Europeo.

of 1972. The new electoral system foresaw that the 176 binominal constituencies of the Assembly would be replaced by 48 plurinominal constituencies, in which candidates would be elected by list vote, with a barrier of 8%; the purpose of the law was to reserve the electoral competition to political parties, thus avoiding the feared "independent" candidatures, much used by radical Islamism. Elections were held in 1984 and saw the clear victory of the National Democratic Party but were annulled shortly after. The reform in fact, was judged unconstitutional by the Constitutional Court, as it was detrimental to the right of citizens to stand as "independent" candidates. Following the ruling, in 1987, through a referendum, an amendment to the law was approved that led to the provision of both independent and party candidacies as well as the dissolution of the Assembly. The new parliamentary elections were held the same year and the elected Parliament nominated Mubarak to the office of President; the confirmation, according to the then current version of Title V/part one of the Constitution, came shortly after via referendum. However, also the 1987 elections were judged unconstitutional; the oppositions in fact, appealed to the Constitutional Court that in reception of the petition established that the independent candidacies had been, however, penalized in comparison to those of party and declared unconstitutional the elections of 1987 as well as null any law approved by the Parliament after the date of the publication of the judgment. Among boycotts, suspicions of fraud and violent protests, new parliamentary elections followed and in 1993 Mubarak was confirmed for a third term.

As we have seen, in this climate of corruption and repression of the opposition, the Constitutional Court played a fundamental role and took a very severe attitude towards the regime, invalidating in 1997, 121 laws passed by the Parliament, fifty of which were passed under the Presidency of Mubarak. On July 8, 2000, the Constitutional Court published a sentence with which it declared the electoral law 38/1972 and its subsequent amendments unconstitutional as they allowed, in contrast with the provisions of Article 88 of the Constitution, public officials to replace judges in the supervision of elections; according to this decision, the parliamentary elections of 1990 and 1995 were considered invalid and with a presidential decree the Parliament confirmed the role of the judiciary as the only supervisory authority for the electoral process.

The choice of securitarianism and the worsening of the living conditions of Egyptians provoked a series of tensions which culminated in 2004 in the Popular Campaign for Reforms which united the entire opposition. In essence, the campaign called for a reform of the presidency that would provide for a maximum of two mandates and effective party pluralism. The reform did not take place but in the meantime the protest movement in Egypt had started and the requests for changes to the Constitution multiplied. Mubarak then asked the Parliament to revise Article 76 of the Constitution, to allow the participation of multiple candidates in the presidential elections, while at the same time announcing his candidacy for a fifth term; the amendment was approved following a referendum in May 2005, opening the way for multiple candidacies. In view of the 2005 elections, the pre-electoral climate was however incandescent: the oppositions denounced the many irregularities including the non-publication of the lists, the boycott of electoral campaigns both in the media and in public rallies regarding the candidates of the opposition parties as well as the non-appointment of foreign observers.

The presidential elections were held on September 7, 2005 under the supervision of the judiciary, and were the first elections to feature more than one candidate. The main candidates were Hosni Mubarak of the National Democratic Party, Ayman Nur of the al-Ghad Party[18] and Nu'man Gum'a of the Neo-Wafd Party[19] . The electoral campaign began on August 17, 2005 and lasted until September 4, 2005; while many believed that the re-election of Hosni Mubarak was a foregone conclusion, he instead campaigned seriously, trying to win votes throughout Egypt. In the end, amidst protests, accusations and suspicions, the elections were won by Mubarak who obtained a clear majority, followed by Ayman Nour leader of the Al-Ghad party, who was confirmed as a leading exponent of the opposition.

1.4 The constitutional reform of 2007 [20]

The constitutional reform of 2007 represented the formalization of a material constitution that had already been formed in the country, based, as we have seen, on a policy of modernization within a robust securitarian framework. The main objective was to guarantee economic stability and the permanence in power of the ruling group at the time, at the same time warding off the political rise of radical Islamism. The final text, approved on March 19, 2007[21], contained 34 articles and its characteristics can be summarized as follows:

- Protection of the system through the Constitution of emergency and electoral discrimination along with a partial introduction of legality criteria in the electoral procedures.
- Economic liberalism and administrative rationalization.
- Strengthening the top executive.
- Redevelopment of the relationship between the executive and legislative branches by strengthening both the Prime Minister and Parliament.

Mubarak's Constitution represented the plastic attempt to insert within a strong securitarian framework, processes of modernization and also in a certain sense of democratization, where the democratic "openings" were literally placed side by side with new "closures" of the system; an example of this is art. 5 dedicated to political pluralism which forbade any "political activity" and "any political party" founded on "religious bases" (with clear reference to the Muslim Brotherhood). As for the strengthening of the "protection" of the system, art. 74 of the Constitution provided further guarantees to the exercise of presidential power in emergency

[18] Literally "Party of Tomorrow", is a party officially founded in October 2004, centrist, liberal and secular in nature.
[19] It is an Egyptian political party of nationalistic and liberal imprint. It is the revival of the old and glorious Wafd party, born in Egypt immediately after the end of the First World War, which had been forced to stop its political activity following the military coup of 1952.
[20] Human Rights Watch, (2010), *Elections in Egypt: state of permanent emergency incompatible with free and fair vote*.
Sbailò, C. (2011), *L'Egitto tra mutamento di regime e transizione costituzionale*. Diritto Pubblico Comparato ed Europeo.
Sbailò, C., (2012), *Principi sciaraitici e organizzazione dello spazio pubblico nel mondo islamico: il caso egiziano*. Padova: CEDAM.
[21] During the parliamentary debate, about 110 deputies left the room in protest and the amendments were approved even without their presence.

situations, establishing that such measures were justified only when the danger was serious and imminent, and in any case it was necessary that the President consulted beforehand with the Prime Minister and with the presidents of the two Chambers; moreover, the powers of the President regarding the state of exception were considerably amplified by the rewriting of art. 179, which neutralized, in the case of a terrorist threat, the jurisdictional reservation for arrest, searches and violation of the secrecy of personal communication. A mere subsequent judicial review was foreseen, while the President was given the power to choose the military court to which to refer the terrorist suspect.

As far as anti-Islamic norms are concerned, the intervention with the greatest constitutional weight was undoubtedly the one concerning the denial of freedom of political association to Islamist formations; according to article 5 of the 2007 Constitution, political activities or political parties referring to any form of "religious authority" or built on religious grounds or on the basis of gender or race discrimination were not allowed in Egypt.

As for the rules wanted by Mubarak for the election of the President of the Republic, they clearly aimed to prevent the formation of other national leaderships outside the traditional Egyptian party circuit and to prevent opposition forces to exploit the electoral appointment to voice their dissent. Specifically, according to the mechanism foreseen by art. 76 of the Constitution, in order to run for office, a citizen had to be able to count on the support of at least 250 elected members of the People's Assembly, the Shura Council or municipal councils in governorates. Of those supporters, at least 65 should have been members of the People's Assembly, 25 members of the Shura Council, and 10 members of each of the local councils in at least 14 governorates. As for political parties, since 2007 they could only present their own candidates on the condition that they had been founded for at least five consecutive years prior to the start date of the candidacy, had been operational for the same period, and the members had obtained at least 3% of the elected members of both the Assembly and the Shura or an equivalent number of MPs in either assembly; in addition, the candidate should have been a member of the party's High Council for at least one consecutive year. Finally, the rule provided for the submission of candidacies to a special "Committee for Presidential Elections" which would have to guarantee the impartiality and regularity of the electoral process. Moreover, as regards the regularity of the electoral procedures in general, as we know in 2000, the Constitutional Court established that the polling stations should be chaired by a member of the judiciary and since the members of the judiciary were not sufficient to cover more than 50,000 auxiliary polling stations, the territory was divided into three groups of governorates and elections were held in a staggered manner, over a period of three weeks. In the Constitution of Mubarak, however, it was established that elections were held in a single day and that an independent commission formed by magistrates or former magistrates would have to supervise the elections and would have to form in turn, constituency bases, for the supervision of electoral processes. This rule was much criticized, since in this way it was impossible to guarantee a judicial control of the entire cycle of electoral operations.

As far as economic reforms were concerned, the new Constitution provided first and foremost for the elimination of references to socialist ideology with regard to the aims of the State, justice, the arts, sciences

and education. The Republic was no longer socialist and its foundation was "citizenship", no longer the alliance between the "working forces". As a result, there was the introduction of norms aimed at favoring economic liberalization, promoting capitalist economics and administrative decentralization.

As regards the form of government, there was a strengthening of the dynamic between the executive and legislative branches. In particular, there was a widening of the competences of the Council of Ministers, until now compressed by the role of the President of the Republic; furthermore, the President could issue regulations for law-enforcement, for police controls, could decide on the organization of public services and could issue decree-laws in periods of inactivity of the People's Assembly only with the approval of the government. The figure of the Prime Minister was strengthened through the formalization of his role as "second office of the State" and at the same time the Parliament was supported by a greater enhancement of the role of the "Second Chamber", the Shura; in fact, with the reform of articles 194 and 195 of the Constitution, its approval was now required as well as its opinion, in cases of request for constitutional amendments, complementary laws to the Constitution drafted in 30 articles, peace treaties and alliance treaties or otherwise affecting the sovereignty of the State.

Finally, as far as the figure of the President is concerned, the latter remained alone at the top of the executive. He had the power to declare a state of emergency, he was the commander in chief of the armed forces, he not only promulgated laws but could also propose them to Parliament; he could adopt decree-laws, he had the power of veto and as for relations with the courts, he was the head of the judiciary, the only one who had the power to appoint the Attorney General, the President of the Supreme Court and the Supreme Constitutional Court.

From an analysis of the amendments, it can be seen that the main objective of the reform was to strengthen the authoritarian system and the centrality of the President, through the ousting of religious political forces from power and the granting of greater powers to the same in cases of a state of emergency legitimized by the fight against terrorism. The Egyptian form of government, therefore, remained substantially far from the semi-presidentialism foreseen in the Charter, despite the co-presence of a Head of State and a Prime Minister. Despite the fact that one of the intentions of the reform was to make the constitutional and economic systems compatible with the modern demands of the market, no action was taken to modify the provisions invoking Islam as the State religion. Article 5 itself, in its new reading, limited party formations based on religious motives, inciting discrimination on the basis of sex or religious affiliation, but the provision only produced a bizarre situation in which the prohibition of religiously inspired parties, already provided for among other things on a legislative level in Law n. 40 of 1977, was inserted into a constitutional framework that already recognized the divine source above national legislation. In other words, the prohibition of parties inspired by religion was imposed, even though that same religious faith is the foundation on which the public organization identifies itself. It has already been said that the purpose of the law was to exclude the Muslim Brotherhood from the political arena; in reality, the latter continued to act on a social level, so much so that, as we will see

in the following paragraphs, after the fall of the Mubarak presidency and the end of the thirty-year state of emergency imposed up to that moment, they were the only organized political force present on a national level.

1.5 The fall of the Mubarak regime and the rise to power of the Supreme Council of the Armed Forces[22]

No one could have foreseen that an apparently isolated act like that of the street vendor, Mohamed Bouzazi, could have such a huge resonance and influence the affairs of other countries. In 2010, Mohamed Bouzazi set himself on fire in protest against the authoritarian and repressive power of the Tunisian police force. This event was able to trigger a chain of reactions beyond the Tunisian borders, disrupting the entire Middle East; what was later called the "Arab Spring", in honour of the events that shook Prague in 1968, was a long period of protests that involved various Arab countries, tired of being subjected to repressive and oppressive regimes and willing to shake up the stagnant and passive status quo in which they had always lived.

In order to better understand the events that have taken place since the events in Tahrir Square, the place where the Egyptian Arab Spring began, it is necessary to take a step back a year. In 2010, the National Democratic Party announced that Mubarak would once again be the candidate for the 2011 presidential elections and among other things, it was clear that the President was preparing his son Gamal to succeed him, thus fully implementing the concept of a *monarchical republic*. A mixture of political and economic injustices, false promises and disappointing realities then led the Egyptian population to rebel against the authoritarian power of the President; the protesters demanded above all the end of the state of emergency, free elections and freedom of thought expression, fight against political corruption, remedies to the severe economic crisis and unemployment, increase of minimum wages and price controls on basic goods. Among other things, the crisis of the regime was also hastened by the lack of support from the military establishment, in fact, in 2010 the Supreme Council of the Armed Forces had discussed the actions to be taken if Mubarak's son had been a candidate in the elections and the population had taken to the streets; according to many observers, the military had agreed that in such a scenario they would not have obeyed orders and would have refused to attack the demonstrators. The Mubarak regime could not survive without the support of the military apparatus.

When Mubarak resigned on February 11, 2011**,** the Supreme Council of the Armed Forces took power. According to the Egyptian Constitution in force at the time, it should have been the President of the Parliament to assume this position on an interim basis. The transfer of power to the Council had no legal basis, but had a clear political motivation; in fact, the military institution was the most respected in the country, while the Parliament was considered corrupt and illegitimate. For this reason, Egyptians were pleased to see the Council take the lead in the transition. However, it is important to note that the Supreme Council, composed of 18

[22] Sbailò, C., (2012), *Principi sciaraitici e organizzazione dello spazio pubblico nel mondo islamico: il caso egiziano*. Padova: CEDAM.
Anderson, L., (2011), *Demystifying the Arab Spring: Parsing the Differences between Tunisia, Egypt, and Libya*. Foreign Affairs. 90, No.3, 2–7.

members and led by Marshal Mohamed Hussein Tantawi, had no experience in running a country and even less in leading a political transition, so much so that under the Council's government Egypt's economic crisis worsened further and the unrest continued. On February 13, 2011, the Supreme Council of the Armed Forces, after taking the reins of power, published a "Constitutional Proclamation" with which it decreed the suspension of the Constitution and its own temporary management of public affairs for a period of 6 months or until the elections of the People's Assembly, the Shūrā and the President. The Proclamation announced the formation of a Commission for the reform of the Constitution and the subsequent holding of a constitutional referendum. In the following paragraph will be analyzed the main amendments to the Constitution proposed by the Supreme Council of the Armed Forces and the subsequent events that characterized the constitutional transition in Egypt after the fall of the Mubarak regime.

1.6 The difficult constitutional transition: from the amendments to the Constitution to the 2011 Constitutional Declaration [23]

It is possible to break down the amendments to the Constitution sought by the Supreme Council of the Armed Forces into 4 major goals to be pursued:

- Partially dismantle the securitarian-repressive system built by Mubarak, mitigating the emergency Constitution and restoring the principle of legality;
- Mitigate the "protective" standards of the Constitution;
- Remove the figure of the President from his isolation by tying him to the political dynamics of the system;
- Disciplining the constitutional "transition."

As for the first group, it was proposed first of all to repeal article 179 which allowed the president to act in derogation of the principle of the division of powers and the principles of natural judge and habeas corpus. It was then completely revised the discipline of the state of emergency, regulated by article 148: in this case, the declaration of the state of emergency had to be presented by the President to Parliament no longer within fifteen days, but within seven days of its proclamation, so that the People's Assembly could decide on it. In addition, it was necessary that the Lower House pronounced a favorable opinion by a majority of its members and in any case the state of emergency could not be extended beyond 6 months, possibly extendable after a popular referendum.

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[23] Anderson, L., (2011), *Demystifying the Arab Spring: Parsing the Differences between Tunisia, Egypt, and Libya*. Foreign Affairs. 90, No.3, 2–7.
Sbailò, C., (2012), *Principi sciaraitici e organizzazione dello spazio pubblico nel mondo islamico: il caso egiziano*. Padova: CEDAM.
Stacher, J., (2020), *Watermelon Democracy: Egypt's Turbulent Transition*. Syracuse University Press.

As for electoral procedures, regulated by Article 88, the reference to elections to be held on a single day was removed, with an implicit provision for ordinary legislation on the subject; moreover, a High Commission formed entirely by judges would have the task of supervising elections and referendums until the proclamation of results. It was then up to the Supreme Constitutional Court to assess the validity of the members elected to the People's Assembly; a challenge could be submitted to the Court within 30 days of the proclamation of the election results and the Court could make a decision on the matter within 90 days.

As for the second group of objectives, i.e. the rules relating to the "protection" of the Constitution, the prohibition to create parties of religious inspiration, regulated by art. 5, was maintained, while the rules for presidential candidates were revised. First of all the discipline regarding the subjective requirements of the candidate to the presidency was rewritten in a restrictive sense; according to the new art. 75, the President of the Republic, in addition to being born in Egypt of Egyptian parents, enjoy political rights and have an age not less than 40 years, should also not have foreign citizenship or be the son of persons with foreign citizenship or be married to a person not Egyptian. It is clear that this rule was intended to exclude from the presidential competition personalities who grew up or were rooted abroad. Also, with regard to the rules governing presidential candidacy, according to the new wording of article 76, the presidential candidate needed the support of at least 30 members among the elected members of the Shūrā People's Assembly as well as the support of at least 30,000 citizens from 15 governorates, with a minimum of 100 people for each governorate. It was confirmed the "Commission for the Presidential Elections" whose task was to supervise the presidential elections and whose decisions would be unappealable; the Commission also had the task of forming sub-commissions to follow the supervision of the elections in a capillary manner. Also with regard to the role of the President of the Republic, the presidential term of office was reduced from 6 to 4 years and a maximum limit of one re-candidacy was set; moreover, according to the new wording of Article 139, the President of the Republic, within 60 days of assuming his official duties, appointed one or more vice-presidents and established their competences. The requirements for assuming the office of vice-president were the same as those required for election to the office of President.

Finally, as regards the rules governing the constitutional transition, a paragraph was added to art. 189, according to which a new Constitution could be requested by the President of the Republic, once acquired the countersignature of the Council of Ministers, half of the members of the People's Assembly and the Shūrā. For this reason, a Constituent Assembly composed of 100 members, elected by a majority of the members of the two chambers, was given the task of drawing up a draft of the new constitution, within 6 months from the formation of the Constituent Assembly. The draft of the new Constitution was then to be submitted to the President of the Republic, who within 15 days was to submit it to a popular referendum. The new Constitution would come into force on the day of the proclamation of the results of the popular referendum.

On February 27, 2011, the amendments proposed by the CSFA were announced and on March 19 the referendum [24]announced in the Proclamation was held. The Muslim Brotherhood and what remained of the governing party, the PND, were in favor, while many voices of protest were raised by the "young people of Tahrir Square". In this context, in fact, the reason why the Muslim Brotherhood expressed itself in favor was that, confident of their organization and wide popular support, they hoped to have a majority in parliament and thus be able to draft the new constitution. In the same vein, the PND, having ruled the country for many decades, was aware of its organizational and campaigning capabilities to be able to compete with the Brotherhood, obtain a majority in parliament and draft the new constitution. On the other hand, the revolutionary and liberal forces that instead protested in Thrir Square realized that if a new constitution was not drafted before the elections, the elected bodies could easily abuse their political power.

Eleven days after the referendum, a Constitutional Declaration was issued that served as a legal reference until a new Constitution was drafted. In the Declaration the institutional position of the CSFA was formalized, the constitutional modifications introduced by the referendum were implemented with some clarifications and the procedures for the launching of the new Constitution were established. In addition to the changes voted in the referendum, the Constitutional Declaration confirmed the placement of the principles of Sharia at the top of the legal sources (art.2), corrected the rule that excluded women from running for president (art.73 and art.32) and contained the nine constitutional amendments voted in the referendum of March 19. The text consisted of 63 articles and opened with the definition of Egypt as a "democratic state"; the semi-presidential form of government was specified, in a multi-party system. In art. 1, the emphasis was placed on political pluralism, considered as the foundation of the political system even if it was reiterated in art. 4, as we have seen above, that parties based on religious, racial or gender discrimination could not be established. In the text it was also possible to notice a privileged position of fundamental rights; individual freedom in fact was defined as a "natural right" which equally concerns all citizens. It was also guaranteed "the right to protect the private life of citizens" (art.8), "the right to privacy" (art.6), "the right to a fair trial" (art.7) and "the right to a fair trial" (art.8). (art.8), "freedom of belief and freedom to practice religious rights", "freedom of expression" (art. 12), "freedom of the press and other publications" (art.13), "freedom to assemble peacefully and without arms, without prior notice" (art.16), universal suffrage was guaranteed, as well as the right of association (art.4)[25]. The executive is composed of the President, the Prime Minister, the Cabinet of Ministers and representatives of local governments. The President appoints the Prime Minister, i.e. the leader of the party that wins the majority of parliamentary seats; however, regardless of the opinion of Parliament, the President has the power to remove the Prime Minister from office as well as the ministers, only after consulting the Prime Minister. In addition to the requirements for running for the presidential office analyzed above, the text specifies that the President is elected directly by the people, by universal suffrage and secret ballot. Article 27 then defines that

[24] The 2011 referendum was among the Egyptian electoral appointments with the highest popular participation: 41% of eligible voters, against 27% in the 2007 constitutional referendum. The "yes" votes won with 77.2% (75.9% in 2007). Support for the referendum came mainly from the Muslim Brotherhood and the former ruling party, the NDP.

[25] *Egyptian Constitutional Declaration of 2011.* Wikipedia

each party which has at least one representative in Parliament has the possibility of presenting its own candidate in the presidential elections. The Parliament remains bicameral, however its functions will be restored after the elections. The principle of independence of the judiciary and the judicial order are reaffirmed. In essence, with this unilateral declaration of a provisional constitution, the Supreme Council of the Armed Forces not only rendered the verdict of the referendum invalid, but also appointed itself as the main actor that would determine the trajectory of the transition, entrenching its control over critical state institutions. On the other hand, the political spectrum was highly polarized, and the two ideological lines that had opposed the Mubarak regime during the January 25 uprisings became increasingly suspicious of each other's motivations. While Islamist factions were interested in maximizing their electoral gains and being at the forefront of shaping the future of the new Egypt, secularists were very concerned about possible domination of parliament and the constitutional process by Islamist factions. It was this polarization that extended into the streets and paved the way for widespread protests that would play into the hands of the old regime and, as we will see in the following paragraphs, ended in a bloody military coup in 2013. In short, the use of a flawed constitutional framework for the transition, such as the 1971 constitution, erased any possibility of writing a constitution based on large-scale consultation and dialogue.

On September 25, 2011, the Supreme Council of the Armed Forces defined a new electoral system to govern the then upcoming parliamentary elections. The new electoral system stipulated that two-thirds of the People's Assembly would be elected through the system of closed party lists, while one-third of the seats would be elected through the system of individual candidates as independents. This prevented revolutionary forces, most of which operated outside traditional party structures, from gaining substantial representation in parliament. In the aftermath of the voting, this distribution of seats was not even implemented, as the law allowed party-affiliated candidates to compete in the remaining third of seats that were theoretically the preserve of independents.

It is therefore not surprising that the first parliamentary elections in post-Mubarak Egypt resulted in a political victory for the Islamists. In the People's Assembly elections held in December 2011-January 2012, Islamist parties won 70% of the national vote, while the remaining 30% was distributed among the New Wafd Party, the Social Democratic Party, the Socialist Popular Alliance, and independents, with "The Continuous Revolution," a coalition of revolutionary movements, getting a measly 3%. This was followed by elections to the Shura Council in February 2012, which saw a low turnout and the victory of the Islamists who obtained more than 80% of the seats. The results of both elections thus saw a strengthening of the Islamists' grip on parliamentary and political life and were further evidence of the marginalization of revolutionary forces. In the post-Mubārak transition then, the Muslim Brotherhood emerged as the main political force in the country and seemed destined to remain so for a long time. Although other important players, such as the Salafists and liberals, had also gained political weight, the Brotherhood appeared to be the only organization able to gather around it a consensus that could guarantee a stable government for the new political-institutional course.

