

Introductory Note to the Translation: The following is a fairly literal (and therefore sometimes awkward) English translation of the Court of Cassation's judgment order reversing the original trial court's convictions and sentences in what is commonly known as the Al-Jazeera English case, or "Marriott Cell" case. To aid the general reader, some explanatory topic headings and notes have been added, all in italics, with some of the most notable portions of the court's reasoning and conclusions highlighted in yellow, starting on page 19. Also, some changes have been made in formatting, such as sometimes inserting paragraph breaks in very long sections in order to make transitions from one line of thought to another easier to follow.

**In the Name of the People
Court of Cassation
The Circuit Criminal Court
Thursday (B)**

The Presiding Justice, Counselor Anwar Gabri

Judges on the right of the Presiding Justice: Ahmed abd al-Quwa Ahmed and Hammad abd al-Latif

Judges on the left of the Presiding Justice: Nafaa Fargali and Kamal Qurani

The presence of the Chief Prosecutor at the Court of Cassation Mohammed al-Bambi/Amiin al-Sir al-Sayyid and Tariq abd al-Aziz.

In the public session held at the headquarters of the court in the High Court Building in the city of Cairo.

On Thursday, the 9th of Jumada I of the year 1436 \rightarrow coinciding with the First of January 2015.

Issued the following ruling

In the appeal which is bound to the schedule of the court Number 26806 of the 86th judicial year.

Raised By

- 1-Mohammed Mahmoud Fadil Fahmi
- 2-Bahir Mohammed Hazim Ahmed Nasir Ghrab
- 3-Khalid Abd al-Rahman Mahmoud Ahmed abd al-Wahab
- 4-Sahib Saad Mohammed Mohammed
- 5-Khalid Mohammed abd al-Rouf Mohammed
- 6-Shadi abd al-Hameed abd al-Azeem
- 7-Peter Greste

Against

The Prosecutor General

The Case

In criminal case number 1145 of the year 2014 in the Qasr al-Nile district the Prosecutor General accuses all of

- 1- Alaa Mohammed al-Sayyid Biyumi
- 2- Anis Abd al-Wahhab Khilewi Hassan
- 3- Khalil Ali Khalil Bahnis
- 4- Ahmed Abdu Fatah al-Bab abd al-Hameed
- 5- Mohammed Mahmoud Fadil Fahmi (Appellant)
- 6- Bahir Mohammed Hazim Ahmed Nasir Ghrab (Appellant)
- 7- Mohammed Fouzi abd al-Aziz Ibrahim
- 8- Sayyid Abd al-Hafiz Ibrahim al-Gamal
- 9- Noura Hassan al-Banna Abu Bakr
- 10- Ahmed Abdullah Mohammed Atiya Dawoud
- 11- Khalid Abd al-Rahman Mahmoud Ahmed (Appellant)
- 12- Sahib Saad Mohammed Mohammed (Appellant)
- 13- Khalid Mohammed abd al-Rouf Mohammed (Appellant)
- 14- Shadi abd al-Hameed abd al-Azeem
- 15- Ahmed abd al-Hamid abd al-Azeem
- 16- Anis Mohammed Mohammed Ibrahim al-Bultagi
- 17- Peter Greste (Appellant)
- 18- Dominique Lawrence John
- 19- Susan Milani
- 20- Johanne Aidentee

during the period of time between September 29, 2013 and October 3, 2013 in the Qassim al-Nile police district in the Governance of Cairo, of the following:

[The court lists the charges against the defendants, referring to each defendant by his or her number from the list above.]

First: 1-16 of the accused: Their inclusion into a group that was illegally established for the purpose of calling for hindering constitutional rule; preventing government institutions and public authorities from performing their duties; violating citizens' individual freedoms and general rights and freedoms; and destroying the religious unity and peace of the nation. They are also accused of joining the Muslim Brotherhood, which seeks to change the ruling government with violence, violate the freedom of individuals, target public institutions with the goal of breaking down public order, and expose the peace and security of society to danger and terrorism, among the means which this group uses to implement its purposes as proven in the public investigation.

Second: Defendants 5-7 and 12-16: The defendants possessed written material and audio recordings that promote the goals of the illegally established organization (see previous paragraph) and that were prepared by the organization for distribution. The defendants knew that these materials advocated the goals of said organization and its prescribed means to achieve these objectives as proven in the investigation.

Third: All the defendants: Supplied the illegally established organization with material and financial aid. Also, providing the organization (whose crimes are outlined in the first paragraph) with money, dispatches, equipment, kit, and information knowing that which the group calls for and its means for achieve its goals as proven in the investigation.

Fourth: Defendants 5-10 and 12-17: Possessed telecommunication and transmission devices (a Thuraya handheld phone, an Inmarsat device, and a Mobile Viewpoint device) without receiving a license from the appropriate administrative institutions with the intent to damage the national security of the country as proven in the public investigation.

Fifth: Defendant number 6: Obtained supplies—ammunition—which are banned for civilian use.

Sixth: Defendants 1-16: As Egyptian Nationals they deliberately broadcast outside of Egypt news, information, and rumors which were lies concerning the internal conditions of the country. Also, transmitting across the internet and across a satellite television channel—Al-Jazeera—intentionally false video recordings, pictures, and news to give the impression to the general public outside of Egypt that the country is witnessing internal armed clashes and a civil war which weakens the prestige of the country and damages the *raison d'Etat* as proven in the public investigation.

Seventh: All the Defendants: They intentionally broadcast false news, information, and rumors which they transmitted over internet and a satellite channel—Al-Jazeera— (these accusations are set forth in the sixth charge against the defendants) this could disrupt public security, harm the public good, implant fear in the hearts of the people, and stir up sectarian tensions as proven in the public investigation.

2. They had in their possession recording instruments in addition to possessing devices for capturing and transmitting images; and devices for transmitting sound and video especially for broadcasting the contents. The accusations are set forth in the previous paragraph according to that which is found in the investigation.

3. They possessed pictures that falsely depict the internal conditions of the country. This leads to ruining the reputation of the state as proven in the public investigation.

Eighth: Defendants 17-20: The defendants agreed to aid co-defendants 1-16 in the commission of the crimes outlined in the sixth charge. They also agreed to carry out the crimes and they actually helped them. They provided the co-defendants with some media materials and they carried out changes to the materials by adding and deleting and they transmitted it publicly across the Internet and a satellite channel—Al-Jazeera. The crime occurred with the agreement and the subsequent help as proven by the investigation.

They were turned over to the Giza Criminal Court for sentencing according to the laws and procedures.

[The court then lists the relevant sections of the governing rules and laws applied by the trial court.]