Later, on June 14, 2012, the Supreme Constitutional Court declared the electoral law "unconstitutional" resulting in the dissolution of the People's Assembly. Two days later, the CSFA issued an addendum to the March 2011 constitutional declaration that gave it all legislative powers until a new People's Assembly was elected and the power to form a new constituent assembly to draft the constitution if the existing assembly failed to complete its work in time for any reason.

1.7 Morsi and the 2012 Constitution: a new form of authoritarianism [26]

After about a year and a half of convulsive transition process governed by the Supreme Council of the Armed Forces, on June 17, 2012 the first presidential elections of the new democratic course of the country were held, which consecrated the victory of the exponent of the Muslim Brotherhood Mohammed Morsi. The new president assumed both the powers foreseen by the Constitutional Declaration, a provisional document approved as we have seen in March 2011 by the Supreme Council of the Armed Forces, and the legislative power, as the country does not yet have an elected parliament. Mohamed Morsi signed the Constitution on December 26, 2012, after having been approved by the Constituent Assembly on November 30, 2012 and passed in a referendum held from December 15 to 22, 2012 with 64% support, and a turnout of 33%. The new Constitution was to replace the 2011 Provisional Constitutional Declaration.

Although the new constitution solved some of Egypt's most important problems, such as the absence of presidential term limits and a parliament without effective power, it nevertheless posed a kind of threat to the protection of a wide range of political and civil rights, perpetuating authoritarianism in a new form. For example, the constitution left the president with excessive powers that placed him as a dominant political figure, above checks and balances, rather than being a party in balance with other powers. The new constitution authorized the president to appoint the heads of independent bodies and regulatory agencies charged with supervising the president himself (Article 202), authorized the president to veto laws legislated by parliament (Article 104), and to appoint the judges of the Supreme Court, including its president (Article 176), thus overriding an existing law that stated that the head of the SCC would be elected by a general assembly of judges. In addition, the constitution included many loopholes in the area of human rights. For example, although Article 36 prohibited torture and other ill-treatment, including the use of "confessions" extracted under torture in criminal proceedings, Article 219 allowed the imposition of corporal punishment in violation of the prohibition against cruel, inhuman, and degrading punishment. The constitution also allowed the prosecution of civilians in military courts in cases of crimes "that harm the armed forces" (Article 198) and placed the military justice system in a section, as opposed to a general judiciary section. This was the first time

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[26] Anderson, L., (2011), *Demystifying the Arab Spring: Parsing the Differences between Tunisia, Egypt, and Libya.* Foreign Affairs. 90, No.3, 2–7.
Sbailò, C., (2012), *Principi sciaraitici e organizzazione dello spazio pubblico nel mondo islamico: il caso egiziano*. Padova: CEDAM.
Selim G.M., (2015), *The international dimensions of democratization in Egypt. The limits of externally-induced change.* Springer.
Stacher, J., (2020), *Watermelon Democracy: Egypt's Turbulent Transition*. Syracuse University Press.

in Egypt's modern history that the constitution formalized and legalized military trials for civilians. Finally, Article 215 replaced the Higher Council of Journalism, an elected body of journalists, with a government-appointed National Media Council, which was to establish controls and regulations that would ensure the media's commitment to adhere to professional and ethical standards and observe the constructive values and traditions of society. This loosely defined article then gave the new council the authority to control and guide editorial and news coverage.

In May 2013, the ruling FJP[27] (*Freedom and Justice Party*) proposed a bill that imposed harsh restrictions on civil society organizations and subjected their operations to continuous supervision and control by administrative and security bodies. The draft law thus sought to subject civil society organizations to strict executive supervision under the so-called "Coordination Committee," which was given broad powers to adjudicate in all matters relating to foreign funding for domestic organizations and licensing and operations of foreign NGOs in Egypt. It also limited the right of civil society organizations to develop the financial resources necessary to pursue their activities by conditioning their right to collect donations on the completion of an investigation. The bill, in the words of UN High Commissioner for Human Rights Navi Pillay, would have "imposed a number of draconian restrictions on civil society organizations, particularly those focused on human rights," leaving Egyptian civil society "in a worse situation than it was before the fall of the Mubarak government in 2011." Similarly, the Morsi regime intensified authoritarian measures to suppress labor movements protesting the state's neoliberal project. In July 2013, the Center for Trade Union and Workers Services (CTUWS), an Egyptian labor NGO, published a report documenting a series of government violations against the labor movement during Morsi's year in power. According to CTUWS, the Egyptian working class had been subjected to quantitative and qualitative violations unprecedented in Egyptian labor history. Even more alarming was the reckless use of torture and cases of murder behind bars; on June 26, 2013, the El Nadim Center for the Rehabilitation of Victims of Violence published a report documenting 359 cases of torture and 217 cases of torture-related deaths during the period from June 30, 2012 to May 31, 2013.

In response to these policies, calls for civil disobedience multiplied in different parts of the country. In May 2013, young activists founded a protest movement against Morsi's regime called Tamarod (Rebel); the movement sought to collect public signatures in support of a vote of no confidence in Morsi, to be followed by a mass demonstration on June 30, 2013. The movement quickly gathered support from major opposition groups, and by mid-June 2013, announced that it had collected over 15 million signatures. On June 30, 2013, millions of protesters demonstrated across Egypt, accusing the Brotherhood of hijacking the Egyptian revolution and using electoral victories to monopolize power and suppress dissent; hundreds of thousands of

[27] On February 21, 2011, the Muslim Brotherhood, in the aftermath of the Egyptian Revolution of 2011, announced that it intended to found the Freedom and Justice Party, assigning Dr. Muḥammad Saʿd al-Katātnī as its leader. The party was officially constituted on April 30, 2011 and announced that it would appear in half of the electoral districts to compete in the formation of the new parliament in November. The Brotherhood's electoral body elected Muḥammad Mursī president of the Freedom and Justice Party, ʿIṣām al-ʿIryān and Coptic Rafīq Ḥabīb vice presidents, and Muḥammad Saʿd al-Katātnī secretary general. The three were members of the Muslim Brotherhood's Executive Office, i.e., the Maktab al-Irshād, the Muslim Brotherhood's supreme body.

Morsi supporters also took to the streets, defending the president with counter-demonstrations. The violent clashes between Morsi's supporters and opponents in Cairo ended with the military issuing a 48-hour ultimatum to the president to meet the protesters' demands. When Morsi rejected the ultimatum, Defense Minister Abdel-Fattah El-Sisi presented a roadmap for Egypt's political future, as proposed by the opposition, which included ousting Morsi, suspending the constitution, and appointing Supreme Court Chief Justice Adlī Mansūr as interim president. The proposed roadmap, which was approved by state institutions, also included amending the 2012 constitution and holding new parliamentary elections and presidential elections.

In conclusion, the Egyptian revolution of January 2011 was essentially hijacked by a structural alliance composed of the Supreme Council of the Armed Forces and the Muslim Brotherhood, emerging as a counterrevolutionary duo in post-Mubarak Egypt. These actors belligerently suppressed repeated calls for democratic change, using all possible means to ensure the continuity of an authoritarian power structure that responded to the interests of the deep state rather than the demands of revolutionary and labor forces. All this had the effect of limiting the Egyptian revolution within the limits of an "orderly transition." The forces of the counterrevolution continued to operate at different levels after the ouster of the Morsi regime as the country prepared to draft a new constitution and elect Abdel-Fattah El-Sisi as the new president of the Republic.

1.8 Al Sisi and the beginning of a massive repressive system [28]

After Morsi's fall, the military once again took center stage in the Egyptian political scene, moving quickly to restore democracy, intending to play an even more active role in shaping the outcome of the democratic processes they would soon authorize.

The 2012 constitution was then suspended, and Adlī Mansūr, who was temporarily elected interim president after Morsi's removal from office as president, issued a constitutional declaration in July 2013 expressing his willingness to begin a process to adopt a new constitution. A committee, made up by ten legal experts was then established to draft a new constitution, which was subsequently amended in the final months of 2013 by a fifty-member body that had been assembled with the intention of reworking the document initially written by the Committee of Ten. The Committee of Fifty's draft was finalized in December 2013 and adopted by a 98% vote in a popular referendum in January 2014. When al-Sisi assumed the Egyptian presidency in June, he became the first elected Egyptian president to operate under the 2014 constitution.

Since his election, General Al-SIsi has inaugurated a policy aimed at "putting Egypt back on the right track." As we will see in the following paragraph, the new 2014 Constitution re-established the dominance and privileges of the military class and eliminated any religious element from the institutional apparatus. The

[28] Abashidze, A. & Ocheretyanaya, O., (2015), *The new Constitution of the Arab Republic of Egypt of 2014 in the light of the former Constitution of 2012 and International Human Rights Standards*. RUDN Journal of law. No. 2.
Ardovini, L. & Mabon, S., (2020), *Egypt's unbreakable curse: Tracing the State of Exception from Mubarak to Al Sisi.* Mediterranean Politics. 456–475.
Selim G.M., (2015), *The international dimensions of democratization in Egypt. The limits of externally-induced change.* Springer.
Senato: Dossier n.36; Camera: documentazione e ricerche n.312, (2017), *L'evoluzione del quadro politico in Egitto dopo l'avvento di Al Sisi*.

Fundamental Charter, disguised by the much-appreciated facade of secularist progressivism, officially inaugurated the beginning of the impressive and widespread repressive system still carried out today by the Egyptian regime; many religious movements, first and foremost that of the Muslim Brotherhood, were given the label of terrorist groups and for this reason naturally illegal and enemies of the State. This attitude, reinforced by the new anti-terrorism laws in 2015 and the proclamation of the state of emergency in 2017, measures used to further weaken any form of dissent, has contributed to the formation of a capillary regime in which it is not only the emergence of an organized opposition that is prevented, but any form of dissent, even individual dissent. With the passing of time President Al-Sisi has managed to penetrate into any circuit in which forms of protest could arise, suffice it to think of the very strong control of the media, media and websites and the stranglehold exerted on universities, whose rectors are appointed by the Office of the Presidency and can expel students and researchers who conduct studies and advance ideas that are unconstitutional or "against public security", i.e. against the regime's line.

In the following paragraph, the salient points of the 2014 Constitution will be analyzed, as well as all those provisions that are useful to understand the situation that the country still faces today, especially with regard to the protection of human rights.

1.9 The 2014 Constitution, human rights protections, and token progressivism [29]

The 2014 Egyptian Constitution consists of 247 articles, 40 of which are completely new provisions, 100 are amended articles from the 2012 Constitution, and the remaining articles were included in the new Constitution without changes.

The 2014 Constitution proclaims the Arab Republic of Egypt as a sovereign, united, and indivisible state with a democratic system based on citizenship and the rule of law; the people are the source of power and the sole holder of sovereignty (Article 4); in accordance with Article 5 of the 2014 Constitution, the political system is based on, among other things, political pluralism and peaceful transfer of power, separation and balance of powers, and respect for human rights and freedoms. It should be noted that human rights and freedoms are not contained in a separate section of the Constitution, as they were in the 2012 Constitution, but are scattered across several chapters. Among other things, probably the biggest step forward is the abolition of a second chamber with questionable democratic credentials but substantial legislative authority. Legislative powers are now concentrated in the House of Representatives, which is elected by direct universal suffrage, while the unpopular Shura Council has been abolished.

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[29] Abashidze A. & Ocheretyanaya O., (2015), *The new Constitution of the Arab Republic of Egypt of 2014 in the light of the former Constitution of 2012 and International Human Rights Standards*. RUDN Journal of law. N.2.
Ardovini L. & Mabon, S., (2020), *Egypt's unbreakable curse: Tracing the State of Exception from Mubarak to Al Sisi*. Mediterranean Politics. 456–475.
Heliotis N., (2014), *A Textual Analysis of Presidential Power under the 2014 Egyptian Constitution*. The international lawyer. 48(2), 127–151.
Mansour A., (2013), *Constitution of The Arab Republic of Egypt 2014*. Yearbook of Islamic and Middle Eastern Law.

As for the role of Islam in society, the latter has been largely rethought in the new 2014 Constitution; although the new Basic Charter has retained Article 2 of the 2012 Constitution, which proclaims Islam as the state religion and the principles of Islamic law (Sharia) as the main source of legislation, the confirmation of Article 2 is rather to be seen as a tribute to tradition. In fact, in order to reduce the role of Islam, the 2014 Constitution did not include the previous Article 219 of the 2012 Constitution, which explained the concept of Islamic Sharia principles, including the Qur'an and Sunnah, "qiyas" (reasoning by analogy) and "ijma" (the consensus of scientists) as interpreted by respected Sunni schools. In fact, the article was not included because it offered a twofold problem: first, it discriminated against Shia schools, and second, due to the fact that the four recognized Sunni schools rely on different variations of Sharia sources and often disagree with each other; thus, Article 219 of the 2012 Constitution had provided the opportunity for an extremely broad interpretation of Islamic law, including its ultra-conservative forms, and its use as a tool of political expression, which, in turn, could have led to significant restriction of freedom of expression, including the use of corporal punishment and the introduction of the death penalty for apostasy. Also with regard to the religious sphere, the new Constitution of 2014 excluded the provision that for all matters relating to Sharia law one had to rely on the expertise of scientists at the Muslim Theological Academy, i.e. Al-Azhar University. In fact, the existence of this provision authorized the aforementioned religious institution, which is not an elected public body, to take part in the legislative process that could later lead to its politicization. Then, with regard to the right to interpret Sharia, with the new Constitution it has been delegated to the Supreme Constitutional Court, a traditionally secular court. The 2014 Constitution also did not incorporate Article 44 of the previous 2012 Constitution, which prohibited insulting religious messengers and prophets. At the same time, it introduced a ban on forming political parties based on religion (Article 74). The 2014 Constitution did not introduce any provision that the human rights and freedoms contained therein should not be contrary to Sharia principles, as well as prescribed rules of morality and ethics. Finally, the 2014 Constitution has preserved Article 3 of the 2012 Constitution, according to which the principles of religious laws of Egyptian Christians and Jews are the main source of legislation governing their respective personal status, religious affairs, and the selection of spiritual leaders. We can therefore infer that the preservation of Article 2, the introduction of new provisions and the exclusion instead of other articles that reinforced the role of Islam, can be seen as a kind of attempt to achieve reconciliation between the secular and religious segments of society, however more to the detriment of the latter.

In the area of gender equality, it can be noted that while a number of provisions in the 2012 Constitution were explicitly discriminatory against women and aimed to de-emphasize their role in society, the new 2014 Constitution paradoxically goes in the opposite direction. First, the Preamble states that the provisions of the Constitution are aimed at achieving equality in rights and responsibilities without discrimination. In addition, the new Constitution contains provisions guaranteeing equal opportunities for all citizens (Article 9), as well as equality of all citizens before the law in their rights and duties without discrimination. Unlike the 2012 Constitution, in the 2014 Constitution discrimination itself becomes a crime and grounds for discrimination,

including gender discrimination, are also listed. However, the aforementioned provisions only apply to citizens of the state and are not extended to people such as refugees, asylum seekers, and immigrants. Article 6 of the 2014 Constitution then grants Egyptian women the right to confer nationality to their children, including those born to a citizen of any foreign country. Also quite revolutionary are the provisions of Article 11 of the new Constitution, which establish the state's obligation to protect women against all forms of violence, to ensure the achievement of gender equality in civil, political, economic, social and cultural rights, and to guarantee women's representation in parliament; women have the right to hold public office and to be appointed to judicial bodies without discrimination. In accordance with the aforementioned article of the 2014 Constitution, the Egyptian government, in May 2014, among other things, approved amendments to the Penal Code to criminalize perpetrators of sexual harassment: obscene gestures, words and innuendos of a sexual nature are considered a violation of the law. Previously, the Penal Code only provided for criminal liability for "indecent assault" and "rape," so perpetrators were rarely held criminally responsible.

Regarding freedom of the press and media, among the provisions that were not included in the 2012 Constitution is precisely the obligation of the state to protect intellectual property and to establish a special supervisory body for this purpose (Article 69); Article 72 also declares the obligation to ensure the independence of state-run media. However, despite the fact that freedom of expression and freedom of the press and mass media are protected by Articles 65 and 70, a law prohibiting participation in public protests without prior authorization was adopted in November 2013, thanks to which many liberal and Islamist activists and journalists were arrested for participating in unauthorized protests. Thus, since the adoption of the 2014 Constitution, thousands of civilians, including journalists, have been tried in military courts, thanks to an article, which the 2014 Constitution preserved, that allows for the conduct of trials of civilians before military courts. That of civilian trials before military courts represents a very serious reality that the country has been experiencing for years now, and taking into account the dominant position that is currently held by the military, the retention of such a provision as a constitutional principle may negatively contribute to such practices to an even greater extent.

Despite the expansion of human rights standards, including the rights of children and the disabled, the right to education, and the right to health care, the new Constitution also introduces new standards that serve as a device to bypass the former. In fact, Article 237 of the 2014 Constitution declares the state's duty to combat all types and forms of terrorism; however, the introduction of the specified article poses a risk as the Constitution does not contain a definition of "terrorism" and this provision ends up giving the ruling party, the opportunity to fight its unwanted opponents and limit human rights and freedoms. Despite the criminalization of torture (Article 52) and the confirmation of additional rights in the 2014 Constitution for people accused of crimes (such as the right against self-incrimination, the right of access to a lawyer), since the year when the Constitution came into force, an alarming increase in the number of cases of arbitrary detention, disappearance, ill-treatment and rape at the hands of people under the command of law enforcement agencies has been noticed, which often proved fatal, as well as unfair trials. This is explained by the fact that, many provisions, such as

the one that guarantees the right to life and introduces a ban on the use of the death penalty, were not included in the new 2014 Constitution. Thus, after the Muslim Brotherhood party was declared a terrorist organization, hundreds of its supporters were sentenced to death, and despite the sustained chorus of international criticism, the appeals court upheld, in several rulings, the death sentences of some 183 people.

Although Egypt has adhered to numerous international human rights instruments over the years, it is only with the 2014 Constitution that the authority of these international instruments is formally recognized. Indeed, in addition to the fact that the Preamble states that the provisions contained in the Constitution are in accordance with the 1948 Universal Declaration of Human Rights, Article 93 of the 2014 Constitution provides that the state is bound by ratified international human rights treaties. This is on paper, because indeed the country, in light of the numerous violations of human rights and freedoms, as specified in the reports of well-known international non-governmental human rights organizations, seems that it is not actually committing itself to the international human rights treaties to which it is a party.

Concluding the above, it should therefore be noted that the expansion of the list of human rights and freedoms is in fact a definitive achievement of the 2014 Constitution; however, the implementation of most of the rights and freedoms therein is regulated by a law to which the state traditionally does not provide adequate protection. Many expected a bolder text more in tune with the expectations raised by the 2011 Revolution**;** the Charter, which is nonetheless a small step forward from the previous text, actually has many limitations. In general the guarantees increase, but at the same time the State continues to be equipped with the tools to circumvent them, the balance of power is still unbalanced in favor of the President, while the rhetorical and stereotypical celebration of the country's history and of the Revolution contained in the preamble sounds more like prior legitimization of the regime that may come than a narrative in which all Egyptians recognize themselves.

1.10 The Anti-Terrorism Act of 2015 and the 2017 proclamation of a state of emergency [30]

In August 2015, President al-Sīsī signed the new anti-terrorism legislation, which provides for the establishment of special courts to speed up trials, toughens penalties for terrorism and incitement to violence by introducing the mandatory death penalty for 13 crimes, and finally provides legal protection for soldiers and law enforcement officers who use force in the exercise of their mission. The law also provides for high fines for journalists who do not correctly report the government's version of terrorism.

The new 2015 Law 95 on Terrorism largely retains the overly broad definition of terrorism contained in the Egyptian Penal Code; according to that definition, a "terrorist act" includes any "use of force or violence or threat or terrorization" that aims to, among other things:

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[30] Human Rights Watch, (2015), *Egypt: Counterterrorism Law Erodes Basic Rights. Broad 'Terrorist Acts' List May Criminalize Civil Disobedience*.

Heliotis, N., (2014). *A Textual Analysis of Presidential Power under the 2014 Egyptian Constitution*. The international lawyer. 48(2), 127–151.

Luiss: osservatorio sulla sicurezza internazionale, (2020), *L'Egitto e la lotta al terrorismo: le ultime misure*.

"Disturbing the general order or endangering the safety, interests, or security of society; harming individual liberties or rights; damaging national unity, peace, security, the environment, or buildings or property; preventing or hindering public authorities, judicial bodies, governmental facilities, and others from performing all or part of their work and activities"

According to the definition of terrorism that the UN Security Council unanimously adopted in 2004 and that the UN Special Rapporteur on Counterterrorism and Human Rights subsequently endorsed, terrorism is an act committed with the intent to kill, cause serious bodily injury, or take hostages for the purpose of intimidating or terrorizing a population or compelling a government or international organization; it is clear that the broad and generic definition of terrorism given instead in the 2014 Constitution and subsequent amendments far exceeds that officially recognized by the international community. We can therefore say that Egypt's new anti-terrorism law goes against a fundamental principle of international human rights law that requires laws to be drafted precisely and to be understandable as a safeguard against their arbitrary use and so that people know which actions constitute a crime. In the name of the fight against terrorism, therefore, it has contributed to criminalize people not involved in any violent act or even engaged in completely peaceful activities; as we will elaborate in the following chapter, according to the European Parliament human rights defenders in Egypt are arbitrarily included in the lists of terrorists and therefore suffer detention or forced disappearance and torture. Repression in recent years has not only affected Egyptian citizens, and Italy knows this well; January 25 for Cairo means anniversary of the revolution but for Italy it means another year without Giulio Regeni, the Italian researcher who disappeared on January 15, 2016. Today we know that he was arrested by Egyptian security forces, tortured and killed in circumstances never clarified until now.

The issue of security and the fight against terrorism is closely related to the issue of the state of emergency. The Egyptian president declared a state of emergency on April 10, 2017, after attacks on a number of churches located in the governorates of Cairo and Alexandria that resulted in some 47 deaths. Previously, on October 25, 2014, al-Sisi imposed such a measure only in North Sinai, in response to a series of terrorist attacks in the region that left 26 Egyptian servicemen dead. Although the Egyptian constitution stipulates that the state of emergency be promulgated for only six consecutive months, in recent years the Egyptian president has always rushed to renew it even before the stipulated deadline. This measure allows the president to have civilians tried by emergency state security courts, whose verdicts have no appeal process, to intercept and monitor all forms of communication, impose censorship prior to publication, as well as confiscate existing publications, impose curfews, and seize private property. In addition to this, the state of emergency gives security forces broad powers in restricting public gatherings and media freedom and allows them to arrest people for any reason.

Following a referendum held in 2019, on April 24 of that year the electoral commission announced the approval of several amendments to the Constitution that allowed al-Sisi to extend his presidential term from 4 to 6 years as well as to run again in the next presidential election in 2024. The Egyptian leader, among other

things, will have the power to appoint judges and prosecutors general, while the army will have the power to approve the choice of Defense Minister. The amendments, specifically, define the army as the "guardian and protector" of the State of Egypt, democracy and the Constitution. Some critics fear that these changes could result in the military exerting too much influence over the country's political life. Supporters of the president, on the other hand, say these reforms are necessary to allow al-Sisi to complete important development projects and substantial economic reforms.