The aforementioned court ruled in the presence of the defendants in the session held on June 23, 2014 pursuant to Articles 2-1; 2-a; 30; 32; 40-2, 3; 41-1; 80 (d)-1; 86; 86 bis, 1, 2, 3, 4; 86 bis-1, 2; 102 bis-1, 2, 4, 178 bis, 2-1 of the Penal Code; and articles 1, 44, 48-1, 2; 70; 77-1, 2, 3, 4 of Law No. 10 of 2003 on telecommunication regulations, and articles 1-1, 6, 26-4, 30-1 of Law No. 394 of 1954 amended by two laws. The first, Law 26 of 1978, and the second, Law No. 165 of 1981, and decreed by Law 6 of 2012, Table 3 attached to the first law concerning weapons and ammunition with the effect of Article 32-2 of the Penal Code for connecting between all the crimes except what was attributed to possessing ammunition and to punishing the defendants.

[The court then lists the convictions (or acquittals) entered and sentences imposed by the trial court on each defendant.]

First, all of the accused *in absentia*, Alaa Mohammed al-Sayyid Biyumi, Anis Abd al-Wahhab Khilewi Hassan, Khalil Ali Khalil Bahnis, Ahmed Abdu Fatah al-Bab abd al-Hameed, Noura Hassan al-Banna Abu Bakr, Ahmed Abdallah Mohammed Atiya Dawoud, Mohammed Fouzi abd al-Aziz Ibrahim, Sayyid Abd al-Hafiz Ibrahim al-Gamal, Dominique Lawrence John, Susan Milani, Johanne Aidentee have been sentenced to ten years in prison.

Second, concerning those defendants who were present, Mohammed Mahmoud Fadil Fahmi, Bahir Mohammed Hazim Ahmed Nasir Ghrab, Sahib Saad Mohammed Mohammed, Khalid Mohammed abd al-Rouf Mohammed, Shadi abd al-Hameed abd al-Azeem, and Peter Greste are sentenced to seven years in prison. Ahmed abd al-Hamid abd al-Azeem and Anis Mohammed Mohammed Ibrahim al-Bultagi have been found innocent of the charges against them.

Third, Bahir Mohammed Hazim Ahmed Nasir Ghrab has been sentenced to three years in prison concerning the accusation mentioned in the fifth charge and is fined five thousand Egyptian Pounds.

Fourth, the court ordered the confiscation of the seized video equipment and materials.

[The court reviews the procedural posture of the case on appeal.]

Those who have been found guilty in this case have appealed using appellate procedure, the first of which is Mohammed Mahmoud Fadil Fahmi who appealed on July 20, 2014. Second, Bahir Mohammed Hazim Ahmed Nasir Ghrab who appealed on July 13, 2014. Third, Sahib Saad Mohammed Mohammed appealed on July 9, 2014. Fourth, Khalid Mohammed abd al-Rouf Mohammed appealed on July 9, 2014. Fifth, Shadi abd al-Hameed abd al-Azeem appealed on July 9, 2014. Sixth, Peter Greste appealed on July 13, 2014.

Also Mohammed abd al-Satar Khawali, lawyer for the convicted Khalid Abd al-Rahman Mahmoud Ahmed abd al-Wahhab, appealed on August 13, 2014. Six memos were submitted explaining the reasons for the appeal on August 20, 2014. The first of these memos were signed by Ahmed Mohammed al-Badawi Mohammed the lawyer for Sahib Saad Mohammed Mohammed, Khalid Mohammed abd al-Rouf Mohammed, and Shadi abd al-Hameed abd al-Azeem. The second was signed on August 21, 2014 by Nagad Mohammed al-Barai the lawyer of the convicted Mohammed Mahmoud Fadil Fahmi. The third and fourth were signed on August 21, 2014 by Mohammed Ragai Atiya and

Mustafa Mahmoud Ahmed, the two lawyers of the convicted Khalid Abd al-Rahman Mahmoud Ahmed. The fifth was signed on August 20, 2014 by Mustafa Nagi Mohammed the lawyer for the convicted Bahir Mohammed Hazim Ahmed Nasir Ghrab. The sixth was signed on August 20, 2014 by Mustafa Nagi Mohammed the lawyer representing the convicted Peter Greste.

The Court today has heard the defense as found in the minutes of the session.

The Court

After examining the briefs and listening to the report that was delivered by the prosecution and the defense and after consultation according to the law:

The appeal satisfies the form stipulated by the law:

[The court begins the substantive portion of its judgment by summarizing the claims and arguments raised by the defendants' attorneys.]

The appellants reject the findings of the court which convicted them of joining an illegally established organization whose purpose is to call others to obstruct constitutional and legal rule of law as well as block institutions of the state and the authorities from performing their duties; violating the personal freedom of the citizens in addition to general rights and freedoms; the destruction of the religious unity of the nation and the peace enjoyed by the society at large; and has taken on terrorism as a means which it uses to achieve its purposes. They have also been found guilty of materially and financially supporting this organization with the full knowledge of what the organization stood for and the means it employs to achieve its goals. They have also been found guilty of possessing printed material and recordings that promote the goals of the organization. They also possessed unlicensed telecommunication and broadcasting devices. In addition to ammunition that is illegal for civilians to possess. They also have been found guilty of participating in and wittingly broadcasting falsified news and rumors in order to disrupt public security, spread fear among the people, and destroy the common good. They also had in their possession printed materials prepared for distribution that contained propaganda for the organization. They also had in their possession means to record and broadcast the contents of the printed material. The reasons for the convictions are weak, the evidence was insufficient, the rights of the defense were violated, and the laws were clearly misinterpreted. The judge did not prove that the defendants' actions contained the criminal elements necessary to warrant the punishment that was given. The conviction did not mention any substantiated evidence upon which the judges based their ruling that was delivered in vague expressions. I submit to you the erroneousness of the warrant obtained from the

Prosecutor General. This warrant was built upon spurious inquiries that were not conclusive enough to authorize the warrant in the first place. The conviction relies on the confessions of defendants numbers one through three obtained during the Prosecutor General's investigation; however, these confessions are invalid because they were forced confessions which were made under physical and mental duress. The court rushed to deliver its verdict before receiving the medical examiner's report which the court ordered to examine the defendants— submitting to the defense's request in this matter—this did not allow the defense to examine those involved in the forced confession. While at the same time, the court ordered the prosecution to re-seal the evidence, after it was opened and its contents removed without the defendants or the defense lawyers present even though this order occurred after the court proceedings began. The court is the only one authorized to keep the evidence. Also the court in its ruling relied on information from this inadmissible procedure. Therefore the ruling is illegitimate and requires an appeal.

[The court then summarizes the trial court's overall factual findings, followed by a lengthy and fairly detailed description of the trial evidence, consisting of the next 11 pages.]