As we have seen, since the beginning of his tenure, al-Sisi has shown an iron fist, banning unauthorized protests and imprisoning thousands of people to massively crack down on any form of dissent. Since the ouster of former Islamist president Mohamed Morsi on July 3, 2013, Egyptian authorities have begun launching a harsh crackdown against the Muslim Brotherhood, which was declared a terrorist organization in December 2013, and all political opponents. Despite the denunciations made by human rights organizations, such as Amnesty International, Egypt continues to enjoy the support of numerous allies, both among Arab and Western countries, who consider it a bulwark against Islamist militancy. One of the most serious waves of repression against civil society activists, journalists and Islamist opponents is currently underway in the country, a situation that Covid-19 has only contributed to aggravate. In response to the spread of the virus in fact, the al-Sisi regime has opted to present the emergency as a national security risk rather than a health problem, starting a rapid process of securitization of the pandemic itself. In a presidential decree issued on April 28, 2020, the Egyptian president extended the national state of emergency for another three months, maintaining what has now been an almost automatic renewal since 2017.

In the following chapter the attention will shift to the issue of protection of human rights in Egypt, trying to analyze in more detail the situation in which the country is today. The analysis will obviously take into consideration Egypt as a member of important international agreements on human rights and will use data from various international and regional instruments to bring to light clearly the dramatic situation in the country.

2. THE DIFFICULT SITUATION OF HUMAN RIGHTS IN EGYPT

As emerged from the brief historical excursus on Egyptian constitutionalism dealt with in the previous chapter, the situation regarding human rights in Egypt, despite being partly protected in the constitution, in reality is anything but positive and especially in recent years has only worsened. Briefly reviewing the most significant historical events from this point of view, we could see that since the 60s there has been a systematic control on civil society aimed at monitoring the political and social influence of the Muslim Brotherhood, one of the largest Islamist organizations rooted in the Middle East territory; this was done through the law No. 32 of 1964, which prevented the organization from establishing itself in the territory. Likewise, the dictatorial regime established by Mubarak tried to maintain control of almost all non-governmental organizations. In the early 2000s, an attempt was made to respond to the pressure calling for greater independence for these organizations, through a law that would remove all restrictions contained in the previous code of associations of 1964. Despite some timid openings, the law maintained several barriers to freedom of association, requiring all non-governmental organizations to register with the Ministry of Social Affairs, and allowing government agencies to deny funding for projects deemed contrary to public policy. Despite the repressive climate, non-governmental associations have continued to proliferate in the country; in 2011 there were almost thirty thousand active associations registered in Egypt. Immediately after the deposition of Mubarak in early 2011, as we have seen above, the Supreme Council of the Armed Forces took power, which worsened the human rights situation in Egypt. In fact, during their transitional government they tried, through a policy based on fear and repression, to implement nationalist policies. When the United States of America intervened, pledging more than 65 million to human rights organizations, the Egyptian government reacted, claiming that these donations were an affront to Egypt and a violation of state sovereignty. A commission of inquiry was set up to investigate the foreign funding received by civil society groups. After Morsi's election in 2012, more than 40,000 people were arrested for political reasons. During this period the Court established for urgent matters in Cairo decided to ban all Muslim Brotherhood activists and established the freezing of all assets belonging to them. With Al Sisi's rise to power in 2014, the smear campaign against NGOs and all democratic groups worsened dramatically. To describe the human rights situation under the presidency of al-Sisi (who in 2019, with an amendment to the Constitution confirmed by a referendum secured his stay in power until 2030), Amnesty International uses two oxymorons: "normalized state of emergency" or "permanent state of exception." Around the state of emergency, which continues to be renewed without interruption, a whole series of laws revolve in a satellite fashion: first of all, the anti-terrorism law, whose content is so vague and general that it allows the criminalization of peaceful activities that are entirely legitimate under international law, then the law on demonstrations, the law on non-governmental organizations, trade unions, the media, etc. If the state of emergency were abolished, one would not notice the difference in how much it has been "internalized" by ordinary law. The protagonists of repression are the National Security Agency (i.e. the civil intelligence services), which carries out most of the arrests, and the Supreme State Security Prosecutor's Office (i.e. the anti-terrorism prosecutor's office) which in the first five years of al-Sisi's presidency has more than tripled the

number of cases handled. This Prosecutor's Office is also tasked with denying a phenomenon that is new to al-Sisi's Egypt: enforced disappearances, which averaged two to three cases per day in 2015-2016 and have not decreased much in the years since. Judges usually attest that a detainee has appeared before them in accordance with procedure, i.e. within two days of arrest, thus belittling weeks if not months of enforced disappearances, periods of time during which detainees are regularly tortured. Under the al-Sisi presidency, preventive detention is continually used, including the current detention of University of Bologna student Patrick Zaki. Although the law provides for a maximum duration of detention without trial of two years, since 2013 there have been thousands of cases in which this period has been extended even up to four or five years, through the issuance of new arrest warrants at the expiration of the period established by law. Preventive detention is applied against numerous prisoners of conscience, hit with non-existent "copy and paste" charges such as "threat to national security", "incitement to illegal demonstration", "subversion", "spreading false news" and "propaganda for terrorism". In Egyptian prisons, where a total of about 110,000 inmates are housed, overcrowding, sanitary conditions, denial of medical care, prolonged isolation even for years, and torture are the norm. At least 800 inmate deaths have been recorded since 2013. As of spring 2020, the Covid-19 pandemic has claimed lives among inmates, prison guards, and administrative staff. Also common is the requirement, at the end of the sentence, to undergo precautionary measures such as staying from 6 p.m. to 6 a.m. the next morning in a police station. This makes it virtually impossible for former prisoners to return to a normal family and professional life. In order to prevent the Egyptian population from being informed about the human rights situation and to prevent news from being spread outside the country, there is strict censorship of the media. There are at least 30 journalists convicted or awaiting trial. From July 2013 to May 2019, more than 2,400 death sentences have been issued and there have been 144 executions, often at the end of irregular trials. By the end of 2020, the total had risen to over 200, with 51 convictions carried out between October and November alone. The situation faced by those who want to defend human rights in Egypt has been analyzed by the African Commission on Human and Peoples' Rights. The African Commission on Human and Peoples' Rights is the safeguard mechanism and quasi-judicial body established by the African Charter on Human and Peoples' Rights, which has the task of monitoring the human rights situation on the African continent. The December 2016 press-release shows how the analysis, carried out by Special Rapporteur Reine Alapini-Gansou, who chaired the Commission until 2017, is a composite of violations constituting the arrests, arbitrary detentions and freezing measures carried out against the assets of NGO representatives. His analysis addresses the cases of Azza Soliman, who was prevented from leaving the country resulting in the freezing of the assets of her organization namely the Legal Aid Center for Egyptian Women and then the cases of Mozn Hassan and Mohamed Aly Zarea against whom an asset freezing procedure had been initiated. In the analysis there is also a call on the Egyptian government to provide explanations for the alleged human rights violations taking place, the request for the immediate release from detention of those who defend human rights in Egypt and all those who have been unjustly arrested; the call also extends to take all necessary measures to ensure freedom and security of all human rights defenders in Egypt and ensure a favorable climate for non-

governmental organizations in Egypt. Through various reports and investigations carried out by NGOs, the difficult situation of human rights in Egypt is becoming increasingly worrying. According to statements by Joe Stork, director of the Middle East section of Human Rights Watch, the actions taken by al-Sisi continue to repress all those who oppose his policy, calling for a tough and strong intervention of the international community. The report also mentions the legislative measures taken by Al Sisi against non-governmental associations. The authorities have banned more than 15 directors, founders or staff of human rights groups from traveling outside Egypt. If on the one hand there are several testimonies that tell how there are systematic and repeated violence against the subjects, the Egyptian authorities deny everything. The Ministry of Interior, in fact, categorically denies the use of practices involving torture.

In this chapter we initially introduce the theme of the prohibition of torture conceived by almost all international and regional instruments aimed at protecting human rights, functional to address in the last chapter the specific case of Patrick Zaki, who was also subjected to arrest without trial and inhuman torture. The chapter then tries to explain how it is possible that Egypt, despite being part of numerous international treaties for the protection of human rights, manages to violate these rules without suffering consequences. Egypt is in fact part of numerous international treaties that prohibit the use of torture and protect fundamental human rights, yet despite this, the country continues to multiply cases of human rights violations that is enforced disappearances, arrests of civilians subjected to torture and unfair trials; this happens because the country has managed to find a way to circumvent these international norms, providing itself with a national legislation sometimes too vague, which in the name of the fight against terrorism, the protection of national integrity and compliance with Islamic law authorizes the use of violent, unjust and inhuman forms against civilians who most of the time are only guilty of having freely expressed their opinion or have denounced the work of government. In the final paragraphs the focus will be on the latest Universal Periodic Reviews of the UN Human Rights Council with reference to the Egyptian situation. The UN Human Rights Council (HRC) introduced in 2011 the revised procedure for the review of the human rights situation in all UN member states, the so-called Universal Periodic Review (UPR). The review has a cyclical cadence of four and a half years and is divided into fourteen sessions (with the exception of two for the first year, in general there are three annual sessions) of a special working group of the Human Rights Council (UPR Working Group). Fourteen countries are examined at each session for a total of 42 countries per year. The list of countries to be examined is drawn by lot on the basis of a series of parameters in order to ensure that the member countries of the Council are affected by the procedure first and that in each session there are countries from different geographical areas. Specifically, the Universal Periodic Review of 2014 and the last one of 2019 will be considered, from which it emerges an attitude of indifference of Egypt towards the recommendations received and the commitments made in this regard. Finally, the chapter will close with a brief analysis of Egypt's relations with the European Union and Italy, highlighting mutual interests, mostly economic, which often overwhelm and leave in the background emergency situations, such as the state of human rights in which the country is, which cannot and must not continue with the indifference of the international community.

2.1 The prohibition of torture in international and regional human rights instruments [31]

The prohibition of torture constitutes one of the fundamental norms of the system that protects human rights at the international level and is contained in several regional and universal treaties. The first document, from which to start the analysis of the prohibition of torture, is the Universal Declaration of Human Rights, adopted by the General Assembly of the United Nations on December 10, 1948. The content of the Declaration represents the necessary consequence of the horrors that occurred during the Second World War, and is formulated in 30 articles that represent an achievement for the protection of human rights in the world. In fact, the Declaration is an instrument that represents the result of the intentions of the States in the post-war period, having been approved by the General Assembly of the United Nations with no votes against, 48 votes in favor and only 8 abstentions. The reference norm of the Declaration that enshrines the express prohibition of torture is Article 5, which clearly and precisely prohibits the submission to torture or cruel, inhuman or degrading treatment or punishment. The wording of the article is vitally important to the prohibition of torture because it represents the first step in creating a prohibition that will later be incorporated into several subsequent instruments. Although it is a non-binding instrument, it can be said that it largely reproduces customary rules. it represents, in fact, a useful tool for the adoption of a series of norms for the protection of essential human rights, of a binding nature. As mentioned above, Article 5 of the Universal Declaration of Human Rights has been used as a starting point for the establishment of a series of norms aimed at protecting torture in other treaties and covenants. An instrument that further establishes the prohibition of Torture is in fact the International Covenant on Civil and Political Rights, adopted in New York in 1966 and entered into force in March 1976. The Covenant currently binds 160 states, including Egypt since 1982. The Covenant sanctions, in article 4, the clause that allows a derogation towards some rights contained in it; in this case it is possible to derogate from the Covenant in case of exceptional public danger that threatens the existence of the nation and this danger must be current and proclaimed by an official act, respecting the principle of proportionality and previous communication to the other contracting states.

If an event occurs in a state which, presumably, could endanger national security, the extent of the event will be assessed by a supervisory body, with the task of verifying whether the conditions of emergency exist. However, there are some rights in the Covenant which cannot be derogated from; one of them is article 7, which concerns the prohibition of Torture. The combination of article 4.2 and article 7 of the Covenant shows how the prohibition of Torture is an absolute prohibition, that is, it can never be derogated. The prohibition of Torture belongs, in fact, to the list of those fundamental rights that the contending states undertake to respect and to guarantee to all individuals, whether they are on their territory or subject to their jurisdiction.

The instrument that specifically analyzes the prohibition of Torture is the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of December 10, 1984, in force since June 26, 1987 and binding 153 states. As stated in the preamble, this agreement is the result of the convergence of

[31] Amnesty International, *Rapporto 2019-2020. Medio Oriente e Africa del Nord: Egitto*.
Scaroina, E., (2018), *Il delitto di tortura: l'attualità di un crimine antico*, Cacucci, Bari.

Article 5 of the Universal Declaration of Human Rights and Article 7 of the International Covenant on Civil and Political Rights. The Convention is the result of constant work carried out by the United Nations, especially since the 1970s when torture was still widely used by several states. As far as jurisdiction is concerned, this implies the necessity that within a state there is a governing body capable of protecting the human rights of its citizens, in fact, once human rights covenants have been ratified, states are obliged to observe the norms deriving from these agreements in their territory and in the territories where they exercise governmental activity. Hence, it is necessary to consider how the prohibition of torture is delineated in regional contexts. There are, in fact, among the international norms of regional character several agreements useful for the consolidation of the prohibition of torture. Reference can be made to the European Convention on Human Rights, the American Convention on Human Rights, the African Charter on Human and Peoples' Rights and the Arab Charter on Human Rights. The commonality between these different, but at the same time similar treaties, is the express provision of the absolute prohibition of torture, with the exception of the African Charter where torture is included in a list of acts contrary to fundamental human freedoms.

The European Convention on Human Rights (ECHR) is a treaty that protects human and peoples' rights, signed in Rome in 1950 and in force since 1953. This Convention was created within the framework of the Council of Europe, an international organization whose purpose is to protect human rights and democracy. The European Court of Human Rights was one of the two supervisory bodies, with the Commission, set up by the Convention to monitor respect for human rights. Since the entry into force of Protocol No. 11 in 1998, a single, permanent Court has been established that also performs the functions of the Commission. The reference article of the ECHR that establishes the prohibition of torture is Article 3; this article, although short, represents a starting point for many judgments of the EDU Court. The Court, in fact, since the first sentences has affirmed its value, defining the prohibition of torture as one of those principles that are placed at the basis of democratic societies. The reference case is Soering v. United Kingdom where the Court, recalling the International Covenant on Civil and Political Rights of 1966 and the American Convention on Human Rights of 1969, has defined the prohibition of torture as an internationally recognized standard. This judgment is, moreover, indispensable in the system of protection of human rights because the judges of the EDU Court analyze the difference between torture, cruel or inhuman and degrading acts. It is, in fact, examined the prohibition as a whole, taking into account the seriousness of the fact. The dangerousness of the fact will be taken into consideration by examining concrete cases, without excluding that several elements can be considered as constituting cruel inhuman and degrading treatment. The judgment also recognizes a positive obligation on the state that has signed the Convention to ensure that, if a person is expelled, extradited or removed from the territory, he or she is not subjected to treatment contrary to Article 3. The Court later clarified that the risk faced by the subject must be "present" and "concrete". Only in 2006 the Court will define what is meant by inhuman and degrading treatment. The reference is to the case of Jalloh v. Germany, where the Court will clarify that, if an act is premeditated and continued over time this will be considered inhuman; if the act is "profoundly" humiliating, carried out in front of other people and against the will of the victim, it is defined

as degrading. Of particular interest is article 15 of the ECHR, which regulates the derogation to the rights contained in the treaty in case of a state of emergency. It should be noted, however, that there are rights within the Convention from which it is not possible to derogate under any circumstances. Article 3 on the prohibition of torture belongs to these non-derogable rights. This norm is the substantial reaffirmation of what has been previously deepened with regard to articles 7 and 4.2 of the International Covenant on Civil and Political Rights. The prohibition, in fact, according to the Court, is not subject to any kind of restriction and is mandatory even in situations of national emergency, including suspicion of terrorism. Also in the jurisprudence of the European Court of Human Rights it is clear that the states parties to the convention have different obligations, both positive and negative. In fact, the Court has highlighted in several judgments that there is an obligation on the state to prevent violations of the prohibition of torture and also the obligation to take investigative measures to ascertain who is responsible for what. In this regard, it is significant to recall the judgment Saadi v. Italy where the court has recognized the Italian state responsible for not having supervised a subject forced to suffer violations and not having guaranteed him protection and safety.

In 1969, during the Inter-American Conference on Human Rights in San Jose, the American Convention on Human Rights was concluded, which did not come into force until 1978. This Conference was convened by the member states of the Organization of American States (OAS). The Convention provided a similar mechanism to the ECHR, before it was amended by Protocol 11. In fact, there are two bodies that have monitoring functions, the Commission and the Inter-American Court of Human Rights. Moreover, the Convention is divided into two parts: the first part, substantive, presents a series of rights considered "fundamental" also common to other Conventions, while the second, procedural, concerns the functioning of the Commission and the Inter-American Court of Human Rights. In the first part there is a clear reference to the prohibition of torture, precisely in article 5 paragraph 2, where it is clear the reference to the fact that the prohibition is binding for the states parties to the Convention. The Inter-American Court, through its judgments, imposes rules that are not limited to a single case, but become indications of principle that all states party to the Convention are required to respect. States are also obliged to adopt legislative measures in order to provide, in their own legal system, provisions which comply with those dictated by the Convention. One of the Court's most stringent obligations, and one that has always been a point of reference for the Court, is Article 1, which makes the state responsible for respecting the rights contained in the Convention and ensuring their full recognition. The Inter-American Convention on Human Rights provides, like other conventions protecting human rights, a norm that establishes the possibility to derogate from the rights of the Convention. The reference is to Article 27, which allows states the possibility to derogate from some of the treaty rights, if the state faces a situation of emergency or threat to independence. Such measures must conform to the principle of proportionality and must not be contrary to international law or make any kind of distinction based on race, color, sex, language, religion or social origin. Among the rights to which there is no possibility to derogate there is article 5 concerning the prohibition of torture, which has always been considered by the Court as a mandatory article.

After analyzing the system of human rights protection at the regional level in the European and American context, we move on to analyze the rights protected by the Arab Charter of Human Rights. The first version of the charter was adopted in 1994. This first attempt to codify the protection of human rights in a charter was achieved through the efforts of the Arab Commission on Human Rights, under the mandate of the Arab League of Human Rights. The first version of the Charter was a substantial failure, because none of the states actually ratified the document, only Iraq in 1996 signed the Charter but never ratified it. Since 2002, the work of preparing the Charter passed to a committee of experts, under the advice of the UN High Commissioner for Human Rights. This committee, made up exclusively of members from Arab countries, discussed various proposals and adopted the text with important changes. To do so, they based themselves on the text first drafted in 1994, making changes that could include all the human rights protection instruments recognized up to that time. Finally, on March 15, 2008, the second version of the Charter came into force after ratification by a number of states. The new text has also introduced new and different ideas, not present in the 1994 text. For example, the principle of non-discrimination was introduced, placing obligations on states to take the necessary measures to guarantee and protect all individuals without distinction; equality between men and women was also guaranteed, ensuring legal equality for both sexes. An important turning point is also given through the affirmation of the human right to development and the prohibition of human trafficking. As for the obligations that the contracting states have, they have been clearly implemented in the 2004 version. For example, Article 23 imposes an obligation on each state to ensure an effective remedy in case of violation of a right included in the charter. The prohibition of torture and inhuman or degrading treatment is included within Article 8; the provision provides for, among other things, the possibility of compensation for an individual who has been subjected to torture.

The last relevant instrument on the protection of human rights is the African Charter on Human and Peoples' Rights, concluded in 1981 and in force since 1986. As already mentioned, the prohibition of torture is not explicit. In fact, there is no article in the Charter that prohibits torture, but rather this act is considered a form of mortification and abuse of human rights, similar to the prohibition of reducing individuals to slavery.

The following section aims to consider Egypt as a party to numerous international human rights treaties, to explain how the country, despite being a party to these agreements, manages to circumvent them and continue to violate these norms.

2.2 Egypt and the problem of the application of international instruments for the protection of human rights [32]

Egypt, besides being a member of the United Nations, has ratified many international treaties of great importance in the field of human rights and is also a member of the African Union. By being party to important

[32] Facchi, A., (2017), *Breve storia dei diritti umani*. Bologna: Mulino.
Human Rights Watch, (2017), *Egypt: Consolidating Repression Under al-Sisi*.

international agreements and treaties on the protection of human rights such as the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESR), Egypt, at least formally, has consolidated its international commitment in this area. However, as we will see below, the ratification of such agreements serves little purpose if it is not accompanied by the acceptance of the monitoring instruments (such as committees) provided for in these treaties and agreements.

The International Covenant on Civil and Political Rights obliges member states to respect basic human rights such as: the right to life, freedom of expression, freedom of association, equality before the law, minority rights but above all obliges state parties to take administrative, judicial and legislative measures to promote human rights in their countries. A very important element is that the ICCPR as an international treaty enshrines the authority of the Human Rights Committee to oversee the human rights behavior of states. The committee is composed of 18 independent experts from the countries that are parties to the Covenant, these experts are meant to oversee the behavior of member states in order to understand if they are taking the necessary steps to implement human rights. States having ratified the ICCPR are required to submit a report every four years to be reviewed by the Committee, which will make comments, recommendations and guidelines for the improvement of human rights. The new Constitution of 2014 contains a very relevant legal provision regarding Egypt's adoption of international treaties contained in Article 151. Article 151 states that the adoption of international treaties by the country takes place only under the condition that they are not contrary to the principles of the Constitution. The problem with this statement lies in the fact that the Constitution in question is a legal document which, as we have seen in the previous chapter, in art. 2 defines the Islamic principles of Sharia as the main source of the Constitution; consequently, whenever Egypt adopts an international treaty promoting fundamental rights and freedoms, the latter will become almost legally invalid when it conflicts with the Constitution, as was the case with previous Constitutions. Art. 93 could represent another element of improvement in the field of human rights operated by the new Constitution as it reiterates the country's commitment to respect all international treaties and conventions concerning human rights that have been ratified. One wonders if these provisions can really have a concrete impact on domestic legislation when at the same time the role of Sharia is reaffirmed. In fact, Egypt included a declaration at the time of the adoption of the ICCPR emphasizing that the accession to this treaty is effective taking into consideration the prescriptions of Sharia and provided that there is no conflict between the international instruments and the principles of the latter. In fact, the current Constitution, although it presents improvements in the field of human rights compared to the previous one, never conceives the rights of individuals as founding values so as

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Reine Alapini-Gansou, (2016), *Press Release on the situation of Human Rights Defenders and Civil Society Space in the Arab Republic of Egypt*. African Commission on Human and Peoples' Rights.

Saccucci, A., (2002), *Profili di tutela dei diritti umani tra Nazioni Unite e Consiglio d'Europa*. Padova: CEDAM.

Scaroina, E. (2018), *Il delitto di tortura: l'attualità di un crimine antico*, Cacucci, Bari.

Trione, F., (2006), *Divieto e crimine di tortura nella giurisprudenza internazionale*. Napoli: Editoriale scientifica.

to guarantee them unconditionally as the ICCPR and UDHR instruments do; on the contrary, Sharia imposes substantial limits to the principles of equality and freedom of religion. Moreover, the Constitution does not provide any mechanism to guarantee and strengthen these rights. The relationship between state and religion even in the 2014 Constitution is not altered but is reproduced by the same dynamics, in which religion is the formant that defines and influences the law and not the latter, which instead seeks to satisfy and respond to the claims of religion.

As extensively analyzed in the previous chapter, al-Sisi's government in August 2015 promulgated a new anti-terrorism law No. 94/20015 that grants broad powers to the President of the Republic similar to those present in a state of emergency and provides for the adoption of draconian measures that repress freedom of expression with the alleged purpose of ensuring security and public order. This law provides a penalty ranging from 200,000 to 500,000 Egyptian pounds for anyone who publishes or disseminates false news through social networks, print media, media and radio or reports news about operations of government security forces contradicting official sources and the arrest from 5 to 7 years for those who "incite violence directly or indirectly and use sites to spread messages of terrorism. These restrictions on freedom of expression found in the laws of the Penal Code, the press law, and the new anti-terrorism law have increased self-censorship by journalists and those using social media. In fact, most radio broadcasters, journalists and publishers practice self-censorship regarding sensitive issues such as human rights violations, criticism of government policies and government officials. Among other things, this law provides for the establishment of special courts to try those accused of "acts of terrorism" or "offending public morals. Often, these are mass trials before military courts against civilians, which as we know are internationally illegal and unfair. Between 2015 and 2016, it is estimated that at least 3,000 civilians are being tried before military courts on charges of terrorism and incitement to violence. Anti-terrorism Law No. 94 seems to want to discourage independent press activity in the country and intensify self-censorship by journalists and editors, which with this measure has also extended to the Internet network, a key tool for the circulation of information of all kinds. Similarly to the prescriptions of the penal code on blasphemy and defamation, the risk of these laws is that they will be used to punish any form of political dissent or criticism. In fact, a number of local and international human rights activists have expressed strong concerns about these laws, which significantly undermine the space for freedom of expression. Many journalists have been arrested for reporting crucial incidents regarding the political situation in the country such as clashes between protesters and security forces or for posting on social networks such as Twitter and Facebook their dissent for the policies of the system and their representatives. Similar to the anti-terrorism law, a new law was approved by the Council of Ministers in April 2015, which punishes insults and defamation on the Internet against citizens, the state and its authorities. This law allows the monitoring and closure of websites considered dangerous to national security thus strengthening and extending the ban on blasphemy and defamation already protected by the Internet Penal Code. In fact, the level of surveillance in the use of the Internet has increased dramatically since 2013 as the arrests of citizens for publishing certain posts on social networks.

The human rights situation in Egypt is increasingly deteriorating, government authorities are arbitrarily curtailing freedom of the press, association and assembly, and this is exacerbated by the excessive use of force by the security and military apparatus that is legitimized through these laws. In addition, there is a strong climate of impunity in the country, in which human rights violations are not punished while citizens exercising their right to freedom of expression are arrested and executed through unfair and non-transparent trials.

2.3 The phenomenon of enforced disappearances in Egypt and the draconian amendments to the 2019 NGO law [33]

As already analyzed in the previous paragraphs, the state of human rights in Egypt is worrying. The Egyptian government, in fact, has always implemented a real work of terror against citizens and with the rise to power of al-Sisi, cases of forced disappearances and arbitrary detention of students, activists, lawyers and journalists have increased dramatically. Rather than using methods recognized as legal in the rest of the world, all those who try to oppose them are made to disappear, for more or less time, without any kind of legal protection. The mechanism behind enforced disappearances seems to be convoluted and mean-spirited: in essence, enforced disappearances are used to allow the internal apparatuses to obtain confessions concerning, most often, alleged acts of terrorism; the confessions obtained are fictitious, however, because they represent a statement, made by the victim, intended only to interrupt the bloodiest torture that he or she is forced to endure. The magistrates, disregarding this petty practice, use the confessions obtained through torture to incriminate the subjects and condemn them for terrorism.

The very serious state of human rights in Egypt, and the ever-increasing number of cases of enforced disappearances, has led several human rights groups to monitor the situation. According to a report compiled by Amnesty International in 2016, there have been 34,000 arrests confirmed by the government itself, but the figure is potentially higher and, in any case, increasing to date. Instead, it amounts to 1,700 the total of "people who do not exist", disappeared into thin air, estimated in the same year. Only in 2011, according to the Egyptian Commission for Rights and Freedoms, the cases of enforced disappearance were 1,250. The Academic Freedom Monitoring Project reports that at least 32 of these confirmed attacks were against Egyptian and foreign academics. Enforced disappearances, declared illegal by a 2013 Constitutional Court ruling, are commonplace in Egypt. Selected subjects are picked up in both public and private spaces, and detained in so-called "ghost centers," where torture is inflicted on them. They lose all contact with their

[33] Amnesty International, (2018), *Egitto: Amnesty International chiede l'abrogazione della legge draconiana sulle Ong*.
Amnesty International, (2019), *Sei anni di al-Sisi in Egitto: repressione senza precedenti*.
Human Rights Watch, (2021), *Lettera aperta all'Ue ed ai suoi stati membri sull'Egitto*.
POMED: Project On Middle East Democracy, (2019), *Egypt's new NGO law: as draconian as the old one.*
European Parliament, (2020), *The deteriorating situation of human rights in Egypt, in particular the case of the activists of the Egyptian Initiative for Personal Rights (EIPR).* European Parliament resolution of 18 December 2020 on the deteriorating situation of human rights in Egypt, in particular the case of the activists of the Egyptian Initiative for Personal Rights (EIPR) n.2020/2912(RSP).
Herrold, C. E., (2016), *NGO Policy in Pre- and Post-Mubarak Egypt: Effects on NGOs' Roles in Democracy Promotion*, Nonprofit Policy Forum.

families and disappear into thin air. In the rarest cases in which they 'reappear' for trial within the 24 hours stipulated by law, they show visible signs of the torture they have suffered.

The work carried out by NGOs on the ground is therefore of fundamental importance because it witnesses and denounces these constant violations of human rights bringing them to light and at the same time giving an important signal to the victims left alone and without any protection. It is clear that that of non-governmental organizations turns out to be an uncomfortable presence especially for a government for which violating human rights and inflicting inhumane torture is a daily practice; and in fact, on July 15, 2019, the Egyptian parliament approved some amendments to a controversial law passed in 2017 that, according to human rights organizations, imposes severe restrictions on the work of non-governmental organizations (NGOs) in the country. These amendments come after Egyptian President, Abdel Fattah al- Sisi, in November 2018 under pressure from the international community, stated that this law needed to be more balanced. As stated by local media, more than two-thirds of the 596-member parliament approved the bill while only 6 deputies opposed it. In essence, the law enacted in 2017 limits the operation of NGOs to development and social activities and imposes penalties on violators of up to 5 years in prison. Those in charge of legal matters have justified this law as necessary to safeguard the country's security and avoid the interference of charitable organizations, which receive foreign funding. Below we will try to analyze the draconian measures included in the amendments to the 2019 law.

According to the government, the aim of the law is to allow organisations to establish themselves after notifying the authorities and without having to obtain a proper permit from the government; in reality, the law, based on very vague concepts relating to national security, public order and public morals, allows the government to prohibit the registration of any organisation that threatens these concepts and not least allows the government to disregard applications that do not include all the required documents. So, the problem with the law is that it contains vague terms and concepts that allow it to criminalise even overtly peaceful acts that fall within constitutionally protected rights such as peaceful protests, consensual sexual conduct and artistic activity. The International Covenant on Civil and Political Rights (ICCPR) states that "no restrictions may be placed on the exercise of the right to freedom of association except those that are provided for by law and are necessary in a democratic society in the interests of national security or public safety, public order, the protection of public health or morals, or the protection of the rights and freedoms of others" (Article 22.2).

Freedom of association is therefore "indispensable in a democratic society" and the most severe restriction on freedom of association, such as the dissolution of an association, would require the strongest possible justification. The new law, like the 2017 law, would then prohibit a range of peaceful activities that are commonly part of the activities of non-governmental groups. For example, the law would prohibit organizations from conducting any surveys or field research without government approval, ban any work that threatens "public order, public morality, national unity, or national security," and prohibit cooperation with any "foreign internal or external entity"-in effect, Egyptian organizations would not be allowed to recruit, consult, or collaborate with foreign volunteers or employees of foreign organizations without the approval of

the ministry. The law imposes hefty fines of 100,000 to 1,000,000 Egyptian pounds for violating many of its terms, such as sending or receiving funds or donations without government approval, which can be confiscated if received without consent. Similar fines would be imposed for carrying out civil society activities without permission. The bill would allow the government to inspect all NGO activities to ensure that "funds are spent for specified purposes," and the relevant minister would have the power to close for one year organizations that the government finds to be in violation of regulations regarding the receipt and expenditure of funds or to engage in activities that were not declared at the time of registration. The court must review the minister's decision and decide to uphold it within seven days. The courts would also have the power to dissolve organizations that accept funds or cooperate with foreign organizations without authorization, as well as organizations that do not engage in "serious activities" for one year, but would not define what constitutes a "serious activity." The law would then allow government officials and security agencies to interfere in the day-to-day work of the organisation and would stipulate that any employee of the organisation who "obstructs the administrative authority" from controlling or supervising the organisation's activities would have to pay a fine ranging from 50,000 to 500,000 Egyptian pounds. A similarly disproportionate fine would be imposed for minor administrative matters such as failure to report a change of address of the organisation within three months. The law would also establish a "Central Unit for Associations and Civic Work" under the relevant ministry to monitor and supervise the activities of NGOs. This unit would also be required to establish a mechanism for "immediate sharing of information with the relevant authorities" if there is "reasonable suspicion" of terrorist activities. The law also imposes draconian restrictions on the work of foreign and international organisations; international organisations must obtain a licence from the Ministry of Foreign Affairs, which is valid for a certain period of time, before undertaking any work in Egypt. The license would cost up to 50,000 Egyptian pounds (US$3,000), and applications for the license would have to match "the priorities and needs of Egyptian society according to development plans." International organisations would have to submit "reports, data or information" on their activities at the request of the "administrative authority" and the law again prohibits international organisations from giving or receiving funds without the approval of the ministry. The relevant minister would have the power to revoke an international organization's license without due process on the grounds that the organization has violated "public safety, national security, or public order" or violated the terms of its license.

In July 2019, approximately 10 Egyptian human rights organizations, including the Cairo Center for Human Rights Studies (CIHRS), rejected these amendments as still highly limiting, with CIHRS Director Mohammed Zaree stating that the purpose of the amendments was simply to appease international opinion, but the changes continue to be out of line with the Egyptian constitution and international obligations. According to these organizations, the new draft law is nothing more than a reformulation of a repressive law, carrying a philosophy and ideology hostile to civil society organizations. Human rights groups have, therefore, fully rejected the draft law concerning the work of civil society; activists consider the new law as an attempt to curb humanitarian activities.

A number of UN officials and agencies have criticised Egypt's crackdown on independent organisations and human rights defenders. Former UN High Commissioner for Human Rights Zeid Ra'ad Al Hussein said Egypt has used abusive laws to justify the "systematic suppression of civil society and the closure of civic space". Among other things, the Egyptian government has not yet allowed the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association to visit Egypt, despite requests in 2011, 2013 and 2017.
The following section will analyze the recommendations to Egypt that followed the 2014 Universal Periodic Review through an analysis published by Amnesty International, which shows Egypt's attitude of disregard and indifference to international commitments, as well as a human rights situation that is once again staggering.

2.4 Amnesty International's analysis from Egypt's 2014 Universal Periodic Review [34]

In June 2019, Amnesty International published an analysis of the human rights situation in Egypt since the last Universal Periodic Review in 2014. The report, which was then submitted to the UN Human Rights Council, highlighted the use of arbitrary detention, ill-treatment and torture, enforced disappearances, irregular trials and chilling conditions of imprisonment. In fact, at the previous UPR session, held in 2014, Egypt accepted 237 of the 300 recommendations submitted to it. Amnesty International's analysis revealed, however, that instead of implementing fundamental reforms in line with those recommendations, the Egyptian authorities adopted even more repressive measures that further restricted fundamental rights and freedoms. Several UN Special Procedures have denounced the worsening human rights situation in Egypt, referring among other things to arbitrary arrests, restrictions on freedom of demonstration and expression, torture, reprisals for dealing with the Procedures themselves and, most recently, to detention conditions that may have even resulted in the death of former President Mohamed Morsi. Below we will attempt to analyze what emerges from Amnesty International's analysis regarding the recommendations made to Egypt during the 2014 UPR and how little the country has actually complied with those recommendations.
As already mentioned, of the 300 recommendations made to Egypt during the previous UPR, the country accepted 237, partially accepted 11 and rejected 52. In particular, Egypt accepted recommendations to guarantee freedom of expression, association and assembly, to protect journalists and human rights defenders, to amend the law on the right to public assembly, processions and peaceful demonstrations, and to adopt a new law on NGOs in line with international standards. As we have seen, despite these recommendations, the authorities continue to strictly restrict the activities of civil society organisations, trade unions and independent media, both in law and in practice. Since 2014, the authorities have arrested hundreds of human rights defenders, critics and journalists. Between December 2017 and January 2019, the authorities intensified their

[34] Amnesty International, *Rapporto 2019-2020. Medio Oriente e Africa del Nord: Egitto*.
Human Rights Council, (2014), *Draft report of the Working Group on the Universal Periodic Review – Egypt*, Twentieth Session.
Human Rights Council, (2019), *Draft report of the Working Group on the Universal Periodic Review*, Thirty-fourth Session.
Arab Republic of Egypt National Standing Committee for reporting and follow up, *Mid-term Report*, Thirty-fourth Session.

crackdown on dissent, arbitrarily arresting at least 158 people just for voicing critical views peacefully. The report reveals that although Egypt has accepted recommendations to respect basic human rights, it continues to use the subterfuge of false accusations under a draconian anti-terrorism law and other vague laws that allow any form of dissent to be deliberately misconstrued as a crime. Egypt has also accepted recommendations to protect all detainees from torture and other forms of ill-treatment, while rejecting recommendations to allow independent visits to all places of detention, including military or National Security Agency facilities. Although the country has accepted these recommendations, Amnesty International analysis suggests that the National Security Agency routinely uses enforced disappearances, torture and other forms of ill-treatment to extract "confessions" and punish opponents. While on the one hand the country has accepted recommendations to ensure fair and impartial trials, on the other hand it has dismissed recommendations to stop using pre-trial detention as a measure to punish activists and protesters and to end the practice of military trials against civilians. The authorities continue to hold thousands of people in pre-trial detention on unsubstantiated charges or on the sole accusation of involvement in peaceful protests. Civilian and military courts have handed down verdicts after unfair mass trials and sentenced hundreds of people to death. Egypt also accepted recommendations to eliminate gender discrimination, protect survivors, and prosecute perpetrators, despite which discrimination against women and Lgbt people continues in law and practice.

While on the one spectrum the country has accepted recommendations to fully cooperate with the Human Rights Council and the and its mechanisms, the numerous requests for visits to Egypt are still pending from UN special procedures; Amnesty International's analysis shows that requests for visits from 16 UN special procedures are pending. In addition, the report denounces the fact that the authorities have often implemented reprisals against people who engage with the UN special procedures; the UN Special Rapporteur on the right to adequate housing in fact, during her visit in 2018 was faced with several restrictions, in addition, people who engaged with her were subjected to reprisals, such as the lawyer and human rights defender Ebrahim Metwally, engaged in the Working Group on Enforced or Involuntary Disappearances. All of this clearly calls into question Egypt's commitment to genuinely cooperate with UN human rights mechanisms.

In the analysis there is also an emphasis on the fact that the constitution of 2014 contains better guarantees for human rights than previous constitutional experiences, despite the fact that they are insufficient to meet international human rights obligations or are canceled by as many rules that violate other rights. Indeed, the constitution allows the military trial of civilians and fails to unconditionally guarantee freedom of expression, assembly, and provide protection against forced evictions. Constitutional amendments were adopted in 2019 that helped further erode judicial independence, increasing unfair trials and enshrining impunity for members of the armed forces. Legislative authorities passed several laws that "legalized" widespread human rights violations, including the Law on Associations (70/2017) that grants authorities additional powers to deny NGOs legal registration, restrict their activities and funding, and prosecute their staff on the basis of vaguely worded offenses. An amendment to Article 78 of the Penal Code increased the penalty for receiving foreign funding to life imprisonment. In addition, the new Trade Union Law (313/2017) prohibits independent trade

unions from operating outside the state-controlled Egyptian Trade Union Federation. In the analysis, Amnesty International also says it is concerned about Egypt's 2018 media and cybercrime laws, which further strengthened the authorities' near-total ability to censor the press, online media, and broadcasting. In 2017, the president signed a series of legislative amendments to the Criminal Procedure Code, particularly the law governing appeals before the Court of Cassation, the Terrorist Entities Law, and the Anti-Terrorism Law allowing authorities to make mass arbitrary arrests, enabling indefinite pre-trial detention, and undermining due process and fair trial. Impunity was further strengthened with the Armed Forces Senior Leadership Law (161/2018) allowing the president to grant immunity to senior military officers for human rights violations committed between 2013 and 2016, a period during which hundreds of protesters were killed. The Personal Status Law continues to discriminate against women in marriage, divorce, and custody rights. Authorities have also used the Debauchery Law (10/1961) to arrest people based on their actual or perceived sexual orientation. In 2017, the authorities established human rights departments in all ministries and governorates. However, it seems that these are cosmetic measures because so far the main role of these bodies has been to counter allegations of human rights violations, rather than actually addressing the violations themselves. In addition, the autonomy of the National Human Rights Council is still in question, and the Council has no mandate to conduct unannounced visits to places of detention.

Data also emerges in the analysis regarding religious minorities who continue to face discrimination in law and practice. Specifically, authorities often prevent Christians from worshipping, and their right to build and repair churches remains limited by a new law that requires the approval of various state bodies, including security agencies. In addition, the Bahá'í[35] community is not recognized and its "public activities" continue to be criminalized. [36]Nubians are also forced to suffer discrimination of various kinds; for example, although the 2014 constitution recognizes the "right of return" to their original lands, authorities have not taken steps to allow Nubians to return to their lands. In addition, the Ministry of Education has not allowed schools in the far south of the country to teach the Nubian language despite requests from Nubian residents. Protests by Nubians in 2017 were met with arrests and a protracted trial at the Emergency State Security Court.

Security forces often arbitrarily arrest and detain thousands of refugees, asylum seekers and migrants and use excessive and unnecessary force against those seeking to enter or leave Egypt illegally. Dozens of refugees were deported to countries where their lives and safety were at risk, in violation of the principle of non-refoulement. In the analysis published therefore, Amnesty International says it is appalled by the interim report

[35] The Bahá'í faith is a monotheistic religion born in Iran during the mid-19th century, whose members follow the teachings of Bahá'u'lláh (1817-1892), prophet and founder. This religion emphasizes the spiritual unity of all humanity. Three fundamental principles establish the basis of Bahá'í teachings, the unity of God (one God who is the source of all creation), the unity of religion (all great religions have the same spiritual origin and come from the same God), and the unity of humanity (all people are considered equal before God and cultural and ethnic differences are valued as gifts worthy of esteem and acceptance). The Bahá'í Faith explains the relationship of man in his dynamic and historical bond with God through the concept of relativity and progressiveness of religion, thus reconciling History with each temporal and geographical profile of monotheism, as well as with the eras preceding Abraham.

[36] The Nubians are an ethnic-linguistic group indigenous to the region of Nubia, divided between northern Sudan and southern Egypt. They are descended from the first inhabitants of sub-Saharan Africa, from the central valley of the Nile, considered one of the first cradles of civilization. They speak Nubian languages, part of the southeastern languages of Sudan.

of Egypt's UPR in which the authorities claim to have followed up on recommendations made during the 2014 review; the organization believes the claims of progress are completely unfounded, given the significant deterioration in Egypt's human rights situation since the previous review.

In November 2019, the last Universal Periodic Review was held during which Egypt's human rights record was examined, among others. UN member states submitted 372 recommendations and Egypt accepted 294 of them, many of which simply proposed cosmetic changes that will not reverse the current human rights crisis. On the other hand, Egypt rejected or only partially supported key human rights-based recommendations, arguing that the government has already successfully implemented some of them, such as ending the practice of reprisals against human rights defenders, and claiming that others were factually incorrect or irrelevant. It is also regrettable that Egypt rejected both recommendations on abolishing or moratorium on the death penalty, while claiming to be conducting credible investigations into allegations of torture, enforced disappearance, and extrajudicial killings. Moreover, it is equally disconcerting that Egypt has refused to release people arbitrarily detained for exercising their right to freedom of expression, and to recognize the rights of LGBTQI people. A few days after the release of the review, Egypt made it clear that it is unwilling to address the widespread human rights violations in the country and honor its international legal obligations to protect and respect the right to life, dignity, and fundamental freedoms, instead conveying its intention to perpetuate its policies with total impunity.

2.5 Egypt's ambiguous relations with the European Union and the international community [37]

On November 5, 2020, the President of the European Council Charles Michel made a trip of a few hours to Cairo where he met with the Egyptian President Abdel Fattah Al-Sisi. It was, explains Brussels, to consult one of the most important Arab leaders, at a time when, in France, the revived crisis of the caricatures of the Prophet risked to tarnish relations between West and East. The aim of the meeting was to discuss cooperation between Egypt and the EU in the light of the terrorist attacks perpetrated in France and Austria in 2020. This episode illustrates well all the ambiguity of the relations between the European Union and the Arab Republic of Egypt. The joining of forces between a European entity that exalts its "fundamental values" and a state south of the Mediterranean that for more than half a decade has worked, successfully, to earn its reputation as a ruthless dictatorship raises many questions if not suspicions. Realpolitik dominates, in an overwhelming way, considerably eroding the application of the values claimed by Europeans.

Recent history highlights an increase in priorities between Egyptians and Europeans. As Koert Debeuf, a researcher at the Flemish University of Brussels who spent five years in Cairo between 2011 and 2016 as an envoy of the European Parliament's Liberal Group, puts it, over the years relations between the European Union and Egypt have evolved; very formal before 2011 and focused on small projects with no hope of major

[37] Pardo, I., (2020), *EU-Egypt Relationships in the wake of the Zacki case*, The New Federalist.
Petillo, K., (2020), *Upholding values abroad: Europe's balancing act in Egypt*, European Council on Foreign Relations.
Baudouin, L., (2020), *EU-Egypt: a disgraceful partnership*, OrientXXI.

progress, these relations then shifted to a phase of intense cooperation as soon as the wind of democratic change blew through the region. Finally, in recent years, they have been reduced to utility: combating illegal immigration and terrorism. After 2011, relations improved then, but not substantially. In any case, there were some opportunities to invest not only in the local economy but also in society and democracy. The Egyptian leadership, however, never wanted to address the latter dimension.