According to the sentence that is being appealed “the accused used the noble media improperly and transformed it from searching for the truth into distorting it. In so doing they betrayed the country by taking advantage of journalism and directing it against this country as evidenced by their collecting visual and audio recordings and editing them by removing and adding elements into others. They affirmed that which they had created in the way of media reports that did not occur at the time or place described. They gathered these reports for the purpose of broadcasting them on a satellite news channel which operates outside of Egypt which also serves one of the outlawed terrorist organizations (the terrorist group the Muslim Brotherhood) through showing the country—falsely—in a state of chaos with videos and pictures as if Egypt was a failed state suffering from deep divisions, internal violent clashes, and unclear leadership from the top. They strove to abort the national efforts to achieve the goals set forth in the political roadmap by broadcasting this inside and outside the country using this channel which adopted ideas against this country, and for which 10 of the defendants work. The accused directed this work based upon instructions that they received from the terrorist Muslim Brotherhood organization. The defendant Mohammed Mohmoud Fadil Fahmi rented two suites in the Marriott hotel under his name and made them into a newsroom to serve the ideas of the organization. He also undertook the operations of producing and broadcasting live from inside this makeshift newsroom. These reports damage the internal security of the country and blemish the image of Egypt and falsely show that the country is currently experiencing a state of civil war. He also broadcast and propagated blatantly wrong news and reports with the goal

of riling up the citizens and creating negative public opinion toward the Egyptian state. He then sent all of this to the aforementioned channel. All of Bahir Mohammed Hazim Ahmed Nasir Ghrab, Mohammed Fouzi abd al-Aziz Ibrahim, Sayyid Abd al-Hafiz Ibrahim al-Gamal, Noura Hassan al-Banna Abu Bakr, Ahmed Abdullah Mohammed Atiya Dawoud; the two British citizens Dominique Lawrence John and Susan Milani; Dutch national, Johanne Aidentee; and the Australian Peter Greste cooperated with Mohammed Fahmi. The defendant Khalid Abd al-Rahman Mahmoud Ahmed abd al-Wahhab undertook to establish an entity he called the Institute for Building Knowledge and which was registered under number 8823 of 2012 on July 18, 2012. Khalid led its board and through this he obtained cameras and editing equipment in distorting some films and recorded content. The headquarters of the entity used apartment 5 building 1 number 5111 street 44 Hay al-Diplomaseen, al-Maatam, Cairo, Egypt as another media center through which news was produced and broadcast live. The material of the newscast helps break down the security in the country and blemishes it. The apartment was rented out to the al-Nour company for film productions and was owned by Ahmed Abdu Fatah al-Bab abd al-Hameed who is a member of the Muslim Brotherhood. The warrant issued by the Prosecutor General on December 24, 2013, which allowed the country's security service to arrest and search all of those suspected of committing a crime and their names are mentioned in the investigation's report, with the judge verifying the names, and to search their places of residence as mentioned in the report as well as suites 1752 and 2056 and room number 1951 of the Marriott Hotel in order to confiscate the cameras, broadcasting devices, computers, tools, editing equipment, all of that which was related to the crime stipulating that the warrant had to be executed within 30 days to the hour of which it was issued. The search of the suite 2056 at the Marriott Hotel and the arrest of the accused Mohammed Mahmoud Fadil Fahmi and in his possession 2 Sony cameras; 1 small Cannon camera; 2 camera stands; 1 microphone with sound and internet cords and a case; 2 wireless microphones; 1 iPad; 4 Apple Laptops; 1 Toshiba laptop; 2 hard drive; a ADVC55 digital converter which allows one to take videos off a camera and onto a laptop to edit and broadcast using the internet; 1 editing device with an Apple keyboard; 3 small electric Sun Guns; 1 flashlight; a Kilo stand and a voltage regulator; 1 printer; 2 hard drives and a device for internet broadcasting; 3 gas masks; 3 papers with the title "The Most Important Court Cases of December" and a handwritten paper with the title "Financial Corruption: Sharm Sheikh and a handwritten paper with the title "The Principle of Supporting Culture in Egypt" and a handwritten paper with the title "Students Strike Against Tests" and a handwritten paper with the title "The Coup Plotters Strive to Restore the Mubarak Regime" "The Political Roadmap leaves the True Path" "The Political Roadmap Has Been Transformed Into Something Worthless" a printed paper under the headline "Important Advice to Keep People Protesting"; 700 American Dollars; 150 Egyptian Pounds. The search of room 1951 resulted in the arrest of the Australian Peter Greste and in his possession was 1 Apple Laptop; 1 Nikon digital camera; 120 South African

Rand; 1000 Lebanese Lira; 1 piece of paper; and a Blackberry cell phone. At the headquarters of the entity in apartment 5 building 1 number 5111 street 44 zone h, Hay al-Diplomaseen, al-Maatam, Cairo, there was confiscated 1 device for transmitting pictures and sound and a device for reading and recording on HDF tapes which are for television cameras; 2 Sony Cameras and their charging cords and a white Samsung camera; 3 cassette tapes; 15 small tapes and a tape for a video camera which is for television; 2 small satellite phones, a device for transmitting live pictures, a medium sized reserve battery, and an Apple laptop; 2 hard drives and a dell desktop computer tower; 8 cell phones of different makes, a black microphone; 20,700 Egyptian Pounds; 2000 American Dollars; 13 insignias written upon them “Committee for Organization” (لجنة النظام) with a picture of the removed president Mohammed Morsi; 2 bandannas with the words “The Muslim Brotherhood” written upon them; 5 files filled with some papers pertaining to the company al-Nour for Media Production and Distribution; 25 cards written upon them in big font the words “Media—Department” and underneath in smaller font “Muslim Brotherhood” and “The Freedom and Justice Party”; a colored map of the Arab World and Europe and a book with the title *Reviews in the Message of Education* written by Mohammed Abdullah al-Khattib and Mohammed abd al-Haleem Hamid and a book entitled *Industry Leaders* written by Salah al-Deen Sultan. The defendants intended to stir up conflict inside Egypt and make it appear as if it was a failed state in front of the international community through gathering and editing video and sound recordings to broadcast untrue events using a satellite television channel. This comes at a time when thanks to the media the world has become a small village in which news circulates a second after it happens including the broadcast of these falsified news stories which spread around the globe in seconds presenting falsely the Egyptian State and the division of its people into two warring factions.