Under the authoritarian wand of Al-Sisi, Egypt's partner of the Europeans has plunged, since the July 2013 coup that ended a year of Muslim Brotherhood rule, into a management of the country based on the suppression of freedoms and thus the repression of protests. Buoyed by its support in Washington, Riyadh, Abu Dhabi, and Tel Aviv, the Egyptian regime shows itself increasingly impervious to criticism on the issue of human rights as, although its values are under fierce assault on the banks of the Nile, the EU itself turns a blind eye or is reduced to making a few passing comments. The argument of the sacrosanct and necessary stability of Egypt, imposed by the most influential European capitals, constitutes, therefore, the basis of bilateral relations between this country and the EU. For its part, the Egyptian regime does not hesitate to take care of its image as a good partner: in Brussels, for example, some appreciate its actions that make it a model of efficiency against illegal boardings. This is evidenced by the September 20, 2018 statement of Austrian Chancellor Sebastian Kurz, whose country held the EU presidency, who praised Egypt for being "the only North African country that has managed to prevent migrant departures" by sea since 2016. These good relations have not failed to stimulate the self-esteem, if not the pretensions, of a self-confident regime. Indeed, some cooperation programs planned by Brussels could not be launched for two years, as Cairo demanded that the general conditions of the agreements formalizing this aid be deleted from Article 26, which provides for the possibility of suspension for serious human rights violations. As of 2018, the Egyptian Ministry of Foreign Affairs has informed the European Commission that it does not, or will no longer, accept clause 26. Disconcerted, the Europeans seek a compromise, as they are concerned with maintaining at least some of the support programs related to socio-economic sectors and civil society, without taking care of the direct links to human rights, as in the case of the renovation of informal settlements. The tug-of-war continues, with Egypt making it a matter of principle. However, in Cairo, informed observers know that Foreign Affairs is also under the influence of the security services while technical ministries become the victims. In essence, cooperation finds itself hostage to political tensions.

The sums involved do not impress the Egyptian regime; the amount of the current financial availability for subsidies is 1.3 billion euros. These are budgetary and sectoral aids, contributions to development agencies, grants to public partners or NGOs. This instrument of the European Neighborhood Policy represents, every year, about 115 million euros for Egypt. It is not a considerable amount since it is a country of 100 million people. Morocco receives 200 million, Tunisia 300 and so does Palestine (including aid from the United Nations Relief and Works Agency for Palestine Refugees in the Near East, UNRWA). These 115 million disfigure in comparison to U.S. aid or what the International Monetary Fund (IMF) is doing. However, these are donations and not loans. For the sake of efficiency, the EU is focusing on certain sectors such as water,

energy, access to finance for SMEs, development programs for informal settlements in Greater Cairo. Not to mention more discreet assistance to some NGOs. Despite this, therefore, it is not able to commit these sums. The main European countries are probably not upset in any case; for them, the stakes in the areas of trade, migration and counter-terrorism are much higher. For example, France, Germany, and Italy have favored signing "armament" contracts - fighter-bombers, submarines, and frigates, respectively - that run into billions of dollars. Therefore, as much as these countries officially maintain a rhetorical moral stance in the European Council, their banks or development agencies do not place a human rights clause when signing an agreement or loan with this country, and their bilateral embassies in Cairo do not show the same firmness as each plays up their national interests.

Alongside the commercial interests of the Europeans, the Egyptian regime deftly wields the cards at its disposal. At least since 2015, according to Leslie Piquemal, head of European defense at the Cairo Institute for Human Rights Studies, in Brussels, the Egyptian authorities have been able to engage in a political-diplomatic game that is sometimes subtle, sometimes less so, but very effective in strengthening Egypt's role as a partner deemed indispensable in European strategy in the Middle East and the Mediterranean area, as well as in border control and the fight against terrorism. This creates implications in EU-Egypt relations, since the EU and many member states do not want to lose Egyptian cooperation by clashing with Egyptian authorities on issues of democracy, human rights, rule of law. From his privileged position as an observer in Brussels, Leslie Piquemal notes, on the part of Europe, a combination that is not necessarily effective or consistent: that of a public diplomacy that, on the issues that bother (such as human rights, status and weight of the Egyptian army, military support for Marshal Khalifa Haftar in Libya, etc..) is generally timid or limited to formal channels with very low media visibility, such as oral interventions at the UN Human Rights Council, and which is sometimes non-existent or invisible in the face of alarming events such as the crackdown on demonstrations in September 2019 that resulted in 4,400 arrests and enforced disappearances. At the same time, this diplomacy is clear, relatively visible and consistent on the 'positive' aspects of the relationship with Egypt (financial support in the socio-economic sphere, infrastructure, cooperation on regional issues such as Palestine, gas)."

The European Parliament, unfortunately lacking real powers, has issued four emergency resolutions on human rights in Egypt in recent years (the first one concerned, in 2016, the Giulio Regeni case, named after the Italian researcher whose death in Cairo in atrocious circumstances may have been the work of Egyptian "services"). More recently, on October 21, 2020, 222 members of the European Parliament and parliaments of European countries also signed an open letter to President al-Sisi asking him to release political prisoners and end human rights violations. Instead, the diplomatic work of the EU's executive bodies, as evidenced by Josep Borrell's[38] latest visit to Cairo on September 3, 2020, seems to be more rhetorical and window dressing. Indeed, the EU

[38] Josep Borrell is a Spanish politician and economist, member of the PSOE (and therefore of the European Socialist Party). Since 1 December 2019, he has held the position of High Representative of the Union for Foreign Affairs and Security Policy. He was President of the European Parliament from 2004 to 2007, as well as Minister of the Spanish Government for Foreign Affairs, European Union and Cooperation from 2018 to 2019.

High Representative for Foreign Affairs and Security Policy commented on his visit with these words, "An important visit to Cairo, which started with an in-depth exchange with President Al-Sisi. Egypt plays a key role in the region and we strive to strengthen relations and continue to cooperate on issues of mutual interest." The EU and Egypt appear to be in fact solid partners.

2.6 Italy's gradual abandonment of democratic internationalism in its relations with Egypt [39]

Reflecting on the state of relations between Egypt and Italy, it is impossible not to grasp data that illuminate the moment of great difficulty, if not the general process of decline in which European liberal democracies find themselves in relation to the major Middle Eastern states. This difficulty reflects a profound change in the balances not only geopolitical, and therefore material, but also normative and political between these two areas of the world and the definitive erosion of a shared multilateral framework. It is within this context of disorder and decline, therefore, that we must read the complex events that have bound the two countries in question in the last five years. Despite the divisive potential of some of these, the last five years have tied the fates of Egypt and Italy together, dragging the two countries into a vice in which, despite the imbalances and structural weaknesses of al-Sisi's authoritarian regime, it could be Italy that ends up being crushed.

Relations between Italy and Egypt have historically always been significant, for reasons that have not substantially changed since the time of Gamal Abdel Nasser. These reasons can be traced back to the strong Italian energy dependence, to the relative wealth of hydrocarbons of the Egyptian state, and to the strategic position of Cairo in the Middle East area. In the last five years, however, relations between the two countries have marked a moment of particular intensity, despite the fact that the dramatic events linked to al-Sisi's counterrevolution have closely involved Italy first with the heinous murder of Giulio Regeni, the doctoral student at Cambridge University originally from Fiumicello in Friuli, which took place in Cairo in February 2016, and more recently with the arbitrary arrest of Patrick Zaki, an Egyptian student at the Alma Mater Studiorum in Bologna in February 2020, which we will explore in the following chapter. If these tragic events, absolutely exemplary of the level of repression of Egyptian civil society by al-Sisi's regime, have been able to generate genuine outrage and a significant mobilization of Italian public opinion, they have not, however, succeeded in stopping a powerful rapprochement between the two countries that has touched, in recent years, a plurality of fronts. From an economic and commercial point of view, in recent years Italy has become Egypt's second commercial and political partner in Europe, and the fourth in the world after the United States, China and Germany. Commercial collaboration between the two countries has covered a wide range of sectors, but energy has been by far the most important. In March 2015, Italy's largest hydrocarbon industrial group, ENI, had signed an agreement for a five-billion dollars investment designed to develop Egyptian mineral resources

[39] Salma A., (2020), *Student killing has impacted Italy's relationship with Egypt, minister says,* Arab news.
Trento L., (2020), *Italia ed Egitto: una relazione travagliata,* Orizzonti Politici.
Orsini A., (2020), *Perché l'Egitto è così importante per l'Italia nonostante il caso Regeni,* Luiss: osservatorio sulla sicurezza internazionale.

and address Egypt's energy shortages. This was followed by the discovery of huge offshore gas fields on the Egyptian coast. The Zohr natural gas field, discovered by ENI in August 2015, is now the largest gas reservoir in the Mediterranean and one of the largest in the world. For ENI, therefore, Egypt is now one of the most important production basins and an important building block in the creation of a larger gas hub in the eastern Mediterranean. On the strategic-diplomatic front, in the last five years Italy has de facto assigned to Egypt the role of guarantor of stability in the Mediterranean and the Middle East. Modulating on directives established in Washington and supported in Berlin and Paris, Italy has given Egypt a great strategic value both for its continuous role of mediation in the Arab-Israeli conflict and, especially, for its commitment to the fight against Islamist terrorism. This rapprochement was part of Italy's 'Mediterranean pivot' strategy, whereby the country committed to play the role of vanguard of the EU and NATO, through its own bilateral partnerships with countries like Egypt. Italy's political-diplomatic support to Egypt has also been accompanied by increasingly close strategic and military cooperation, to the point that in 2019 Egypt officially became the world's top customer of the Italian military industry. Such an achievement, which is extraordinary considering that it involves a non-democratic state outside the military alliances to which Italian foreign policy officially refers, rests on a dense network of agreements and exchanges that developed as early as January 2015, with the signing of a new joint defense agreement, and intensified with the progressive increase in the sale of military and police equipment, including small arms and surveillance software. It should be noted that this close collaboration between Italy and Egypt in the military and police sector continues to clash with the EU-wide suspension of arms transfers to Egypt that has been in place since 2013, in response to the Rabaa massacre[40]. Even more striking, then, was the $9 billion deal reached in May 2020 for the sale of substantial Italian military systems to Egypt, dubbed by many as 'the order of the century'; this deal includes the sale of two Fremm multi-role frigates, four ships and 20 patrol vessels, 24 Eurofighter multi-role fighters, and as many M346 trainer aircraft. The sale of military systems marks a qualitative leap in the cooperation between the two countries and allows Egypt to pursue with more means that nationalist, revisionist and muscular foreign policy with which the regime hopes to avert the loss of regional influence and shore up its shaky domestic consensus.

The close relationship between Italy and Egypt, consolidated in parallel with the intensification of al-Sisi's counter-revolution and in spite of the serious events linked to the Regeni and Zaki cases, nevertheless exposes more than one critical issue, and raises some questions. The first is a strategic question; the relationship

[40] Beginning on 3 July 2013, thousands of Muslim Brotherhood supporters occupied the Rābiʿa al-ʿAdawiyya squares in Cairo and al-Nadha square in Giza to protest the ouster of President of the Republic Moḥamed Morsī after al-Sīsī's coup.
During the six weeks they were in control of the square, numerous encampments and sit-ins were set up, turning the square into the epicentre of the pro-Morsī and anti-military coup campaign; according to Human Rights Watch, the vast majority of participants were unarmed and peaceful. Evidence also shows that the army and police shot to kill. After yet another refusal to surrender by the occupiers, the government decided to evacuate the square: on the morning of August 14, Egyptian police forces in riot gear blocked all entrances to Rābiʿa al-ʿAdawiyya and unleashed a very harsh siege on the square beginning the forced eviction of the sit-ins, which lasted about 24 hours, during which police used tear gas, rubber bullets, birdshot and ammunition to disperse protesters, supported by bulldozers to clear barricades and covered by armoured vehicles and snipers on rooftops. The final act was the destruction of the mosque filled with hundreds of protesters, which was set on fire. This event was widely publicized and condemned by the major international media, while it appears that the Egyptian media supports a version of the Rābiʿa al-ʿAdawiyya massacre that is consistent with the official government line. Signs of fire and devastation were erased in record time and public television made no mention of the massacre, given the Egyptian authorities' censorship control over the major media.

between Egypt and Italy is based on considerable, yet now ambiguous, asymmetries of power, vulnerability and legitimacy. Although Egypt is considered an important ally in various theaters and worthy of considerable investments, it remains a country with limited legitimacy and this constitutes a possible strategic vulnerability for a country like Italy. Short-term benefits may be eclipsed by long-term liabilities, partly because the al-Sisi government is based on the difficult and costly maintenance of a repressive regime, and partly because the convergence of interests and strategies between the two countries is by no means obvious, especially given the 'volatile' nationalism that characterizes Egypt's current foreign policy. Moreover, events such as the recent huge sale of Italian weapons and military systems to Cairo seem to betray changes in the balance and roles that are, in fact, increasingly global, i.e. it is no longer the Western arms-producing states that have negotiating power, but their Middle Eastern clients. Thus, from being a junior partner of the alliance, Egypt seems to have passed to being a senior partner, with Italy resigned to chasing the Egyptian will, capturing its interest and reciprocating its attention.

The rapprochement between Italy and Egypt has often been interpreted as functional to the "national interest" and declined in terms of realism and stability. According to this position, in fact, support for the al-Sisi regime would be essential for maintaining the stability not only of Egypt but of the entire Middle East region. This position, however, has now proved to be not only illusory but counterproductive, both internationally and domestically. Internationally, unconditional support for al-Sisi has had the sole effect of increasing Egypt's appetite and encouraging it to pursue a revisionist, ambitious and destabilizing strategy in the Middle East and Mediterranean scenario - a strategy that puts, in no uncertain terms, Egyptian interests first and last. This approach is hardly compatible with the long-term strategic interests of a country like Italy and the case of Libya confirms it. Here, the Egyptian strategy of supporting General Khalifa Haftar's militia is dissonant with the position of Rome and other European diplomacies, since it actually extends Egyptian influence by proxy over regions of Libya such as Cyrenaica, with respect to which Egypt has already fully formulated expansive aims in terms of both military intervention and partition. Internally, the al-Sisi government is actually exacerbating, rather than solving, Egypt's economic and social problems, not least the outward migration pressure. Support for this regime has had the perverse effect of exacerbating internal repression and consigning the country to the most serious human rights crisis in its recent history, as noted in the preceding paragraphs. Not even this can be considered an objective compatible with the interests of Italy, so much so that one of its citizens tragically fell victim to it.

If Italy's interests are not served by such a close partnership with Egypt, we must ask ourselves what interests are. As is evident from the energy issue and the recent agreement on the sale of armaments, it is clear that large Italian industrial groups, from ENI to Fincantieri, have strong interests in Egypt, and that these interests are benefited by a policy of unconditional support to a regime that is repressive and authoritarian. However, such a flattening of the national interest on particular interests is to be considered the result of a precise political will, not of a simple automatism linked to some presumed sense of 'realism'. And it is to be considered imprudent when it exposes Italy more and more to Egypt's blackmail capacity.

The third and last question concerns an ethical issue, and a global one. A frequent criticism of Italian foreign policy towards Egypt has been that of having sacrificed human rights on the altar of interests, of having preferred the reason of State and the reasons of stability to ethical imperatives, starting with the duty to protect its own citizens abroad. But this criticism does not go far enough. What Italy has pursued in Egypt over the past five years is not just a foreign policy that can be traced back to a 'superficial' concept of democracy, as often done by other European countries in the MENA (Middle East and North Africa) area. In fact, we need to ask ourselves whether Italian foreign policy towards al-Sisi has not been, and continues to be, fundamentally anti-democratic. First of all, even before the Patrick Zaki case, it was the Regeni affair that nailed the Italian political class to the reality of brutal anti-democratic repression pursued by the al-Sisi regime and also militarily endorsed by Rome. But a democracy that limits itself to defending the reasons of one of its citizens, or to asking for justice for his death, and at the same time closes its eyes to the forced disappearances, torture, and political arrests that are multiplying every day in Egypt cannot be considered fully democratic. Moreover, a democracy that establishes such a significant military collaboration with a country that systematically violates international conventions and human rights cannot but be accused of a serious lack of democracy and, in the case of Italy, of legality. Among other things, as pointed out by some representatives of civil society, the recent sale of Italian military systems is in clear contradiction with the law n. 185 of 1990 which prohibits the export of armaments to countries that violate international conventions on human rights, or engaged in armed conflicts. Thirdly, a democratic state can be expected not only to pursue democratic foreign policies but also, through its foreign policy, to promote the consolidation and implementation of democracy in other states.

The lack of democracy shown by Italian foreign policy towards countries like Egypt not only harms democratic prospects inside Egypt, but ends up eroding the democratic standards of the country that pursues it, i.e. Italy. Finally, the idea that 'dialogue' with authoritarian states such as Egypt is the only possible way forward clashes with the reality of bilateral relations that now seem destined to be played out on the mere level of force or, as Italian Foreign Minister Luigi Di Maio recently stated, on the level of 'market dynamics', thus divorced from any shared multilateral context. Rather than denoting farsightedness, this strategy of appeasement towards a shaky yet heinous authoritarian regime marks a definitive and surprising abandonment of the democratic internationalism that had inspired generations of Italian and European policymakers; it betrays, moreover, how advanced the decline of the international liberal order has become, and finally consigns relations between the two countries to the waves of an increasingly treacherous Mediterranean Sea.

In the following chapter, attention will be focused on the specific case of Patrick Zaki, an Egyptian activist and student at the University of Bologna, who was arrested on 7 February 2020 after landing at Cairo airport; he was charged with threatening national security for allegedly posting on Facebook. Starting from this case, which has shocked the whole of Italy but also the international public opinion, the aim of this last chapter is to illustrate the system that legitimises the continuous violations of human rights in Egypt, as well as the

continuous abuses perpetrated by the authorities against civilians, activists, students, members of non-governmental organisations, who in most cases are only guilty of freely expressing their opinion, even if contrary to the regime's imposed thinking.

3. THE CASE OF PATRICK ZAKI

On 25 January 2011, millions of Egyptians took to Tahir Square in Egypt to rebel against the system of corruption and lack of rights and perspectives implemented by Hosni Mubarak's regime. The revolution was followed by the first democratic elections in the country's history with the victory of 'Muslim Brotherhood' leader Mohamed Morsi, who remained in office for about a year, until 3 July 2013, when he was deposed by a military coup. President Abd al-Fattah al-Sisi came to power and suppressed all political movements and forces opposed to his rule, arresting many of his opponents. Today, Egypt is a country under indictment for serious abuse of power and systematic human rights violations against activists, students, researchers and opponents of the regime. According to Human Rights Watch, at least 30 journalists are currently imprisoned in the country, while between 60,000 and 100,000 political prisoners are arbitrarily detained. The Covid-19 pandemic has exacerbated the repression of peaceful critics of the government and ordinary people during the 2020s, virtually wiping out any space for meetings, associations or peaceful expression. The human rights situation in Egypt, as analysed above, is very worrying. A situation that, we can say, also directly involves Italy, which is accused of not having done enough for the death of Giulio Regeni and for the release of the researcher Patrick Zaki. Giulio Regeni, as we know, was a young Italian researcher with a passion for Middle Eastern culture. After graduating in Political Science from the University of Leeds, he went to Cairo in 2013 as an intern at a United Nations agency, but soon had to leave the country and left for England, where he began working for "Oxford Analytica". From afar, Regeni closely followed al-Sisi's government and wrote reports on North Africa analysing political and economic trends. In September 2014, he decided to stop working at "Oxfors Analytica" to undertake a PhD in Development Studies at Cambridge. From then on, his research focused on the work of trade unions in Egypt, studying how these organisations were regulated before the 2011 revolutions and analysed the changes after the revolutionary uprisings. After his initial studies, Regeni decided to return to Egypt again in 2015 and settled at the American University in Cairo as an external researcher. On the evening of 25 January 2016, Giulio Regeni was in Cairo, walking down the street that would take him from his flat on Yanbaa Street, to the metro stop. The streets were packed with police and military personnel as it was the fifth anniversary of the revolution that deposed Mubarak. That same evening, Giulio did not return to his flat; on the morning of 3 February 2016, his lifeless body was found along the road, precisely on top of an overpass, in the desert between Cairo and Alexandria. Giulio's body was completely disfigured, his skin was pockmarked by cigarette burns, the bones in his wrists, shoulders and feet were shattered. Regeni had been beaten, burnt, stabbed and tortured for a long time. Giulio Regeni's case recalls that of Patrick Zaki, a young activist with the Egyptian Initiative for Personal Rights and an Egyptian researcher, who was arrested on 7 February 2020 at Cairo airport, where he had just landed on a flight from Italy. His detention conditions are worrying: he was not allowed to receive visits from outside, he was not allowed to attend trials and the prison where he is being held is notorious for the poor conditions in which prisoners are held. After one year, Patrick is still imprisoned in Egypt.

The aim of this last chapter is to retrace Patrick Zaki's story, while also highlighting all the acts of repression and abuse perpetrated by the Egyptian police force and the Egyptian prosecutor's office, to which so many political activists, students and civilians are subjected on a daily basis, as well as the various NGOs operating in Egypt, including the Egyptian Initiative for Personal Rights, an association of which Zaki was also a member. After briefly outlining the biography of the young Egyptian, a student at the University of Bologna, the analysis will shift to the NGO Zaki belonged to before his arrest, addressing the issue of NGOs and their treatment by the Egyptian authorities. In the following paragraphs, the focus will shift to the "national security" system that has become the legitimisation for the continuous abuse of those who dare to oppose the regime or those who simply decide to think differently from the one imposed; in particular, also thanks to a report made by Amnesty International, we will try to better understand what the Supreme State Security Prosecutor's Office and the National Security Agency are and how they operate, bodies that were created to protect national security but that are actually nothing more than a device to repress any form of dissent or thought against the tide. We will then try to understand how the international community and public opinion have reacted to Patrick Zaki's case, noting how the institutions, particularly European and Italian ones, are hypocritical in only formally condemning what is happening in Egypt, while public opinion is calling for immediate and concrete action that can actually influence the situation in the country. In the final paragraph, at the end of the thesis, we will explain the concept of "phoney democracy" used for the first time by "The Economist" in an article in 2000; the aim is to reconnect with the themes addressed in the first chapter, asking ourselves, in the light of what we have analyzed so far, if Egypt can be considered a “phoney democracy”.

Before starting the analysis, however, it must be stated that Patrick Zaki's story is still, at the time of writing this thesis, in a developing stage and that little is known about the young Egyptian researcher; therefore, information about his personal history will be rather limited and the analysis will focus on the historical and political context in which the story took place.

3.1 Patrick Zaki: biography and chronology of events which resulted in his imprisonment[41]

Patrick Zaki, born George Michael Zaki Suleman, is an Egyptian-born activist and researcher from Mansura in 1991. Before being imprisoned, he was attending a master's degree programme, funded by the EU Erasmus Mundus programme, at the University of Bologna to complete his studies. As a researcher, the young Zaki was also a member of the Egyptian Initiative For Personal Rights, an Egyptian association fighting to defend human rights.

Trying to trace the events that led to the imprisonment of the young Egyptian researcher, it all starts in the summer of 2019 when Patrick decided to finish his studies by participating in the Erasmus project for his PhD in Italy. In February 2020, while he was returning to Egypt to visit friends and relatives whom he had not seen for months, as soon as he landed at the airport he was taken into custody by the Egyptian secret service and for 20 hours nothing was known about him. Today, thanks to confessions made to his lawyer a few days after his arrest, we know that Patrick was kidnapped and subjected to atrocious torture for hours: kicks in the stomach, blows on the back, electric shocks and during interrogation he was also intimidated with threats of rape. Amnesty International was the first to raise the alarm, and his disappearance was only officially announced a few days later, on 9 February 2020, thanks to a statement by the Egyptian Initiative for Personal Rights, the Egyptian human rights association with which Zaki worked. According to the reconstruction of the facts, Patrick was first detained in Talkha prison for a few days and then transferred to the prison of his hometown, Mansura, where he was allowed to see his parents only once, as a special concession. He was charged with terrorism and inciting the overthrow of the ruling regime through posts on Facebook, but he has always declared that the Facebook page was never his. On 15 February 2020, Patrick's pre-trial detention was confirmed, pending a hearing scheduled for 22 February, but the detention was renewed. On 5 March 2020, Patrick was transferred from Mansura to Tora, a high-security prison on the outskirts of Cairo, notorious for abuses and human rights violations, but also for overcrowding and poor conditions. In the middle months of the Covid-19 pandemic, March and April 2020, the hearing was postponed several times for health reasons. For many months, there was no news of Patrick's health condition. His family visited him in prison on 7 March, but since 9 March 2020, nothing has been heard of him and no one has been able to meet him. It is only at the end of July that Patrick lets it be known that he is well through a letter and appears in court for the first time on 26 July 2020 with a sentence that will renew his detention for another 45 days. His mother is able to see him in person at the end of August. Then, on 12 December 2020, Patrick sent two letters to his family, one dated 22 November and the other 12 December, in which he said he had back problems and needed something to help him sleep better; he also talked about his mental state, which had been severely tested by torture, and

[41] Ispi online, (2021), *Egitto: un anno senza Patrick Zaki,*.
Il Fatto Quotidiano, (2021), *Patrick Zaki, altri 45 giorni di carcere in Egitto. Respinta la richiesta della difesa sul cambio dei giudici.*
Verdelli C., (2021), *Patrick Zaki compirà 30 anni in cella. E noi staremo zitti e buoni?,* Corriere della Sera.

said he wanted to go back to school. His custody was extended from time to time, including during the hearing on 7 October. The last sentence was on 1 February 2021, with another extension of the custody for 45 days.

In the following paragraph, we will better understand what the Egyptian Initiative on Personal Rights, the association of which Zaki is a member, is all about, and we will also briefly chronologise some of the events that have affected many Egyptian NGOs since 2016, one of the darkest years for humanitarian organisations and activists in Egypt.

3.2 The Egyptian Initiative for Personal Rights and the case 173/2011[42]

Patrick George Zaki, as we mentioned, was an activist with the Egyptian Initiative for Personal Rights (Eipr) before his imprisonment. One of Egypt's most influential NGOs, the Egyptian Initiative for Personal Rights is an Egyptian, human rights non-governmental organisation based in Cairo. The EIPR's main aim is to defend human rights in Egypt and in particular it deals with prisoners' rights, civil liberties, social and economic justice. It was founded in 2002 by Hossam Bahgat with the intention of complementing the work of similar organisations in Egypt, focusing in particular on personal rights and the right to housing; the association has also dealt with the conditions of prisoners during the COVID-19 pandemic, the increasing use of capital punishment in Egypt, sectarian violence and LGBT rights in Egypt. Before analysing the latest events regarding the situation of this and other NGOs in Egypt, let's take a step back and go back to 2016, which is considered one of the darkest years for political activism and the work of humanitarian and non-governmental organisations in Egypt.

2016 was in general a dark year for NGOs which, we can say, have never enjoyed a good treatment in Egypt by the authorities. Indeed, in this year, the Cairo Criminal Court ordered the freezing of the assets of EIPR founder Hossam Bahgat, as part of a vast operation known as "case 173/2011" or "foreign funding case", in which dozens of activists and organisations were accused of receiving funds from abroad with the aim of harming national interests and destabilising Egypt, other NGOs were closed down, such as the Nadeem Centre for the Rehabilitation of Victims of Violence[43], and others were severely restricted in their activities. Also, in 2016, four men attempted to search the headquarters of the Egyptian Commission for Rights and Freedoms

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[42] Acconcia G., (2020), *Egitto decimati i vertici di Eipr*, Nigrizia.
International Federation for Human Rights, *(2016), Background on Case No. 173 - the "foreign funding case" Imminent Risk of Prosecution and Closure*.
Clemente L., (2020), *Egitto, le purghe di al-Sisi: arrestati vertici di Eipr, ong di Zaki*, Domani.

[43] *El Nadim Center for the Management and Rehabilitation of victims of violence* is an independent Egyptian NGO that was established in August 1993 as a civil not for profit company. During the first year of its establishment El Nadim restricted its activity to the provision of psychological rehabilitation to victims of torture and the provision of medicolegal reports whenever this was necessary. However, in their evaluation of the first year of their work, they realized that working with torture cannot be complete without making the issue public: i.e. publishing, campaigning and mobilization of different societal sectors against a practice that has gone completely out of hand over the past two decades. El Nadim provides psychological management and rehabilitation to victims of torture. Together with other NGOs and individuals it also provides some form of social support and refers to legal aid resources.
Source: humanrightsconnected.org

(ECRF)[44], the same NGO that provided legal assistance to the Regeni family. The four individuals, according to Ahmed Abdallah, chairman of the NGO's board of directors, claimed to be officials from the Ministry of Investment but refused to provide their details and the search warrant. After asking a few questions about the organisation's activities, the 'officials' asked to speak to Mohamed Lotfy, the executive director, who was absent at the time, and tried to search the office. Only the timely arrival of one of the organisation's lawyers prevented the alleged officials from conducting the inspection. What happened in 2016 was but one of a series of messages thrown at the Commission over the past few years to obstruct its work and that of other organisations that daily expose abuses, violence and injustices committed by the Egyptian security apparatus. In recent years, especially after the 2011 uprisings, the EIPR and other organisations have been at the forefront of the tortuous path that should have brought Egypt closer to the principles of freedom and social justice repeatedly invoked in Tahrir Square and throughout the country. However, these associations immediately came up against a deeply crystallised system that was incapable of reforming itself and saw them as the backbone of other countries' interests. The repression, supported by massive demonisation of the opposition in newspapers and on major television networks, not only affected members and sympathisers of the Muslim Brotherhood but, just as in the case of Patrick Zaki, involved students, artists, workers, journalists, activists and members of NGOs accused of undermining the integrity of the state, promoting ideas that harm public morals, participating in unauthorised protests and strikes, spreading false information with the aim of subverting the regime or receiving unauthorised foreign funds. In parallel with the restrictions imposed by state bodies, there have also been an increasing number of cases in which ordinary citizens have reported suspicious individuals to the police, often attacking them verbally or physically. The Egyptian media call them 'honourable citizens', as their actions would shield the nation from possible plots and outside interference. Even having coffee with friends and discussing political and economic issues privately is enough to call for police intervention, as happened to Le Monde Diplomatique journalist and essayist Alain Gresh in 2014[45]. Taking a look at the report on freedom of expression published by the Egyptian Association for Freedom of Thought and Expression, it is no coincidence that in second place among the causes that prevented journalists from carrying out their work in the first half of 2016 are complaints by ordinary citizens (61 violations), preceded only by police actions (134 violations). According to a report published by ANHRI[46] in August 2016,

[44] The Egyptian Commission for Rights and Freedoms (ECRF) is an Egyptian human rights organisation based in Cairo. The organisation has been subject to continuous harassment by the Egyptian authorities after reporting on human rights abuses by the al-Sisi government. ECRF is one of the very few human rights organisations still operating inside a country increasingly hostile to dissent and in which countless civil society organisations have been forced to close. The commission coordinates campaigns for those who have been tortured or disappeared, as well as highlighting numerous incidences of human rights abuses.
Source: Wikipedia.

[45] In 2014, Le Monde Diplomatique's Editor-in-Chief Alain Gresh was arrested at a trendy cafe in downtown Cairo after a woman reported him to police for discussing politics. Gresh and two Egyptians were arrested after the woman screamed at them for speaking about Egypt in English and Arabic.
Source: nedhamsonsecondlineviewofthenews.com

[46] The Arabic Network for Human Rights Information (ANHRI), is a legal institution with lawyers and researchers working on defending Freedom of Expression in Egypt and the Arab world, especially Freedom of the Press as a gateway to empower and give access to the rest of human rights.
Source: Arab.org

there were 60,000 political prisoners in Egypt out of a prison population of approximately 106,000 and over the past few years 19 new prisons have been built or are in the process of being built. There is no humanitarian organisation that has not denounced the sorry state of Egyptian prisons, the overcrowding and the torture suffered by prisoners. Those who have visited them, either for work or because they were forced to, tell of dozens of people, often more than 40, forced to stay in cells no bigger than 20 square metres where there is no room to sleep, without medical care and in disastrous hygienic conditions that increase the possibility of contracting diseases. While torture, although condemned by the Egyptian Constitution (Art.52), is an established practice used by the police to extract confessions of dubious reliability.

Returning to the present day and the case of the organisation of which Patrick Zaki is a member, in November 2020 three leaders of the association were arrested by the Egyptian authorities on charges of being part of a terrorist organisation and spreading false information dangerous to national security. First it was administrative director Mohamed Basheer, then criminal justice director Karim Ennarah, who was detained while on holiday in the Red Sea resort of Dahab, South Sinai, and finally the executive director, Gasser Abdel Razek, who was dragged from his home in Cairo to an undisclosed location. The arrests drew international condemnation, in particular from the European Parliament, the United Nations and the US Secretary of State; Amnesty International and Hollywood actress Scarlett Johansson also called for the release of the members. The local and international press, together with the spokeswoman for the United Nations High Commissioner for Human Rights, Ravina Shamdasani, stressed that these arrests followed a few days after a meeting at the EIPR headquarters with a group of diplomats and ambassadors, including the Italian ambassador Giampaolo Cantini, and that the interrogations in prison related to that meeting. The three executives were released in early December 2020, while Patrick Zaki, who had cooperated with EIPR and had been detained since February 2020, as we know, remained in prison.

In the following paragraph, thanks to a report by Amnesty International, we will try to analyse the internal dynamics of the Egyptian national security system, a system that underlies the legitimisation of enforced disappearances, preventive detentions, torture and the arrests we have discussed so far, including that of Patrick Zaki.

I would like to point out that most of the information and what is written in the following paragraphs was taken directly from the Amnesty International report entitled "Permanent State of Exception, Abuses by the Supreme State Security Prosecution"; an important clarification as there was no intention of plagiarism. This choice derives from the desire to leave intact the information and meaning that emerges from the report itself.

3.3 The Egyptian national security system: the Supreme State Security Prosecution (SSSP) and the National Security Agency (NSA)[47]

In order to fully understand the repressive and totalitarian organisation of al-Sisi's authoritarianism, and thus the mechanisms behind enforced disappearances, preventive detentions and the cases we have discussed so far, including that of Patrick Zaki, it is useful to illustrate the nature and functioning of the legal bodies that deal with national security. This system has been analysed in detail by Amnesty International in its report called “Permanent State of Exception”, in which it is defined as a kind of parallel judicial system that works to eliminate all forms of dissent through disappearances, convictions and judicial obscurations. In this paragraph we will try to briefly review the analysis and some parts of the report, which are useful to understand this system, will be reported.

At the apex of this system is the so-called Supreme State Security Prosecutor's Office (SSSP), the judicial body charged with investigating national security cases. Established in 1953 as a special branch of the Public Prosecutor's Office, the Supreme State Security Prosecutor's Office (SSSP) is responsible for investigating and prosecuting a wide range of activities that could pose a threat to "national security." These activities include crimes that may be related to both internal and external security, and include crimes that fall under the jurisdiction of the Extraordinary State Security Courts, i.e. special courts that only operate during a state of emergency. As defined in the 2019 decree, these courts deal with cases that in most cases involve crimes related to "terrorism", which can be protests, rallies and strikes. Geographically, the SSSP has exclusive jurisdiction over these crimes in Greater Cairo and is obliged to investigate and prosecute cases related to its jurisdiction in this area. Other prosecutors have the right to investigate such cases outside Greater Cairo, provided they have the SSSP's authority, but are obliged to keep the SSSP informed of developments in the case. According to the Criminal Procedure Code, prosecutors have the power to prosecute crimes and can issue binding judicial decisions, such as arrest warrants, summons for interrogation and search and seizure warrants. They can also order the preventive detention of persons without a judge's decision for up to four days before handing the person over to a judge to decide whether to extend his or her detention. The Criminal Procedure Code and the 2015 Anti-Terrorism Law allow prosecutors with the rank of director of public prosecutions to assume the authority of judges to order preventive detention of suspects for up to 150 days in cases involving state security. They can also order surveillance of conversations, inspection of financial documents, closure of buildings and censorship of websites, powers normally reserved to judges.

The SSSP works jointly with the NSA, the National Security Agency. The NSA conducts investigations either directly on the basis of information it has or under the direction of the SSSP. The results of these investigations are usually forwarded to the SSSP. The prosecutor may decide whether to instruct the NSA to summon or arrest the suspect. In the event of an arrest, the prosecutor issues an arrest warrant and the NSA must bring the

[47] Amnesty International, (2019), *Permanent State of Exception, Abuses by the Supreme State Security Prosecution*.
Project On Middle East Democracy, (2017), *The Role of the Public Prosecution in Egypt’s Repression*.

suspect before the SSSP within 24 hours. The SSSP can then decide whether to order preventive detention pending investigation, whether to release the person on bail pending investigation, or whether to adjourn the case and release the person unconditionally. If charged, the accused are handed over to one of three categories of special courts: the extraordinary national security courts, terrorism courts and military courts, whose proceedings never meet the requirements of due process.

The SSSP is headed by a so-called first public defender, who reports to the prosecutor in charge of the public prosecutor's office. As for recruitment to the SSSP, appointment is regulated by the High Judicial Council, the body responsible for the administrative affairs of the judiciary. Over the last two decades, there has been a significant increase in the proportion of prosecutors who were educated at the Police Academy or who previously worked in the Ministry of the Interior, including the National Security Service. Several SSSP prosecutors are former NSA employees, and others are relatives of President Al-Sisi and other senior government officials. Although Egyptian law does not preclude women from entering the prosecution service, as of August 2019, no women have served as prosecutors in the SSSP or the judiciary more generally, despite some very limited appointments of women to other judicial bodies.

Amnesty International's research shows that the SSSP is in fact functioning as a tool of repression rather than national security protection, abusing the recently adopted anti-terrorism legislation to detain individuals for acts that should not even be criminal, such as peacefully expressing views critical of the authorities or engaging in human rights activities. Although most of those detained pending investigation are accused of belonging to or supporting 'terrorist groups' or 'groups prohibited by law', the real reason for their detention in most cases appears to be their peaceful participation in protests, public statements they have made, such as social media posts, or their political background.

As can be deduced from Amnesty International's analysis, a triad of institutions working together is being created, namely the NSA, the anti-terrorism courts and the state prosecutor's office. It is important to reiterate that this triad operates autonomously from the other judicial institutions and has been further strengthened since al-Sisi came to power in 2013. First, thanks to the 2015 anti-terrorism law, charges against innocent civilians accused of threatening international security increased dramatically; then, a further boost came from the declaration of a state of emergency in 2017, which has since been continuously renewed; and finally, from the 2019 referendum that granted the office of the attorney general, a figure closely linked to the president, wider discretionary powers.

Returning to the issue of preventive detention, it covers a period ranging from 15 days to a maximum of 150 days, which can be further extended with the approval of the anti-terrorism court in charge of the case. The possibility of interrupting this mechanism is doubtful, since the assessment of a possible appeal by the accused is left exclusively to the judges of the Supreme State Prosecutor's Office. According to Amnesty International's analysis, the average length of pre-trial detention in the cases studied was 345 days, with a maximum of 1,263 days. In most cases, detainees are not informed of their personal rights and are not allowed to speak to their lawyers within the time limits set by Egyptian law. The apparent denial of the right to a fair and impartial trial

is accompanied by gross human rights violations in terms of detention and methods of investigation and interrogation. In the face of such a system and such evidence, it is not difficult to understand how the self-reflection and discretionary powers of the authorities are moving in a reactionary and repressive direction in order to eliminate any form of dissent from the regime. As we have seen, this practice mainly affects the young fighters of organisations and movements that the government still declares to be terrorist groups, but it also affects individuals who are not directly involved in the political process, as the stories of Patrick Zaki and Giulio Regeni testify, in order to create an atmosphere of terror that guarantees monolithic and tacit support for the regime. As Human Rights Watch demonstrates, even minors have not been spared this cruel reasoning. To date, approximately 20 minors between the ages of 12 and 17 have been detained and tortured, almost all at the hands of the National Security Agency.

The violation of the right to a fair and impartial trial, as well as of all other personal rights of detainees, is a very serious problem that the Egyptian authorities do not seem to care about in the slightest. In most of the cases documented by Amnesty International, respondents reported that they had been interrogated by SPT prosecutors without lawyers or that in several cases the SPT had appointed lawyers not chosen by the accused and who could not effectively represent them. Detainees are generally not allowed to consult privately with their lawyers or to review files prior to interrogation. In addition, 60 victims reported that they were subjected to coercive methods at SSSP, including blindfolding until they reached the prosecutor, verbal abuse and derogatory remarks, mistreatment, and threats to return to the NSA, which is known for torturing detainees and then interrogating them.

Amnesty International analysis shows that NSA prosecutors systematically issue arrest warrants for suspects after interrogation and repeatedly extend their detention every 15 days to a maximum of 150 days. In theory, the SSSP has the power to release them at any time, but chooses not to do so. In the cases documented in the Amnesty International report, as of 5 November 2019, 43 detainees had been released after an average of 345 days in pre-trial detention; one detainee had been held for 1,263 days. A total of 89 persons remained in pre-trial detention, having spent an average of 332 days there. Thus, the analysis shows that the SSSP limits judicial review and oversight of detention orders and routinely prevents defendants from appealing detention orders, in violation of their rights under Egyptian and international law. Therefore, it is clear that lawyers representing persons prosecuted, work in a hostile work environment that undermines detainees' right to an effective defense. Of the 29 lawyers interviewed by Amnesty International, 17 said they had decided to stop working on those cases because they feared arrest and prosecution. Of the 138 cases documented by Amnesty International, 17 lawyers have been arrested and prosecuted by the SSSP since September 2017. Thirteen lawyers interviewed by Amnesty International said they had been threatened or harassed while working as representatives of clients before the SSSP, either by prosecutors or police officers working there. Three female lawyers said they were subjected to abusive remarks by prosecutors, some of which had sexual overtones, such as regarding their appearance and choice of clothing.

3.4 Violations of fair trial guarantees: cases documented by Amnesty International[48]

Amnesty International's report "A Permanent State of Emergency" also highlights a worrying reality regarding detainees' access to a fair and impartial trial, as well as their personal rights in cases of preventive detention or imprisonment.Amnesty specifically documented the experiences of around 138 individuals investigated by the GPO in 54 court cases between 2013 and 2019. The analysis carried out shows that the SSSP systematically used pre-trial detention on the basis of arbitrary charges, as explained in previous sections, sometimes circumventing the absolute time limit prescribed by Egypt's pre-trial detention law, also subjecting detainees to coercive interrogation techniques and, most importantly, denying them the right to effective legal representation and judicial review. In relation to the 138 individual cases documented, Amnesty International gathered information on the charges for which they were being investigated, including the questions they were asked by the SRS and the evidence provided. This highlighted that among the 138 people whose cases Amnesty International documented were political opponents, critics of the government, artists, journalists, human rights defenders, LGBT people and even supporters of former President Hosni Mubarak. Amnesty International has analysed the charges against the 138 people whose cases it has documented in more detail and has concluded that the cases can be divided into three main groups: 56 cases (32 men, 23 women and one boy) where the charges relate to involvement in specific protests or specific public statements, such as posts on social media. such as posts on social media; 76 cases (48 men, 27 women and one girl) in which the charges do not relate to a specific incident, but more generally to the individuals' political or human rights conduct; and six cases (three men and three boys) in which the charges relate to involvement in violent incidents. Lawyers and suspects in these cases reported that interrogations before the CPN usually begin with open-ended questions about the suspects' faith, political opinions, economic and social background, and then vary depending on the case. In cases where the allegations related to participation in protests or public statements, the suspects were questioned about their participation in the protests and ownership of the content of the published material. In cases without specific incidents, prosecutors questioned suspects about their acquaintance with certain public figures and the nature of their political, journalistic or human rights activities. In doing so, Amnesty International found that the SPT systematically violated the right to effective legal representation during the initial interrogation by preventing most suspects from obtaining legal counsel of their choice and by preventing lawyers from speaking privately with their clients before the interrogation and from offering legal advice during the interrogation. Prosecutors often refused to allow suspects or lawyers to view NSS investigation materials or take written notes during interrogations, citing security concerns. In 42 of the 138 cases documented by Amnesty International, respondents reported that NSS prosecutors interrogated them without lawyers and did not ask them if they wanted to call a lawyer. In 81 cases, lawyers attended the interrogation after they happened to see the suspects in the SPT and offered their services on the spot. In the case of 12 high-level suspects, the JCPOA informed the lawyers that the detainees would be

[48] Amnesty International, (2019), *Permanent State of Exception, Abuses by the Supreme State Security Prosecution*.
Project On Middle East Democracy, (2017), *The Role of the Public Prosecution in Egypt's Repression*.

questioned by the JCPOA and allowed the lawyers to attend with them. In the case of three suspects, the SSP appointed lawyers for them who had not been selected by the defendants themselves and who did not provide effective representation. A review of five court files obtained by Amnesty International, relating to cases filed between 2016 and 2019, showed that SSP prosecutors interrogated at least 260 of the 381 people detained in these court cases without the presence of a lawyer. Prosecutors gave one of the following reasons: "out of necessity", "because the accused had confessed and there was fear of losing evidence", "because lawyers were not available", "we checked with the bar association and they were closed" or "out of fear that the detention period would expire". Despite the fact that the Cairo Administrative Court issued a ruling in 2016 based on guarantees of the right to legal counsel and, more generally, the right to a fair trial, the JCE refused to comply with these rulings and lawyers cannot enter the JCE building to this day unless their clients need to be questioned or taken to a detention renewal hearing.

3.5 Coercive interrogations and the marginal role of lawyers[49]

In all 138 cases documented by Amnesty International in its report, former detainees, victims' families and lawyers stated that neither SSSP prosecutors nor police officers ever informed detainees of their rights. While some detainees are aware of their rights, either because of their previous experience, education or training, others are not, which makes them even more vulnerable to coercion. In most of the documented cases, suspects reported being subjected to coercive methods by the SSSP during interrogation. Among the most common methods are prosecutors threatening to send suspects back to the NSA, which is known for torturing detainees and interrogating them afterwards, deliberately offending personal, cultural or religious sensitivities. Another common practice, also part of the coercive methods adopted by the SSSP, is to blindfold detainees until it is time for interrogation; in particular, when detainees are transferred to the SSSP, they are usually kept waiting in a holding cell in the basement of the SSSP building, sometimes for hours, before being taken upstairs blindfolded to the prosecutor's office. The detainees, according to research and analysis conducted by Amnesty International, described the cell as "inhuman": overcrowded, without ventilation and with smelly toilets. The blindfold is therefore only removed before they enter the prosecutor's office.