The report from the agency investigating the criminal evidence confirms that it examined the seized items from the five defendants and found that the Sony camera contained a 16 gigabyte memory card. The thorough search of the card’s contents revealed video clips. The first was of an interview in English with a member of the students of al-Azhar who had a badge with the Rabaa logo on it on his shoulder. There was also an interview of a family of one of those who had been arrested in Baltim and they had flashed the signs that are against the country and the military (they lifted their hands up displaying the number four with their fingers). The examination of the contents of the Canon camera’s memory card revealed 109 videos, which include video from protests in Tahrir and al-Nahda squares. Also protests on the Qasir al-Nile bridge and especially of the events of January 25, 2011 in which protesters are shown next to the Egyptian Museum and fighting against the security services with rocks. Eight seized video clips which can transmit and record sound wirelessly using a television camera. The search of the first laptop revealed that it contained a work schedule that covered the protests of the Cairo University students “against the coup” and monitored the events in

the Sinai Peninsula and the role of al-Qaeda and terrorism and the number of killed there. The laptop also contained pictures of protests against the Military Council. The search of the second laptop revealed video files of Muslim Brotherhood protests and also of the sit in at the Raaba al-Adawiya Mosque. There were also interviews with people and also scenes of violence between the Muslim Brotherhood protesters and the security services. It also contained video of a protest for the 6th of April Movement as well as Muslim Brotherhood protests in which protesters held up their four fingers in support of the Brotherhood. There were also text files of the most important court cases of December 2013. The search of the third laptop revealed protests in Tahrir Square held by some supporters of the Muslim Brotherhood holding up the sign for Rabaa al-Adawiya; a video file showing the burning of a police vehicle on the 6th of October bridge and a recording of the attempted assassination of the Minister of the Interior, Mohammed Ibrahim, and an interview with Salah Sultan inside the Raaba al-Adawiya Mosque and a file of the events that happened at al-Azhar University including the attacks on the security services by the students and the riots on the campus of Mansoura University; a video of Safwat Hegazi and others from the Brotherhood while they are on the stage at the Rabaa al-Adawiya sit-in; and a recording belonging to supporters of Beit al-Maqdis in which one can hear the voice of Ayman al-Zawahiri talk about the events in Egypt and then talk about a person wearing a military uniform, Walid Badr. After that there was a scene involving training for members of the Beit al-Maqdis organization. Also on the laptop was altered pictures of the central police station in southern Sinai and the effects on the building and some cars of destruction caused by a violent confrontation. The fourth laptop contained video of one of the Muslim Brotherhood rallies in which people were raising the sign for Rabaa al-Adawiya and calling for the boycott of the constitution. An examination of the hard drive revealed the contents of video files of Muslim Brotherhood protests and their chants against the defense minister and calls to boycott the constitution; video of the Dar Basma orphanage and a recording from the field hospital located in Rabaa al-Adawiya during the sit-in which shows some injured and killed; and video that shows the transport of the wounded and killed to the field hospital. In a different clip, some are seen praying over the bodies in a mosque and then interviews with those who participated in the prayer. There is also an overhead shot taken from a small aircraft of the sit-in at Rabaa al-Adawiya. Yet more pictures of Muslim Brotherhood protests. And pictures of covered dead bodies inside a mosque.

The agency also confirms the search of the items seized from the sixth defendant which include: a Sony Digital Camera which contained pictures of a meeting between leaders of the Egyptian branch of the Muslim Brotherhood and leaders of Hamas. A Lenovo laptop which contained personal pictures of Asam al-Ariyan with a person at the Rabaa al-Adawiya sit-in; a letter written to the great people of Sohag calling on them to protest in the al-Shiban al-Muslimeen Square on July 26, 2013; pictures of the Muslim Brotherhood protests in several streets supporting the ousted president Mohammed

Morsi; pictures of people carrying automatic weapons and pictures of the wounded and killed; pictures of protesters in front of the dais behind a road block made of brick and a poster which is insulting the Minister of Defense; pictures of the military's dispersal of the sit-in at Rabaa al-Adawiya; and pictures of dead bodies inside the Ayman Mosque and video of the covered corpses inside the Ayman Mosque. Also on the laptop were files of the names and phone numbers of spokesmen from universities around the country who represent the Student Movement Against the Coup, and a report given by Hisham abd al-Hameed on the number of killed at Rabaa al-Adawiya— An Examination of the items seized from defendants number 12, 13 and 14 include an Apple computer which contained several files which contained pictures of a person in a military uniform who is making the Rabaa al-Adawiya sign with his hand; pictures of members of the Rebellion (تمرد) Movement; a poster showing police officers and other people with the words “Go out with the Ministry of the Interior and pleasure her;” leaflets for the strike of sophomores in the college of media at the al-Azhar University; sound files of songs which make fun of the Military Council and the salafist Nour Party; a recording from some of the satellite channels of the TV shows of Muslim Brotherhood Members; and among the video files is a recording of some of the protests of the Brotherhood organization. The examination of the Hard Drive resulted in the discovery of copies of Freedom and Justice Party identity cards and of bullet casings; pictures of many members of the Muslim Brotherhood and al-Gamaa al-Islamiya and a picture of a landmine; pictures of a shotgun shell and the dias at Rabaa al-Adawiya and burned out armored police vehicles and a picture of the the newspaper al-Shaab that had on its front page the words “Sawiris is an American Zionist Spy” and depicting members of the Egyptian intelligence service kneeling in front of him. It said that he was the one who founded the removal of the sit-ins at Rabaa al-Adawiya and al-Nahda and the Rebellion Movement. The hard drive also contained a picture of a sign calling people to civil disobedience and several video files which include a recording of a report read by an anchor for Israeli Channel 2 on the situation in Egypt after a statement issued by the Minister of Defense. It also contains another report from the same channel concerning the Palestinian-Israeli negotiations. The hard drive also contained a recording concerning the killing of Shiites in Egypt and a recording of a meeting with members of the Secular Movement concerning religious fascism. An LG cell phone that contained the schedules for organizing protests inside the universities of Faiyum, Southern Valley, Asyut, Beni Swuef, and Sohag, and estimates of the security environments in each of the universities and the amount of participation by students, faculty and others. Also the position of the presidents and of the security personnel at the perspective universities concerning the protests. On the phone was also a picture of a plan to carry out a bunch of acts with the knowledge of the young people and students who belong to the Muslim Brotherhood like protests at the Metro and train stations, once every week, closing roads, blockading government institutions, storming government places, burning trash once every two weeks in every governance, taking advantage of the anger of the youth

like the Ultras and other groups and participate with them in protests and moving youth in schools and universities closing roads to those who support the coup and not allowing them to get to work. The plan called for targeting residential and business properties of criminals through protesting or through small groups of protesters and placing stickers or writing on the walls with the criminals' names and sending them and their family text messages to bother them. The planned rehearsals for blocking off streets before January 25th and for conducting stops at the stock market, Central Bank, and national banks monthly. They also had plans to release personal information about some of the individuals who died in the events like dispersing the sit-ins at Rabaa and al-Nahda.

The report from the agency investigating the criminal evidence confirms that the contents of the previously seized items from article 8 to article 10 include recorded segments and pictures concerning the violation of the unified sectarian fabric of the nation, the publishing of falsified information, news and rumors through changing and editing the events by using editing technology through the program Final Cut Pro [sic] whose damage afflicts the public interest of the country and leads to the weakening of its prestige and standing.