In the cases documented by Amnesty International, interrogation sessions lasted on average two to five hours, although some detainees reported being interrogated for up to 18 continuous hours. Interviewees also reported that interrogation usually began with an "informal chat" between the prosecutor and the suspect in the prosecutor's office, without the presence of a lawyer or someone to transcribe. Amnesty interviewees then reported that, during these "chats", prosecutors would ask for their life history and opinions, informing them that these conversations would not be admissible evidence in court. Twelve interviewees said that, during these 'chats', prosecutors often expressed views in favour of the current government's policies, denouncing

[49] Amnesty International, (2019), *Permanent State of Exception, Abuses by the Supreme State Security Prosecution*.
Project On Middle East Democracy, (2017), *The Role of the Public Prosecution in Egypt's Repression*.

opponents as 'traitors', 'terrorists' or 'misguided youth' and expressing their views on gender roles, gender identity and sexual orientation. It is therefore easy to deduce that anyone who thinks differently is more likely to be subjected to coercive methods. Some interviewees also reported that prosecutors offered to release them if they cooperated, when cooperation often means conforming and abandoning one's ideas. What is even more puzzling and dramatic is the fact that all interviewees confirmed that at no time did the prosecutors tell them that they had the right not to answer questions or to refuse to speak without legal representation.

The Amnesty International report also shows that at the end of interrogation, SSSP prosecutors systematically order the detention of suspects, renewing their detention for the maximum period available to them; suspects then continue to be kept in detention through requests to judges in the terrorism circuit to renew their detention. In some cases, the SSSP has even circumvented judicial release orders by detaining suspects in connection with new cases. As we have said, SSSP prosecutors can hold suspects for a total of 150 days in pre-trial detention through repeated 15-day renewals; after 150 days, detention can only be extended by a judge, who can renew the detention at 45-day intervals, as is happening in the case of Patrick Zaki. In felony cases, the maximum time must not exceed 18 months if the offence is punishable by less than life imprisonment, or two years if the offence is punishable by life imprisonment or death. In 133 of the 138 documented cases, SSSP prosecutors ordered the detention of suspects on remand for the full 150 days allowed without judicial supervision. Only five individuals were released before the end of the 150 days.

Lawyers interviewed by Amnesty International said that when asked about the reasons for the decision to keep suspects in pre-trial detention, prosecutors usually gave two standard answers: "to continue investigations" or "for security reasons". Whenever prosecutors cite 'security reasons' as the basis for pre-trial detention, they claim that they must prevent the suspects from interfering with the ongoing investigation, but do not explain how they arrived at this conclusion. As a result, according to the lawyers interviewed, after the first interrogation the renewal process becomes almost automatic, with the lawyers first demanding the release of their clients during the sessions and the SSSP prosecutor ordering the renewal of their detention regardless. The truth is that, as lawyers interviewed by Amnesty also stated, it is very rare for a detainee to be re-interviewed. The SSSP prosecutors themselves therefore decide whether to allow lawyers to appeal against the detention of their clients, whether the lawyers appeal against the detention decisions of the SSSP or the judges. SSSP prosecutors are thus able to block suspects' access to judges who might review the legality of their detention. In cases where lawyers have the opportunity to file appeals against detention orders, they usually have to follow a changing schedule that is announced in a document posted outside the SSSP building. Since 2015, lawyers have had to submit appeal requests in writing at a counter outside the building and then SSSP employees have informed them orally of the decision. Lawyers interviewed told Amnesty International that appeals are allowed in some cases but not in others; in cases of refusal, they said they never received a written explanation, although sometimes SSSP employees cited, as mentioned above, "security concerns" as the main reason. Between December 2018 and September 2019, the SSSP did not accept a single request to appeal against detention orders from the SSSP or from judges, according to suspects detained during that

period, as well as lawyers and family members. As of September 2019, lawyers strangely did not receive any requests to appeal against detention orders and again as of September 2019, lawyers only have the opportunity to appeal in some cases against the decisions of judges, but not those of the SSSP.

In the following paragraph, the focus will be on the National Security Agency, the special police forces and in particular on the abuses perpetrated by them and the enforced disappearances carried out by them, amidst the total silence and indifference of the judicial authorities.

3.6 Abuses and enforced disappearances at the hands of the NSA in the indifference of the judicial authorities[50]

In the previous paragraph, we focused on what emerges from the Amnesty International report regarding the process of coercive interrogations and the marginal role of lawyers who are not able to defend their clients as they are entitled to do. The objective of this paragraph is to highlight the brutal practice of enforced disappearances carried out by NSA agents, again based on the information collected in the Amnesty International report, highlighting how they act with the indifference of the judicial authorities.

According to information gathered by Amnesty International in its report, 112 of the 138 documented cases involved enforced disappearances by the police, mainly by the National Security Agency. Individuals reported that after their arrest they were taken directly to NSA buildings or police stations in Greater Cairo and in some cases held in cells located in police stations but run by NSA officers where they were interrogated. It should be recalled that these NSA buildings are not official places of detention, and since the judiciary does not have access to them, it cannot even inspect them. Among other things, Amnesty International found that NSA prosecutors systematically falsified the dates of arrests; in particular, in 87 out of 112 cases, the date of arrest recorded by the SSSP corresponded to the day before the SSSP interrogation, although cables sent by family members recording the date of arrest and checks by Amnesty International indicated that detainees had been arrested before that date. When lawyers and detainees challenged the date of arrest recorded by the SSSP, prosecutors almost never took action to investigate the allegation, even though they knew the date of arrest was falsified. As in the case of Patrick Zaki and Giulio Regeni, the falsification of arrest dates was intended to conceal the period during which the detainees had actually disappeared and the suspicion that they had been tortured; in fact, in many of the cases documented by Amnesty International, detainees were tortured or otherwise ill-treated while in police custody and, in particular, in the custody of the SSSP. The most commonly reported methods of torture are electric shocks to various parts of the body, beatings with hands, feet and sticks, and hanging of limbs. In three cases, female victims reported that male doctors forced them to undergo

[50] Amnesty International, (2019), *Permanent State of Exception, Abuses by the Supreme State Security Prosecution*.
Project On Middle East Democracy, (2017), *The Role of the Public Prosecution in Egypt's Repression*.
Ott L., (2011), *Enforced disappearance in international law*. Cambridge: Intersentia.

forced anal or sex determination tests. In three other cases, female detainees said NSA officials threatened to rape them. To Amnesty's knowledge, the NSA prosecutor has never investigated such abuse by a police officer.

After the careful analysis of the Egyptian 'security system' and the mechanisms behind the ongoing human rights violations in the country, in the following section, the focus will shift to foreign public opinion as well as Italian and European institutions' reaction to the case of Patrick Zaki, which as we have seen from the analysis so far is only the tip of the iceberg.

3.7 The mobilisation of Italian public opinion and European institutions[51]

As we have tried to explain in the previous paragraphs, the trial of the student and researcher from the University of Bologna seems to be based on ambiguous assumptions which, according to Patrick's supporters, have been artfully constructed by the Egyptian authorities themselves. Indeed, the accusation against Zaki seems to have many contradictory elements at its core, in fact Patrick George Zaki faces up to 25 years in prison for ten posts on a Facebook account, which his defence considers 'false', but which allowed the Egyptian judiciary to lay heavy charges of 'inciting protests' and 'inciting terrorist crimes'. The first contradictory element is the fact that the warrant incriminating the student is said to have been issued in September 2019, but Patrick has never received any notification of such a warrant; as for the warrant itself, Zaki claims that the Facebook page on which the incriminating evidence is based is false and does not belong to him. Secondly, the arrest report also seems to have strong inconsistencies and is thought to have been falsified as it states that Patrick was arrested on 8 February at a checkpoint in Mansoura, his hometown, however, it has been established that Homeland Security actually arrested him as soon as he arrived at Cairo airport the night before. This inconsistency of about 30 hours seems to cover the period during which Patrick disappeared without anyone knowing and during which he claims to have been interrogated and tortured. In addition, this type of detention, although widely used by the Egyptian Chief Prosecutor of Justice, should, according to the Egyptian Penal Code, only be applied in the case of meticulously described and well-founded charges and motivations, of criminals caught in the act, or where there is a possibility that the evidence may be contaminated. Patrick's situation does not seem to fall into any of these cases, as the authorities have nothing to pin on him except the much-accused Facebook page. The Egyptian media, for their part, have launched a fierce criticism of Patrick Zaki, describing him as a terrorist and a subversive, degenerate homosexual, with the intention of isolating him. Many national newspapers have tried to divert Europe's attention from the case, claiming that it is definitely a matter for the Egyptian authorities as Patrick is in fact an Egyptian citizen and not an Italian one.

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[51] Amnesty International, (2019), *Permanent State of Exception, Abuses by the Supreme State Security Prosecution*.
Project On Middle East Democracy, (2017), *The Role of the Public Prosecution in Egypt's Repression*.
Pardo I., (2020), *La vicenda di Patrick Zaki. Un caso europeo.* Eurobull.
Senato della Repubblica, (2021), *Discussione delle mozioni 1-00329 e 1-00338 - Concessione cittadinanza italiana a Patrick Zaki e iniziative per sua liberazione*.
Il Fatto Quotidiano, (2020), *"L'Egitto collabori su Regeni e liberi Zaki": la risoluzione approvata dal Parlamento europeo*.

In Italy, especially after the kidnapping and murder of Giulio Regeni, which took place more than four years ago and is still unresolved, the strong authoritarian grip used by the regime of al-Sisi is still a very hot topic and that is also why there was immediately a strong mobilization of national public opinion. Bologna for example, the city where Patrick studied, reacted immediately to his disappearance; only 10 days after his arrest, the university organised a protest in Piazza Maggiore in Bologna. Both official institutions, including the rector himself, participated together with the mayor of the city and many other diverse groups from Bologna society. The scale of the protest and the broad participation were undoubtedly strong signals, but soon afterwards the collective action inevitably began to be weakened by the spread of the Covid-19 pandemic. Thus, at the end of March, Domitilla Brandoni, a representative of the ADI (Association of Doctoral Students in Italy) in Bologna, brought a request to the board of the University of Bologna to ask the university to take stronger action for Patrick's release. In fact, Patrick's home university has the power to suspend agreements with universities, companies and public and private bodies operating on Egyptian soil, agreements that have been maintained until now as academic bodies have considered them a 'bridge' with the country, having nothing to do with Patrick's arrest and detention. However, in her request, Domitilla believes that this cannot be considered true: in Egypt, rectors are appointed directly by the government, and students are arrested if they express opinions that differ from those of the regime. In Egypt, universities are not a bulwark against authoritarianism: researchers and professors are not free to think and write, and therefore any alleged 'cultural bridge' with Italian universities is ephemeral. For these reasons, ADI Bologna asked the University of Bologna to pave the way for the suspension of the agreements with its Egyptian partners, which is considered the only possible impact action, together with the sharing of this initiative in other Italian and European universities. The response to the request has not yet arrived and, as Domitilla Brandoni points out, the health emergency is the right expedient to demand Zaki's release with greater determination. In fact, several Arab countries and some in the Maghreb, even those governed by highly authoritarian regimes, have ordered the release of thousands of prisoners with minor offences from overcrowded prisons to contain the spread of the epidemic. Egypt is the only country in North Africa that has not implemented any measures, leaving its prisons overcrowded and risking creating hotbeds in the heart of its detention centres by not releasing opponents and dissidents. Giada Rossi, a friend and fellow student of Patrick's, in an article published in "The New Federalist" on 16 July 2020, recounts how they are trying to make themselves heard on several fronts; in fact, friends and acquaintances of Patrick's who live in Spain, others in Germany, Egypt and other countries, are trying to mobilise together with professional lawyers, with the aim of making the situation known, starting in Bologna and then trying to involve other cities and universities in Italy and abroad.

Patrick Zaki's trial is far from being an exception for the Egyptian population, but it is for European and Italian society. As we have seen, Italy has not remained indifferent, not least because of the heartbreaking case of Giulio Regeni, which is still unresolved. In addition to the numerous initiatives undertaken by civil society in support of Zaki's release, Italian institutions have also mobilised. On 14 April 2021, the Italian Senate, after numerous petitions and requests, voted in favour of granting Italian citizenship to Patrick Zaki; the agenda

presented was approved with 208 yes votes, none against and 33 abstentions. The same agenda also called on the government to urge the Egyptian authorities to release the student, to monitor court hearings and detention conditions, to take action at European level to protect human rights in countries where violations persist and to bring initiatives to the G7 with particular regard to cases of repression of political activists. The motion passed by the Senate should therefore commit the government to urgently grant Italian citizenship to Patrick Zaki by decree of the President of the Republic. However, it is important to emphasise that the granting of Italian citizenship to Zaki, in addition to being a complicated measure to carry out, is above all a symbolic one, with no practical effect in terms of protecting the person concerned, since even in the light of international law and principles, Italy would in fact find it very difficult to provide "consular protection" to the young man, since he is also an Egyptian citizen and therefore his original citizenship would prevail, a principle applied by Egypt in a particularly stringent manner. Recognising Patrick Zaki as a citizen of the Italian community is therefore a gesture imbued with a strong humanitarian sense, although one wonders what real effects it will have, whether the new legal status will prevail in the course of the work or whether we will witness a diplomatic action with limited specific weight, as in the Regeni case, which could be ineffective in the short term.

The mobilisation soon reached the European level and in December 2020 the European Parliament passed a resolution calling for a "strong reaction" from the entire European Union to the ongoing human rights violations in Egypt. The text was approved with 434 votes in favour, 49 against and 202 abstentions. All Italians who took part in the vote gave their approval to the resolution, which calls on Brussels and national governments to use all available instruments, including sanctions, to respond to the serious violations. The 'range' of possible European responses certainly includes restrictive measures against high-level Egyptian officials responsible for the most serious violations. The Chamber also calls on EU countries to refrain from granting awards to political leaders responsible for human rights violations, as was recently the case with the award of the Legion of Honour to Egyptian President Abdel Fattah Al-Sisi by French President Emmanuel Macron. According to the Euro-chamber, the search for the truth is an "imperative duty of national institutions and of the EU", which is called upon to take the necessary diplomatic action to ensure this burden. The MEPs referred to the announcement by the Rome prosecutor's office on 10 December that it had exposed evidence of the involvement of four agents of the Egyptian state security forces in the kidnapping and murder of Giulio Regeni, despite obstacles to the investigation by the Egyptian authorities. The MEPs therefore called on the EU to urge Cairo to cooperate and provide the home addresses of the four agents under investigation, as required by Italian law, and expressed "political and human support" for the Regeni family in their search for the truth. With regard to Patrick Zaki, the European Parliament recalls that his detention has been constantly extended in recent months. MEPs therefore called for Mr Zaki's immediate and unconditional release and the dropping of all charges against him, as well as the implementation of a firm, swift and coordinated EU diplomatic response.

In the last paragraph of this chapter, at the conclusion of the analysis carried out, we want to resume the discourse on the Egyptian constitutionalist experience, going to introduce an expression that has had little success in the scientific field but is widely used by analysts of large media networks, namely the concept of "phoney democracy". The intention to introduce this concept is not to draw conclusions about the conditions of the alleged democratic state in Egypt, but is the result of the same desire to address this issue throughout the thesis; the aim is to bring to light some objective considerations leaving the reader free to make up his own mind. In the paragraph, the concept of "imperfect democracy", "protected democracy" and "phoney democracy" will be explained, going through how these concepts have evolved and analysing their intrinsic characteristics.

3.8 Egypt and the concept of "phoney democracy"[52]

In 2000, The Economist first introduced the concept of "phoney democracy", writing: "...the last decade has been a splendid time for democrats. All over the world, dictatorships, both communist and military, have retreated...For the first time in history, the percentage of the world's population living in countries that can claim to be broadly democratic has exceeded 50 per cent. In all, about 120 of the world's 190 or so states can now plausibly claim to have democracies. There is also, however, a more sinister phenomenon that deserves more attention than it usually gets... The celebratory number of some 120 broad electoral democracies includes a considerable list of countries whose citizens are far from free, in the true sense of the word. Freedom House's rankings count only 86 countries as properly free... there is also a need for freedom of speech and press, an independent judiciary and, under the supervision of that judiciary, the impartial application of the rule of law". More than twenty years after the publication of that article and the introduction of a concept that should be obsolete in 2021, we now understand that the rule of law is not the spontaneous product or natural consequence of supposed democracies. As we have seen in the course of the analysis carried out so far, Egypt has gone through a turbulent period of democratic transition in which the population has vehemently expressed the need for recognition of civil and political rights, as well as the need to live in a state that not only claims to be democratic but is also democratic in reality. The basic problem we want to address in this last paragraph is precisely this; as "The Economist" wrote in the same article "...For another good word for the many partial democracies is this: bogus...because their appearances are deceptive. And, increasingly, the suspicion must be that the deception is deliberately designed to gain enough respectability to attract foreign private capital, and to qualify more easily for the public kind, from multilateral bodies like the IMF and the World Bank." Can we then, in light of the constant human rights violations and repression by the government in the silence of other

[52] Campanini, M., (2005), *Storia dell'Egitto contemporaneo: Dalla rinascita ottocentesca a Mubarak*. Roma: Lavoro.
Altomare L., (2021), *La geografia della democrazia: i fattori di rischio nell'era della globalizzazione,* Notizie Geopolitiche.
Habermas J., (2016), *Democrazie di facciata.* Gruppo Laico di Ricerca, Associazione Culturale.
Habermas J., (2016), *Democrazie di facciata.* Il Sole 24 ore.
Sbailò, C., (2012), *Principi sciaraitici e organizzazione dello spazio pubblico nel mondo islamico: il caso egiziano*. Padova: CEDAM
The Economist, (2000), *Phoney Democracies.*

democracies, consider Egypt a "phoney democracy"? Before trying to answer this question, we would like to explain more about the concept of "phoney democracy" and how it develops in the context of democracies in the Islamic world. The discourse starts from how in the Western world, especially after the attacks of September 11, the concept of imperfect democracy is intertwined with that of "protected democracy" and then explains what happens instead in the alleged democratic experiences of the Islamic world.

Often the two expressions "imperfect democracy" and "phoney democracy" function as synonyms, but a clarification must be made: the category of "imperfect democracy" is essentially proactive, that is, it emphasises the gaps that the system in question should fill in order to become fully democratic. The category of 'phoney democracy', which came to the fore, as we saw in the 2000s in an article in The Economist, has instead an evaluative structure and an essentially judgmental character; through it, emphasis is placed on the fictitious nature of many democratic experiences that developed in the decade following the collapse of communism. Although they do not coincide, the two concepts are both, with different nuances, the expression of an axiological approach to legal comparison that today appears to be at least severely tested by the challenge of multiculturalism and the crisis of the national-state paradigm. The processes of globalisation, in fact, touch above all some important paradigms of Western public law, such as that of "sovereignty" or "legal certainty"; since 2001, following the attacks of 11 September, the theme of "imperfect democracy" has become intertwined with that of "protected democracy". In fact, Western governments, finding themselves in difficulty in developing effective solutions to the war unleashed by Islamism against the West while remaining within the framework of the guarantee apparatus, have found themselves forced to expand their role in their respective constitutional systems and attempt to lower the level of protection of fundamental rights, even to the detriment of the autonomy of the courts. In other words, we have witnessed and are still witnessing, in the Western systems of public powers, a sort of stabilisation of the Executive with the consequent questioning of the principle of the separation of powers. In essence, the new "threats" are pushing the system towards a sort of return to the origins, towards a reading of the principle of sovereignty in terms of friendship/enemy and, at the same time, the efforts of mediation are being reduced because the executive needs to have a "free hand". After a phase, immediately following the collapse of the communist regimes, in which it seemed that constitutional democracy and the rule of law should expand in a pacified world, it was realised that a new season of conflict had begun, but this time outside the reassuring framework of the Cold War bipolar order. After 11 September, therefore, the state once again became a protagonist of public life with G.W. Bush, both in terms of economic protection and in terms of security. From this perspective, it is therefore evident that where the rules of the democratic state under the rule of law come into conflict with the interests of the nation, i.e. the state-national envelope in which democracy itself has developed, the rights of sovereignty are forcefully reaffirmed.

If in the age of globalisation, the digital era and the "Third World War", in the constitutional experience of the contemporary West, the protection of civil rights and the guarantee of the separation of powers appear to be in a recessive position with respect to the defence of the political order, this is even more the case in those geopolitical contexts where democratic-constitutional institutions are young and uncertain, the product more

of the will of a ruling class, usually military, authoritarian and of international pressure, rather than of the initiative of democratic-constitutional political movements. We can therefore deduce that, in general, today, the category of "imperfect democracy" appears to be very problematic to apply, and this is particularly true for the so-called "phoney democracies" of the Islamic world; even in the most advanced of these experiences, there is such a high rate of "protection" of democracies that one feels authorised to use expressions such as "entrenched democracies", if not "façade" democracies. Now, as we said earlier, the demands of 'protected democracy' imply even in the most advanced Western democracies, an objective lowering of the standards of the rule of law. However, the basic problem is that in these countries, and therefore also in Egypt, the basic elements of a democracy and therefore of a rule of law are missing, namely a non-monolithic articulation of power and consequently periodic electoral tests in which there is room for a minimum of real competition between opposing forces. So which model of democracy should be referred to in order to assess the state of democratisation of the so-called 'phoney democracies' that have developed in the Arab-Islamic area? Once the essence of democracy has been identified in the procedures, it is not difficult to find a legitimacy for emergency measures that violate fundamental rights, such as those, for example, increasingly in vogue in the West, consisting in the construction of temporary exceptions to the reservation of jurisdiction, in order to avoid the concretisation of imminent dangers to national security. If one adopts a strictly proceduralist perspective, one is not entitled to challenge the legitimacy of Islamic regimes when they enjoy the consent of the majority of the population. Vice versa, if one adopts a substantialist conception of democracy, then the adoption of certain procedures is not sufficient, such as the holding of elections by universal suffrage, the competition between elites for the conquest of power, the majority principle to adopt decisions, but it is necessary to verify the respect of democratic principles and, in particular, the effectiveness of the protection of the rights of citizens and of the powers of guarantee and, therefore, of the rights of the opposition, of the independence of the judiciary, of the control on the constitutional legitimacy of the laws, of the pluralism of information and so on. It is, therefore, evident that in the context of a procedural vision of democracy, the relationship between security and freedom is easily resolved in favour of the former, given that the essential thing is that the formal correctness of all the decisional steps is assured and the possibility, for the opposition, to make its voice heard and to contest the leadership of the executive with the majority.

In the light of these considerations, it is therefore possible to consider what are the characteristics of imperfect or 'façade' democracies, which can be listed as follows:

- The non-effectiveness of the rights and guarantees enshrined in the text of the Constitution;
- A weak pluralism and the compression of the rights of the opposition and those of national minorities;
- The adoption of a presidential form of government, which degenerates into presidentialism, giving the people's plebiscitary Head of State an absolutely preponderant and paradictorial role;

- The provision of strong ways of protecting the order, such as the proclamation of a state ideology, the prohibition of forming 'anti-constitutional' associations, the revocability of mandates, the assignment to the Head of State of the role of guardian of the Constitution;
- The important influence on civil power of the military and religious factor.

It is therefore evident that if we were to adopt the scheme illustrated here rigorously, very few Islamic countries would be excluded from the accusation of being democracies of "pure facade"; in the case of Egypt, in fact, it would not be enough to consider the "formal" progress, for example in the last period of the Mubarak era, as objective conquests, but, as we have been able to see from the analysis carried out so far, especially since the al-Sisi era, it is necessary to consider the effectiveness of such "progress" and steps forward in the context of the overall situation of the country in terms of the rate of freedom, legality and democracy.