Also the report prepared with the approval of the committee made up in accordance with the decision issued by the court in a session held on April 10, 2014 that the personal belongings of the defendant Mohammed Mahmoud Fadil which were scrutinized by the Administration of Technical Support and which contained a Sony Camera which had two memory cards the first memory card contained videos in English and videos of Tahrir Square which showed several armed forces vehicles; videos of a sheep farm and a conversation with the owner of the farm concerning the increase in fuel prices after the revolution; videos of a butcher's shop in one of the more affluent areas and another in a poorer neighborhood; video of conversations concerning the rise in fuel prices; and videos showing a family in a poorer neighborhood eating on the floor. It also contained conversations with the mother of the family on the expensive meat prices that year which made it impossible for the family to buy meat. The second memory card contained video of the accused Peter Greste. Also in Mohammed Fadil's belongings was a Sony Camera with a memory card that contained videos of the funeral for the poet Ahmed Fouad Nigam and a report in English; videos and a sound clip in English and videos containing a student from al-Azhar University who is wearing a shawl with the Rabaa logo on it; videos with the father of one of those arrested talking about the circumstances and place of his son's arrest as a result of possessing a ruler with the Rabaa logo on it, and a conversation with a person which one can understand from the conversation that there was no legal basis for arrest; video of a conversation in English between a person and the reporter; videos of the training for one of the football clubs and a conversation with one of the people about the state of football after the revolution; videos of a charity organization and a conversation with one of the women

about the role of the organization and her description of the closure of the organization as terrorism. Also, included in the possessions was a Canon camera whose internal memory contained videos of clashes between the police and protesters. Also included in the belongings of Peter Grete, a Nikon camera which contained personal pictures, pictures of a church, and pictures of graffiti. A Blackberry cell phone which contained a picture of female protesters and some people; a work schedule for the Bank of Supreme Guidance of the Muslim Brotherhood; a press release in a Microsoft Word folder entitled "Released by Office of the President of the Republic"; several emails that were printed and attached to the report; and videos in English and several emails in English that were printed. Included in the personal belongings of the defendant Sahib Saad Mohammed Mohammed, Shadi abd al-Hameed abd al-Azeem, and Khalid Mohammed abd al-Rouf Mohammed a Samsung Camera which contained photographs of people brandishing the Rabaa sign; pictures from the internet; Picture and sound of religious sermons, songs, and music; and pictures of schedules for appointments to meet with some of the families of those who were injured and died in the incidents. Also included in the belongings was a Nokia cell phone that contained videos from the Internet of a bunch of songs playing over still pictures and various photographs of those injured with the caption "the martyrs of Rabaa." An LG cell phone which had a memory card and internal memory that contained voice recordings understood from the context to belong to Shadi and Khalid talking with a third individual about receiving cameras from Al-Jazeera and each one of them receiving three hundred dollars in exchange for broadcasting the events of one of the Fridays. They were also talking about eight cameras in their possession which could broadcast live images and the amount of 500 dollars for every camera. The third person, Alaa, responds to them that Abd al-Hameed is a liar and a fraud. He adds that they were among those that took control of the news van at Rabaa al-Adawiya and that he had about 30 cameras that Al-Jazeera gave to him to distribute around the country. He also added that they should take control of any camera which films scenes which they do not want to broadcast and that they should work within the Al-Jazeera network and not with the network that belongs to Al-Jazeera Egypt, and that he needed a picture which his cameras took during the incidents at the universities. Then they requested hooking up a picture feed to Al-Jazeera in exchange for money to make banners and flags in their demonstrations. Alaa added that Khalid knows all the details very well and that if one of them encountered any security problems then they could get a visa to Qatar. Also on the cell phone was a recording of a phone conversation that someone placed to a brigadier general named Ahmed. The caller informed him that the blood of the martyrs of Rabaa will continue to haunt him, and pictures of demonstrations in which there are fires and pictures of maps of some of the streets with the goal causing traffic paralysis which were copied and attached to Tahrir Square. Excel files with the names of the injured and dead in various places that were printed. Also pictures, files, and electronic conversations were taken and printed and attached to the report. The defendant Bahir Mohammed Hazim Ahmed Nasir Ghrab

possessed a camera and photographs of people in different places; various pictures of the first science forum of the students of al-Qaradawi. Pictures of some weapons from Qatar; and word documents of ideas for television programs for the TV station Masr 25 which was closed by order of the respective authorities. A Sony camera that had on it pictures from the January 25th revolution that show a few members and leaders of the Muslim Brotherhood and Hamas.

The belongings which the criminal lab combed through included the belongings of the accused Bahir Mohammed Hazim and contained a laptop upon which was found videos of covered corpses in a mosque; videos of a conversation with a person which one understands from the conversation that it is about the divergence between the coroner's report and the truth; videos from the chaos of the accident which resulted in protests and night demonstrations; images of protests in different places which one understands from them that they are protests against al-Sisi; clips from Al-Jazeera reporters who appear with people who show up in other pictures carrying weapons; images of corpses and pictures of military personnel; and videos produced about Tahrir Square. The belongings confiscated along with the defendants Sahib Saad Mohammed Mohammed, Shadi abd al-Hameed abd al-Azeem, Khalid Mohammed abd al-Rouf Mohammed included a laptop that contained video of a conversation with an individual in English and videos of protests against the current government and supporters of the girls of the 7am Movement; videos of some politicians attacking the 2012 constitution and on the clip are the words "boycott the coup's constitution"; photographs making fun of the current constitution and some members of the Constitutional Committee of 50; photographs of the dispersal of the Rabaa sit-in; and video of a woman who condemns al-Sisi and the sentence issued against the girls of the 7am Movement. A desktop computer tower that contained a word document that describes female students from al-Azhar University and the way that so called thugs acted with them. Within in belongings of Peter Greste was found a USB flash drive which contained personal and family pictures and videos of a conference in Kenya; Excel files which one understands from them that they contain information of expenditures during a special assignment with the al-Jazeera network; and PDF files in English which are a contract between the accused Peter Greste and the al-Jazeera network. The belongings of the accused Mohammed Mahmoud Fadil Fahmi contained an Apple Macbook Pro that contained word files in English. Among some of the pictures was a picture of Mohammed al-Zawahiri brother of Ayman al-Zawahiri and videos of an African country. A second Macbook Pro that had editing software on it that contained videos produced of some protests and a conversation in English and Arabic with Ahmed Mahir, a member of the April 6 Movement. Commentary on the videos is also in English. Also on the second laptop were videos of a sheep farm and butcher shops. As well as an interview with a family in a poor neighborhood, with English audio commentary. Another laptop of the same type had on it an editing program which contained videos produced about football

in Egypt and which talks about the poor conditions after and the lack of spectators in the stands; videos of Muslim Brotherhood supporters protesting; video of an Al-Jazeera reporter in English; videos on a charitable organization— which has been cited previously in the section belonging to the camera; and video produced about Brotherhood protests with a report by a reporter in English. A laptop of the same make with the same editing software on it containing videos of the incidents at the American Embassy which included riots, shouting and clashes with security personnel; videos of new and old protests and of a burning car on the 6th October Bridge; edited videos of a covered corpse and an interview with a person and commentary in English edited videos of demonstrations in various parts of the country spliced with scenes of violence and people preparing to film; a video of the Brotherhood leader Salah Sultan in English; videos from inside the Rabaa dias of Safwat Hegazi and Salah Sultan; videos of traffic jams; sound recordings of gunfire, protests, and an ambulance siren which were put together in order to add these sounds to pictures; videos of a police attack on female students at the University of al-Azhar; videos of a demonstration and a signal from the reporter to the protesters that filming was to begin. It also contains commentary of the events in English. A laptop that contained a video of a fire, and phone numbers of some politicians, doctors, and journalists; a wireless keyboard; a computer tower for a desktop computer which contained videos of Mohammed ElBaradei off the internet; and files of the starting times of some trials. An external hard drive which contained videos of protests at Rabaa al-Adawiya; videos of child labor; videos of a burned out car in the middle of protesters and an interview with a lawyer for the Brotherhood; video of a mother of one of the female students accused in the “girls of the 7am Movement” case talking about the oppression which her daughter has to deal with and the injustice that exists in the country. It also shows violent clashes with the security forces, scenes of burning trees, and tear gas. It also has an interview with a father of a girl arrested with the others of the 7am Movement, and a mother whose son was killed in the incidents. There is also an interview with supporters of the ousted president Mohammed Morsi. Videos of clashes and riots with law enforcement in Port Said and videos of individuals, cars, and armored vehicles belonging to the armed forces and of a female journalist speaking English. An external hard drive which contained several videos about the court case relating to the girls of the 7am Movement and an interview with one of them named Sara; scenes of protests condemning military rule; scenes of supporters of the Muslim Brotherhood, and of an Egyptian conference in Turkey; videos of riots and clashes in Port Said; video of judges during a general assembly meeting at the High Court House; video of a field hospital which shows wounded and dead as well as clashes on the 6th of October Bridge. It also contains an interview with Mohammed Beltagy who describes that which happened as a military coup and as a new military dictatorship; a report of sexual harassment; video of a gathering of Ultras on the 6th of October Bridge; videos of the neighborhood of Bulaq voiced over in English which one understands the video to be about the poor living conditions of Egyptians; and videos of

the coverage of Mubarak's court case with English voiceover in which the translation of the events in which these scenes are included and which are done in English with the knowledge of one of the translators from the Ministry of Justice. A CD belonging to the defendant Mohammed Mahmoud Fadil Fahmi contained a video file which begins with a funeral prayer then the female correspondent talks about the eulogy of the victims who were killed at the hands of the security forces during the break-up of the Rabaa al-Adawiya sit-in, and beside them are the wounded who were injured during those events. She also talks about the increase of anger among the people and mentions the call to march on Friday. Then a young man named Mohammed Sultan appears and talks about the legitimacy of the protests for the sake of freedom and that the security forces meet them with firing live ammunition at them. One of the wounded talks about the truth of this claim and that the security services used against them excessive force and live rounds. Another video file contains an interview with a protester named D. Khalid who talks about the destruction of the military coup that killed innocents everywhere from children to men and women. He talks about the Muslim Brotherhood being a peaceful group and not a terrorist organization. Also contained on the CD is a video file with images of a demonstration held by supporters of the Brotherhood and a correspondent talking with one of the protesters named Hussein Amr who decided not to recognize the coup or the government which sprung out of it and that he is prepared to die for his country and for Islam; another file which contains a sound recording of chanting in Arabic against al-Sisi and the reporter is talking about the protests which occurred with large numbers to condemn to military coup. Then the voice of the reporter fades out and the sound level of the chanting increases as it appears in the recording. Also of the CD is a video file with an interview of a student, Yousef Salaheen, from the University of al-Azhar who the reporter describes as one of the student leaders of al-Azhar University and who says that he is busy with protests rather than preparing for tests. He also says that he is fighting against the state run operations of oppression. The student also describes the University of al-Azhar as in a state of uprising and revolution against the regime, avenging those killed and those who died and also in order to get those arrested released. Then the screen goes blank with the words " the rest will be added in Doha." The correspondent then talks about the protests against the coup and the increase in the numbers of participants in the demonstrations after the protest law was issued. The correspondent also says that there is fighting between students and security forces which have used tear gas and birdshot to prevent them from protesting. The broadcaster continues: Al-Azhar University requested the security in order to confront the students. The screen then goes black so that Doha can add a sound clip. Then the broadcaster talks about the student raid of the university's administration building and how the security forces dealt with them with force and sentenced them with punishments reaching up to 17 years in prison; however, their colleagues are determined to continue protesting. The correspondent then returns to his conversation with the student Yousef Salaheen who talks about the continued demonstrations at the

university. The conversation continues in the same vein until the end of the video. Another sound file included on the CD is of a female broadcaster talking about the neighborhood of Bulaq Abu al-Ala, which is located near central Cairo and Tahrir Square. The people in this area talk about how they are forgotten and neglected by the government. Also a file of an interview with Essam Arian and a long conversation which revolves around the military coup and about how the revolution is not yet over and that peaceful protests which fill the streets will lead to removing the leaders of the military who instigated the coup and will return the legitimately elected president Dr. Mohammed Morsi. He also states that the blood of those killed will not be for naught and talks about Muslim Brotherhood's strategy if they return to power. Also on the CD is another video file showing a conversation with a person standing in the street in front of a poster that has on it the words "the Massacre at the hands of the Republican Guard." The person in the street then talks about the return of the ousted president and about the fact that there are a lot of Muslim Brotherhood supporters among the Egyptian people. He also says that he does not know if the current (temporary) president's name is Mansour or Tartour (meaning puppet). The CD also contains a file containing a video clip of a protest. A reporter talks about the possibility of the protesters staging a demonstration following Friday prayers. It also contains an interview with one of the women. The words "Drawn in Doha" appear on the screen with the reporter mentioning that there are good chances that since the ouster of Morsi that protests will become a daily occurrence in every part of the country. The correspondent also mentions consecutive governments have striven to place conditions around protesting. Also on the CD is an interview with Ahmed Maher concerning the protest law and a file containing a video clip of a charity organization and the correspondent talking about the decrease in charity work. There is also a conversation with one of the workers at the organization that is one of the centers for social support in Nasser City. It is also run by a front belonging to the Muslim Brotherhood. The conversation with the worker is about the type of aid and support offered by this center to the poor and that a decision was issued to close this center. With the closure of this center there are not alternatives to the services that were provided to the poor and the needy. According to the worker, this will lead to an increase in anger and frustration. The reporter then comments that the centers that closed were dependent upon the Muslim Brotherhood Organization. Another file on the CD contains videos of protests which support the Brotherhood after the government announced that the Muslim Brotherhood Organization was a terrorist organization and warned that the protesters will face jail time which could reach up to 5 years in prison. There were also interviews with some of the demonstrators who talked about their determination to continue protesting. The reporter comments about the inclusion of women in the protests against the coup and that the police used tear gas and birdshot on the female protesters to disperse them. Also on the CD were some unedited sound and picture files of various protests and files that contain videos that discuss the court case of the girls of the 7am