In conclusion, the theme of "imperfect" democracies and "protected" democracies seem to merge when dealing with the comparison between Constitutionalism and Islamic countries for several reasons; first of all, because what makes the democracies of the Islamic world imperfect is, above all, a "defensive" reading of the principle of sovereignty that today is also adopted by the more advanced democracies, albeit in a less aggressive version than in the Islamic world; secondly, because in the Islamic area the defence and spread of democracy can only be ensured through the presence of very stable political regimes, capable of making their choices regardless of the general orientation of the population, through the affirmation of decision-making logic, based on the almost absolute predominance of the executive; lastly, because in Islamic countries, and therefore also in Egypt, Islam is the bearer of its own political ideology in the broad sense that radically challenges the foundations of constitutionalism, pushing Western societies either to make Islam a "difference among differences" or alternatively to seek answers in the "identity" defence of Western law and political culture.

As I will explain in more detail in the final conclusion of this thesis, the aim was not to find answers to questions that are too big and complex, such as whether democracy in Egypt and the rule of law are real or just abstract concepts, nor was it to find answers to the case of Patrick Zaki, around which so many doubts still revolve and in the wake of what happened in the Regeni case, the truth may never be known; the objective was rather to retrace together the constitutional evolution of the country up to the present day and note the gradual deterioration of the state of democracy and especially the human rights situation in the country, using as a case study that of the young student of the University of Bologna. In the final conclusions I will reflect on the relationship between Islamic law, with particular reference to the Egyptian case, and Western law.

CONCLUSION

In conclusion, an attempt has been made to understand the subject of Egyptian constitutionalism by emphasising those elements that characterise it, keeping in mind those that are the classical principles of Western constitutional theory. As it was possible to deduce from the historical and legal analysis of the different Egyptian constitutional charters, the Islamic legal vision, and therefore also the Egyptian one, is linked to the divine nature of the system, whose principles are by definition in contradiction with the classical constitutional model, both from the point of view of the protection of rights and the separation of powers. It has been pointed out that the Shariah continues to condition the modern Egyptian constitutional system; the lack of separation between state and religion is one of the main limitations to the triumph of the democratic state, and although imported here during the colonial era, the powers of the state have remained subordinate to a legitimisation descending from the divine will and not from the law and the 'secular' constitution. The conflict between Islam and democracy also comes to the fore when comparing Islamic and international law in the specific area of human rights. If international law identifies the supremacy of the law understood as the order of the international community, Islamic law traditionally recognizes only the Shariah as the system of regulation of relations with subjects not belonging to the Islamic Ummah, and therefore with the non-"Muslim" national orders. Consequently, the principles that apply to the international system do not correspond to those that apply to states with an Islamic majority, such as Egypt. Nevertheless, the country today participates in the formation of norms, sometimes binding, adopted by the international community, also adhering to the main Declarations, a choice that may be due to a purely instrumental and "political" interest in maintaining inter-state relations that are fundamental for these systems, or also, in a more optimistic view, to the identification of a process of legal transition that is slowly progressing, even if limited by the continuous confrontation with the tradition of the Arab-Islamic area. As in any juridical system, also in the Muslim one, law is the "vital principle of society", a condition that explains the refusal of Islamic nations to abandon their juridical system, which being incorporated in a system of faith has continued, and continues, to define itself on the basis of the conception of its immutability, so that juridical modernisation, and above all the process of constitutionalisation, are conceived more as a threat than as an opportunity. If the law of the West is based on the recognition of rights, understood according to an individualist logic, for the Muslims traditionally law is not pure technique, as it is the representation of the divine will, so the transition aimed at overcoming the legal system of reference has proved to be a failure, especially because it was led by external forces or through an exercise of authoritarian power. This has led to the failure of the importation of the constitutional model, or rather the failure of the process of homologation to the western model, given the non-acceptance in 'other' contexts of a system that in the areas of origin has proved to be a winner. The reforms promoted in the Muslim world, in matters of rights, have imported, in fact, something foreign with respect to the historical and juridical autochthonous tradition, before which the Muslim orders have responded with a clear position which has translated into a resistance to change, not to be understood, however, as a mere rejection of the reforms, but

as a refusal to annul the peculiarities on which their own juridical history has been built. This peculiarity, as we have been able to understand from the analysis of the different constitutions that have followed one another in the country, is the product of a system that has been built internally along a dialectic between divine/human sources, and that has led to the adoption of a constitutional system 'blessed' and legitimised by the sacred source. Indeed, the legal duality has always been immanent in the Islamic legal tradition, starting from the classical relationship between Shariah and figh, between revealed norm and "human" interpretations, which has succeeded in providing the legal system with a structure capable of lasting over time and guaranteeing adaptability to the historical circumstances that have evolved over the centuries. This specificity has survived until contemporary times, so much so that it is precisely in this last phase that it is most tangible, given the "positive" recognition of the two legal sources, divine and secular, achieved in the current Egyptian Constitution. Thus, at the legislative level, many areas of law have continued to be perceived as the mere "domain" of the classical Shariah, a choice that has sacrificed the protection of the rights and dignity of individuals. Thus, although the opening to constitutionalism and the adoption of constitutional charters of secular origin, the safeguarding of legislation that continued to refer to religious legitimacy, guaranteed that dual system, so much so as to create a paradoxical situation in which the principle of secularism is rejected, preventing the adoption of reforms that substantially protect the rights and freedoms of the individual. In confessional Egypt, the simultaneous reference to the divine source and that of the nation has created obvious problems in terms of guaranteeing rights and constitutional transition. As we have seen in the first chapter, the existence of institutions whose functioning refers to a secular legal structure and, at the same time, to the sharaitic norm, has led to a stalemate in the system that in this phase only the Supreme Constitutional Court with its jurisprudence has tried to overcome, developing an innovative theory that recognises the values of classical constitutionalism, although without denying the references to sharaitic law. The analysis, at a constitutional level, conducted on the Egyptian case is such as to highlight, therefore, how we are dealing with a system that is probably still in transition, in which both the separation of powers and, above all, the protection of rights are limited by traditional readings of the law and, at the same time, by a lack of legitimisation of the legal transition. In light of the considerations made on Egyptian constitutionalism, it is argued that the crucial node around which the challenge of this system revolves is linked to the strengthening of two instruments that can guarantee the reinforcement of the constitutional model and the protection of rights, namely the National Assemblies and the judicial review of laws, institutions imported from the Western model. Moreover, these are the two main elements to ensure a management of public affairs according to a democratic model, exemplifying both the structure of the separation of powers and the jurisdictionalisation of rights, according to the roots of the model of the constitutional state as it has evolved on European soil. Firstly, the prospect of an Islamic constitutionalism is closely linked to the development of a parliamentary body in a democratic sense. This is because the Parliament is, in the democratic-constitutional model, the body that allows to ensure a responsibility to the holders of power, according to the logic of check and balances and, at the same time, the protection of minorities and the representation of all existing positions; the Egyptian experience is, in this

case, emblematic of an authoritarianism that has produced a Parliament that has been attested as an "empty box" of imported democracy. Since the 1923 Constitution, the formal control of the Assembly has been followed by an emptying out of the prerogatives of the representative body, given the centralisation of decision-making authority in the hands of the King, first, and the President of the Republic, later. The republican system has, in fact, strengthened presidential prerogatives, making Parliament even more 'subservient' to executive power. This political practice has also been reinforced by secular "centralising" political ideologies, such as socialism, which has already been mentioned, but I would say, above all, by Islamic culture and political ideology and the reference to figures such as the "Caliph", the true holder of absolute decision-making power. The control of the constitutionality of the laws is, secondly, the instrument to guarantee an effective constitutional justice. The problem of the Arab-Islamic model of constitutional justice is, in fact, also in this case, determined by the predominance and autocracy of the executive power. Often, it is the Head of State himself who elects the panel of judges, which creates many problems from the point of view of the autonomy and independence of the body, which, in this capacity, finds itself having to endorse the political choices of the executive itself. In conclusion, the question of the relationship between constitutionalism, rights and Islam can lead to a substantial application of the former on the part of the latter if a "relatively secular" legal theory is accepted, in which laicity translates into neutrality, and in which it is possible to implement a separation between State and religion, albeit without abdicating the peculiarities of the legal system and its appeal to a high moral code of religious source, as in the case of the concordat solution that some European legal systems have adopted. This is only possible if the Islamic legal space is willing to engage in a phase of self-criticism concerning the legal pillars on which it has built itself and to renounce Manichean positions that are contrary to the legal advancement of the components of its community as a whole. It is clear that this is a slow factual transition, but the demand for democratisation and effective protection of rights that today originates from the civil community, which pushes towards the protection of positions and therefore towards a secularity that translates the neutrality mentioned above, can become an important push in the process of legal modernisation, which is probably not yet over.

This reflections on Egyptian constitutionalism and on the relationship between institutions and the rights of individuals brings us to the situation in which Egypt finds itself today, a situation that, as we have analysed at length in the last two chapters, gives cause for concern. The dramatic events of the Zaki case, which affected a young Egyptian who was studying in Italy, provide further stimulus for reflection on the protection of the fundamental rights of the individual. The condition of the individual is the subject of customary norms consolidated in general international law, from which derive, for each State, limits to its power of government and guarantees to be effectively ensured. The case of Zaki, a human rights activist and a student of the Master's degree course in Gender, Women and LGBT Rights at the University of Bologna "Gemma", is therefore relevant in terms of international law. Zaki was arrested when he returned to Egypt in February 2020, and preventively detained pending a trial that is continuously postponed due to many factors, not least the paralysis

of judicial activity in Egypt due to the Covid 19 pandemic. The issue of diplomatic protection, which can be activated by the State of citizenship, is not relevant, even with regard to its own subjects residing abroad, for whom it can justifiably demand, from the State of residence, whether occasional or permanent, respect for certain fundamental rights, in particular physical safety, or protection against any kind of offence, personal freedom, recognition of legal capacity and capacity to act, respect for the dignity of the person, access to justice and a fair trial, an institution well known following the tragic case of Giulio Regeni. This is due to the fact that Zaki is an Egyptian citizen, arrested and detained in his own country. However, in the case of Zaki, the principles and guarantees deriving from the norms on fundamental human rights are relevant, which, insofar as they relate to the essential rights to life, physical safety, personal dignity, access to justice and a fair trial, can currently be considered to be the subject of general binding norms, which are addressed to all States, irrespective of their participation in conventional regimes, now numerous in the field. Among these normative sources, as we explained in the second chapter, the United Nations Covenants of 1966 on civil and political rights and on economic, social and cultural rights are notable for their wide-ranging and universally applicable application, and they also provide, for States that have consented to them, procedures for protection through individual appeals to international supervisory bodies. The guarantees provided for by these acts can in fact operate universally, i.e. beyond the connection between the violation of rights and the territory of a State that is a party to them, as is also widely recognised by the practice of the United Nations Human Rights Committee, the supervisory body of this act, and the exceptions to the normative provisions contained therein can be implemented in expressly codified emergency situations and in accordance with the procedures intended for this purpose. Moreover, it should be recalled that Egypt has ratified the African Charter on Human and Peoples' Rights, a regional source of protection of fundamental rights, and therefore the guarantees provided by that act apply in the present case, albeit within the limits of the reservations made to that Convention, which have specific relevance to one of the alleged violations suffered by Zaki if it is established that they are connected with the attribution of the crime of spreading fake news. Egypt ratified the African Charter of 27 June 1981, reserving the right to implement Article 8 (freedom of conscience and religion) and Article 18(3) (prohibition of discrimination against women) exclusively in accordance with Islamic law; moreover, it subordinated the implementation of Article 9(1) (right to information) to the limits established by national laws and regulations, effectively inserting a clause limiting that provision. The international guarantee of the protection of the right to information is thus limited by the reservation made by Egypt to correspond to national requirements. More generally, the right to truth, as guaranteed by an internationally relevant legal principle and highlighted in all its urgency in the tragic case of Giulio Regeni, is also relevant in the Zaki case; it is now undeniable that the dissemination of information as an antidote against collusion and tolerance of acts contrary to fundamental rights has assumed a fundamental importance in international relations. Truth and fundamental rights are therefore a subject of great and current interest, and discussing and analysing their mutual implications can only improve their effective implementation; this statement is true since, as we have explained in the last paragraphs, following the case of Patrick Zaki, there has been a real mobilisation of public opinion and also

by Italian and European institutions, albeit timid and still not very concrete. However, it is a thin line that separates, and rarely unites, moral values from the economic needs of a country. As we have seen, despite the continuous violations of human rights in the country, with the Egypt of former General al-Sisi the other industrialised and democratic countries, mostly Western, are faced with this dilemma. Emmanuel Macron has decided to solve it by ignoring values and thinking exclusively of business. A long red carpet, handshakes and even the Grand Cross of the Legion of Honour on al-Sisi's last presidential visit to Paris in December 2020. The images that embarrass the Elysée Palace are those broadcasted by Egyptian TV and conveniently concealed from the French press, showing the pomp and honours reserved for Abdel Fattah al-Sisi during his state visit to Paris. The French authorities have tried to play down this lavish reception by removing a series of events with al-Sisi from President Macron's agenda and banning the French media from filming the events, which were instead filmed and broadcast from Cairo. This led to the grand reception of the Minister of the Armed Forces at the Invalides, followed by that of the mayor Anne Hidalgo at the Hotel de Ville and finally the awarding of the Legion of Honour, followed by an official dinner in the golden rooms of the Elysée Palace with Emmanuel and Brigitte Macron. During these meetings, various topics were discussed, from terrorism to Libya and the Mediterranean, but not human rights, contrary to what has happened in the past and despite the authoritarian drift of the Egyptian government, accused of systematic human rights violations. Even Italy, as we have seen, has not been spared from continuing to entertain its trade relations with Egypt almost ignoring the past history with Giulio Regeni and today that of Patrick Zaki; to tell the truth, the mobilization in Italy there was and came not only from public opinion but also from the institutions with the approval in the Senate of the motion of Italian citizenship to Zaki, but will it be enough? Should not Italy and the whole of Europe take tougher and more concrete actions so that truth and justice are done and this situation ceases to exist? The ethical and political humiliation of such munificence towards the Egyptian autocrat is not only a matter for France and Italy, but for Europe. The aim of this thesis was to bring to light the dramatic situation of human rights in Egypt, without any pretension of resolution and without claiming to be experts in the field. We have come to talk about human rights violations, forced disappearances and torture after a careful historical and political analysis of the constitutional evolution that the country has faced over time; we must not forget that we are talking about a jurisprudential system different from the Western one, different above all for the cultural heritage that it carries. The influence of religion has been the background of the whole analysis, silently manipulating the historical and political events of the country. The case of Patrick Zaki served as an expedient for the narration of an established practice in al-Sisi's country, a practice to which we must no longer remain indifferent. Human rights concern everyone, without distinction, and it seems almost obsolete today to speak of freedom of thought, when it should be an established norm in every country in the world. Today, 2 June 2021, Patrick Zaki's pre-trial detention in Egypt was extended for the umpteenth time. Hoda Nasrallah, one of the lawyers following the case, announced the outcome of the hearing held on 1 June 2021 and made known today by the Egyptian prosecutor's office to Ansa. The umpteenth renewal that leaves no room for doubt: his detention is a judicial overkill.

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SUMMARY

Egypt has a very complex and articulated constitutional history. Over the years, the country has been endowed with various constitutional charters, sometimes on a temporary basis and sometimes under the illusion that it had finally reached full constitutional evolution. In 1971, under Sadat's presidency, the so-called 'permanent constitution' was promulgated to distinguish it from the previous constitutional charters that were subject to constant amendment. Sadat's 'permanent constitution' marked a major break with the past and introduced important innovations such as placing the principles of Shariah at the apex of the system of sources. The question of the place of Shariah in the system of sources actually opens a much more complex debate than the simple insertion of a clause in the Constitution. On the one hand, there were jurists who believed that imposing an Islamic orientation on the legislator would have made the legal system inflexible, in contrast with Islamic teaching itself, which makes a clear distinction between general principles and the rules that concretely govern social life. On the opposite side, other jurists objected that the placement of Sharia law at the top of the sources would not have hindered the progress and dynamism of legislation, since the control of the conformity of the rules with Sharia principles would have been only subsequent to the issuing of the rules themselves and would therefore have taken the form of a sort of subsequent control of constitutionality. On the 22nd May, 1980, through a constitutional amendment, always at the instigation of Sadat, Art. 2 of the Constitution, on the placement of the Sharia in the system of the sources, assumed a more distinct Islamic connotation and the principles of the Sharia, while before they were designated as the "preeminent" source, now became the "principal source" of legislation and jurisprudence. The Supreme Constitutional Court has assumed an important role in this and subsequent phases, introducing an innovative and modernizing system of interpretation of the Shariah law. In fact, it can be affirmed that one of the fundamental characteristics of the Egyptian Supreme Constitutional Court was its ability, shown from the beginning and confirmed over time, to leverage on doctrinal pluralism and on the dynamism of Moslem law, interpreting, in anything but a passive sense, the principle of dīn wa dawlah, on the strength of the postulate that it is the Sharia itself that requires to be historically contextualised. The court has therefore played an essential role in the modernisation and secularisation of Islamic society, as well as in the preservation of the Shariah foundation of public power, enhancing the historical anchoring of the legal status of the Koran to the intrinsic political nature of the debate on interpretation. It is not without significance that the first question addressed by the Court concerned the interpretation of Article 2 of the 1971 Constitution, which identified the "principles" of Shariah as a prominent source of legislation.

In 2011, following the "Arab Spring", a period of uprisings that shook the entire Middle East, Mubarak's regime was overthrown and power passed into the hands of the military. Egypt then embarked on a new and complex phase of constitutional transition and after a brief interlude with the Morsi presidency and a failed attempt at a new constitution in 2012, it only managed to adopt a new and "definitive" constitutional charter in 2014. With al-Sisi's rise to power and a new constitutional charter, disguised by the much-appreciated facade

of secularist progressivism, the start of the massive and widespread repressive system still carried out by the Egyptian regime was officially inaugurated.

In August 2015, President al-Sīsī signed the new anti-terrorism legislation, which provides for the establishment of special courts to speed up trials, stiffens penalties for terrorism and incitement to violence by introducing the mandatory death penalty for 13 crimes, and finally provides legal protection for soldiers and police who use force in the exercise of their mission. It also provides legal protection for soldiers and law enforcement officers who use force in the performance of their duties. The law also provides for heavy fines for journalists who do not correctly report the government's version of terrorism. The new terrorism law largely retains the overly broad definition of terrorism contained in the Egyptian penal code and goes against a fundamental principle of international human rights law that requires laws to be drafted precisely and to be understandable, as a safeguard against their arbitrary use and so that people know what actions constitute a crime. In the name of the fight against terrorism, therefore, it has helped to criminalise people who are not involved in any violent act or even engaged in entirely peaceful activities. The issue of security and the fight against terrorism is closely linked to the issue of the state of emergency. Al-Sisi declared a state of emergency on 10 April 2017, after the attacks against some churches located in the governorates of Cairo and Alexandria that caused the death of about 47 people. Previously, on 25 October 2014, al-Sisi had only imposed such a measure in North Sinai, in response to a series of terrorist attacks in the region, which resulted in the deaths of 26 Egyptian servicemen. Although the Egyptian constitution stipulates that a state of emergency should only be enacted for six consecutive months, in recent years the Egyptian president has always rushed to renew it even before the deadline. This measure allows the president to have civilians tried by emergency state security courts, whose verdicts have no appeal process, to intercept and monitor all forms of communication, impose censorship before publication, as well as confiscate existing publications, impose curfews and seize private property. In addition to this, the state of emergency gives the security forces broad powers to restrict public meetings and media freedom and allows them to arrest people for any reason. A whole series of laws revolve around the state of emergency, which continues to be renewed without interruption: first of all the anti-terrorism law, which is so vague and general in its content and which, as we have seen, allows for the criminalisation of peaceful activities that are entirely legitimate under international law, then the law on demonstrations, the law on non-governmental organisations, trade unions, the media, and so on. If the state of emergency were abolished, one would not notice the difference in how much it has been 'internalised' by ordinary law. Protagonists of repression are the National Security Agency, which carries out most of the arrests and torture, and the Supreme State Security Prosecutor's Office, i.e. the Anti-Terrorist Prosecutor's Office, which has more than tripled the number of cases it handles in the first five years of al-Sisi's presidency. This prosecutor's office is also responsible for a new phenomenon in al-Sisi's Egypt: enforced disappearances.

In what appears to be a disturbing scenario, it is surprising that Egypt is party to several international treaties prohibiting the use of torture and protecting fundamental human rights. However, the reason why human rights violations, enforced disappearances, arrests of tortured civilians and unfair trials continue to proliferate in the

country is easy to explain; This is because the country has managed to find a way around these international norms by adopting national legislation, which is sometimes too general, and which, in the name of the fight against terrorism, the protection of national integrity and compliance with Islamic law, authorises the use of violent, unjust and inhuman forms of violence against civilians, most of whom are guilty only of freely expressing their opinion or denouncing the actions of the government.

The cases of Giulio Regeni and now Patrick Zaki, the former tortured and killed in circumstances that are still uncertain, the latter arrested and tortured without a fair trial and without evidence, have brought the issue of human rights violations in Egypt to the attention of foreign public opinion as well as Italian and European institutions. In spite of the mobilisations, especially on the part of public opinion and non-governmental organisations, in support of Zaki's release and the truth for Giulio Regeni, the reactions of the institutions seem to be timid and not very concrete. Italy, as well as the European Union, consider Egypt as an important trade partner and taking concrete decisions that may affect these relations seems to discourage the institutions themselves to do so. In the last five years, relations between Italy and Egypt have marked a moment of particular intensity, despite the dramatic events linked to al-Sisi's counter-revolution have closely involved Italy first with the heinous murder of Giulio Regeni, the doctoral student at Cambridge University originally from Fiumicello in Friuli, in Cairo in February 2016, and more recently with the arbitrary arrest of Patrick Zaki, an Egyptian student at the Alma Mater Studiorum in Bologna in February 2020. If these tragic events, absolutely exemplary of the level of repression of Egyptian civil society by the al-Sisi regime, have been able to generate real outrage and a significant mobilization of Italian public opinion, they have not been able to stop a powerful rapprochement between the two countries that has touched, in recent years, a plurality of fronts. From an economic and commercial point of view, in recent years Italy has become Egypt's second commercial and political partner in Europe, and the fourth in the world after the United States, China and Germany. Commercial collaboration between the two countries has covered a wide range of sectors, but energy has been by far the most important. On the strategic-diplomatic front, over the last five years Italy has de facto assigned Egypt the role of guarantor of stability in the Mediterranean and the Middle East, especially in the area of migration. Modelling itself on directives established in Washington and supported in Berlin and Paris, Italy has given Egypt great strategic value both for its ongoing mediation role in the Arab-Israeli conflict and, especially, for its commitment to the fight against Islamist terrorism. This rapprochement is part of Italy's 'Mediterranean pivot' strategy, whereby the country has committed itself to playing a vanguard role in the EU and NATO through its own bilateral partnerships with countries like Egypt.

On 2 June 2021, Patrick Zaki's pre-trial detention was renewed for another 45 days. Patrick has been held in the Egyptian prison since February 2020, subjected to physical and psychological torture and inhumane conditions. Perhaps the time has come to take courageous decisions that have real value.