Movement and that which they are exposed to and the attempts of the government to make an example out of them. It also talks about how the harsh punishment meted out to them led to the anger of many which convinced the court to lighten the sentence. Also included on the CD is a file that contained a video clip of a reporter talking about child labor and that the decrease in child labor is dependent upon the return of political stability which no longer exists; a file of a video clip of an interviewer talking about the protests against the government and the organization of a demonstration in the universities across the country since the beginning of the school year and that the response from the government was mass arrests and maximum prison sentences with few having their charges dropped; however, this seems to have stirred up the anger of the students rather than suppressing it; and several files containing videos of a conversation with an al-Azhar University student Yousef Salaheen who was mentioned previously. The long conversation concerns the military coup and the student demonstrations against it. Yousef also insists on the rights of those who were killed and the return of legitimacy and the judgment of those responsible for the coup. A CD belonging to the defendant Peter Greste contained a file with a sound recording of a telephone conversation between two people in English the first one seems to have an American accent and the other seems to belong to a non-native speaker. The conversation lasts 32 minutes and 45 seconds, and the conversation between them revolves around the court case against members of NGOs that were operating in Egypt. The members were arrested and investigated and then released. It appears from the discussion the American was working in one of the organizations and talks about the circumstances surrounding the arrest, interrogation, and the return to America. The speaker clarifies that he and his colleagues were not exposed to any inconveniences or pressure during the entire process. The CD also includes a sound file for a radio program for the BBC which takes up the topic of the situation in the Sinai Peninsula and the military operations the armed forces are carrying out on the peninsula.” In proving the case, the ruling relies on evidence which it gleaned from the statements of Major Ahmed Hussein Mohammed Hussein, Captain Mohammed Ameen Mohammed Azz al-Deen, Colonel Waleed abd al-Azeem Ibrahim, Captain Ahmed al-Sayyid Ahmed Gabr, Major Ahmed Mohammed Azz al-Deen, Engineer Ahmed abd al-Hakeem Ahmed Ali, Engineer Kamal Mohammed Kamal Mohammed, and Technician Mohammed Saud abd al-Salam Saud. And relies on the confessions of the defendants Mohammed Mahmoud Fadil Fahmi, Bahir Mohammed Hazim Ahmed Nasir, Sahib Saad Mohammed Mohammed, Khalid Mohammed abd al-Rouf Mohammed, Shadi abd al-Hameed abd al-Azeem, Peter Greste during the investigation and on that which the technology committees showed.

[The court then begins its analysis, first citing the governing legal principles and then applying those principles to the trial court’s proceedings and judgments.]

As has been laid out, the law makes it necessary in every conviction that it clearly includes details of the case that requires punishment that the criminal elements prove and the circumstances in which the evidence occurred. The conviction [*trial court judgment order*] must also include the evidence that the court relied on to prove the crimes occurrence that the accused supposedly did. The court must also adhere to show the effect of the evidence that the court used in sentencing so that the court's inference is made clear as well as the integrity of its approach unless there is not enough evidence to secure a conviction. This is what is meant by the phrase "report of the incident" mentioned in article 310 of the criminal procedural law which is that the trial judge must prove in his ruling every act and intention from which the criminal elements are composed.

As has been laid out, Article 86 of the Penal Code added by Law Number 97 of 1992 had specified that "in the application of this law, it is intended that terrorism is every use of force or violence or threat or fear which the offender resorts to in order to carry out a criminal scheme whether alone or with co-conspirators with a goal of disrupting public order or exposing the peace and security of society to danger especially when this harms people; or instills fear among them; or exposes to danger their lives or freedom or security; or inflicts damage on the environment or communication or on finances or buildings or public or private property not only damages but also occupies and takes it over; or blocks or slows down the of the practices of public authorities or places of worship or the work done at institutes of learning; or hinders the constitution or the laws or regulations."

[In one of the most legally significant portions of the Court of Cassation's judgment, the court limits the very broad definition of terrorism in Article 86 of the Penal Code to crimes involving violence in one form or another. The court also describes the two components of the crime that must be proven to sustain a terrorism conviction, the first being the physical acts committed and the second—and most important here—being the requisite criminal intent.]

The crimes stipulated by the two articles 86, 86-1 from the Penal Code and with which the appellants are convicted—except for defendant number 5—cannot be established except with the existence of two components. The first of which is physical and it is represented in the appearance of force or violence or threat or fear that results from a criminal. The criminal behavior in the crime of terrorism takes on the form of extreme violence that its various definitions refer to including the use of force or threat or fear in the manner that the law defines. This definition is expanded to pictures or images which modern technology has created. Therefore, the definition cannot stop at the physical meaning for violence. The use of information systems for purposes of terrorism is considered violence, which is part of terrorism. The second component is represented

in the general criminal intent, which is the awareness of the criminal when he commits a crime and that he knew it was a crime *[or, more accurately, knew of its criminal nature]*. The second component stipulates that the intention of the criminal was directed towards the use of force, violence, intimidation, with the knowledge that this behavior for its part, leads to the violation of the rights and privileges stipulated in Article 86. The law stipulates that terrorist acts must have a goal including to disrupt public order or expose the peace and security of society to danger, which encompasses all criminal acts which are directed against the government, or it could for its part create a state of fear in the minds of certain people or among groups of people or among the general masses. It could also include forcing one of the authorities to change its position whether by forcing it to carry out a certain task or to refrain from it, or create a state of crisis or public rebellion or threaten the stability or peace or political unity or the sovereignty of the state. The criminal intent is pieced together *[proven by inference]* through the contents of the acts of terrorism that the criminal commits and the law considers it a picture of criminal behavior and its result.

[The court then holds that as a matter of law the trial court failed to cite sufficient evidence to support the defendants' convictions.]

As has been laid out, the sentence being appealed had charged the defendants number 1 Sahib Saad Mohammed Mohammed number 2 Shadi abd al-Hameed abd al-Azeem, number 3 Khalid Mohammed abd al-Rouf Mohammed, number 4 Bahir Mohammed Hazim, number 7 Khalid Abd al-Rahman Mahmoud Ahmed, with the crime of joining an organization which was illegally established and which has adopted terrorism as a means of accomplishing its stated goals without proving the existence of this organization, its founding purpose before the defendants join it, and how they joined this group and how they knew of its goals. Also appellants one, two, three four, and six, Mohammed Mahmoud Fadil Fahmi, are charged with the crime of possessing printed and recorded materials which promote the goals of this organization without clarifying as to whether these printed or recorded materials were prepared for distribution or displaying to others.. Also these appellants were convicted of the crime of providing this organization with physical and financial support without the judge making clear the nature of this support and how they provided it while being aware of what this organization called for and the means by which the organization accomplishes or carries its goals. The fifth appellant, Peter Greste, has been found guilty of the crime of possessing communications and broadcasting equipment that he did not register with the appropriate authorities without providing a list of these devices and without providing acceptable evidence of his possession of these devices. Also the criminal evidence report did not clarify the possessions of the aforementioned defendant and has just listed the contents of the confiscated possessions while in the defendants' possession without providing sufficient explanation of this content. Also it was not

explained if the confiscated media materials had been distorted from the truth with the knowledge of any of the defendants when it was broadcasted or if it was prepared for distribution and given to someone or not. The fourth appellant Bahir Mohammed Hazim Ahmed Nasser was charged with the crime of possessing an ammunition round not registered with the proper authorities and he received an individual punishment for it without mentioning the evidence regarding this charge. It did not prove that this ammunition round could be fired [shot], and this is a purely technical issue that the court is unable to know by itself. The sentence is lacking the evidence to prove the elements of the crime that the appellants were charged with; therefore the sentence is flawed and must be overturned.

[The court points out that the trial court stated on one page of its judgment that it relied on the defendants' alleged confessions in finding them guilty, stated on another page that the defendants all denied those alleged confessions, but the trial court failed to state any reasons for accepting and relying upon those confessions in the face of the defendants' denials. Note that later in its judgment, further below, the court returns to the subject of the defendants' alleged confessions in the context of failure to prove or make findings of voluntariness.]

According to that which has been laid out, the sentence being appealed is limited in its scope according to that which was established in the tenets of the court when the judge said "according to the events in the case we have just mentioned, the evidence we received prove the events to be true and proves the guilt of the defendants....., all of those who testifiedand from the confessions of the defendants Mohammed Mahmoud Fadil Fahmi, Bahir Mohammed Hazim Ahmed Nasser, Sahib Saad Mohammed Mohammed, Khalid Mohammed abd al-Rouf Mohammed, Shadi abd al-Hameed abd al-Azeem, and Peter Greste with the investigations and with that which the technical committee's reports mentioned and the sentence exposed the contents of these confessions when the judge said "It was decided that the fifth defendant Mohammed Mahmoud Fadil Fahmi according to the Prosecutor General's report that he worked as a journalist for Al-Jazeera English since September 2013 and that this channel transmitted its media material from two units which it rented out at the Marriott Hotel in Zamalek in order to avoid monitoring from the security services and that defendant 17 was dedicated to the specific work of adding and deleting (editing) these materials before their broadcast to the Al-Jazeera Channel. And that defendant seven was the one who supported him in carrying this out. Defendant six, Bahir Mohammed Hazim Ahmed Nasser, confessed according to the investigation of the Prosecutor General that he worked for Al-Jazeera English since May 2013 and that throughout this period he prepared many journalistic reports particular to internal Egyptian matters and that the instructions which were given to him from the channel were to show the Egyptian state in a bad light and to focus in his reports on the negative without showing the positive.

And that the instructions of the Channel were sympathetic to the Muslim Brotherhood and that the Channel's instructions to its reporters were to make the Egyptian state look bad. And that his translation of the words which the Minister of Defense delivered were exploited by the Channel in a report that made it seem as if the Minister was calling for a civil war among the Egyptians. Also he admitted to having in his possession the seized ammunition round. The twelfth defendant, Sahib Saad Mohammed Mohammed, confessed according to the Prosecutor General's report that he participated with the thirteenth defendant, Khalid Mohammed abd al-Rouf Mohammed, and the fourteenth defendant, Shadi abd al-Hameed abd al-Azeem, in the Muslim Brotherhood protests and that he undertook the filming of some of the protests to broadcast one of them to Al-Jazeera. The thirteenth defendant Khalid Mohammed Abd al-Rouf Mohammed confessed according to the Prosecutor General's investigation that he is a member of the Muslim Brotherhood and that he participated in the Rabaa al-Adawiya sit-in and that he became acquainted with one of the supporters of the Brotherhood to whom he gave a digital camera able to transmit live over the internet. And that he established a website which he used in transmitting the clips, which were filmed using the previously mentioned camera and sent to him using his private Internet account. And that these clips that he filmed of the protests were transmitted by satellite channels like Al-Jazeera, the Anadolu Agency, and the Sky News Network. And that some of these clips were subject to editing. The seventeenth defendant Peter Greste, the Australian national, confessed according to the Prosecutor General's investigation that he was paid to work as a reporter for Al-Jazeera English in Cairo since 12/15/2013 and that this channel broadcast its media material from a suite in the Marriott Hotel in Zamelek. It adds that the two producers of the program in Egypt are the defendants five and six, and that others worked alongside all of them. And that they carried out the work of funding and the administrative duties necessary to complete filming. **And because of the short amount of time of his work he did not obtain a license from the appropriate agencies to work as a journalistic reporter in the country."**

Then the court ruling repeated on a different page that the judge said, "Concerning the questioning of the defendants Mohammed Mahmoud Fadil Fahmi, Bahir Mohammed Hazim Ahmed Nasser Gharab, Sahib Saad Mohammed Mohammed, Khalid Mohammed abd al-Rouf Mohammed, Shadi abd al-Hameed abd al-Azeem, and Peter Greste in the investigation of the Prosecutor General **the defendants deny all that has been attributed to them..."**

As has been laid out previously, it was clear that the sentence being appealed used the confessions of the previously mentioned appellants concerning what was attributed to them and the court counted it among the evidence that the judge relied on in sentencing. The judge—afterwards—on a different page, rejected their confessions that were attributed to them. [Note: "Rejected" may be too strong a word, but accurately

describes the legal effect of the combination of what the trial court did and failed to do. The trial court first noted the allegations in the public prosecution's report that the defendants made incriminating statements and then later noted the defendants denied making those statements. Because the burden was on the prosecution to prove the statements were made, the legal effect of the trial court's failure to reconcile the allegations and denials was to accept the denials as true.] This generalization and equivocation proves the lack of the judge's perceptions about the elements of the case and causes a lack of consistency in the opinion of the court, the [required] consistency that makes the case clear. That is why it will be difficult for the Court of Cassation to distinguish between the correctness of the ruling and its error. It is predictable that the case was not clear for the court to the extent that it believes its mistakes in the evaluation of the responsibility of the defendants. Therefore, the ruling was weak in its reasoning and was full of contradictions, which makes it flawed and necessary to overturn .

[The court rules that, after the defendants raised a challenge to the sufficiency of the evidence to support search warrants issued by the Public Prosecution Office, the trial court was required to inquire into and examine that evidence, and to then state cogent reasons in its judgment for any finding of sufficiency. Because the trial court failed to conduct such an inquiry, much less make any findings of sufficiency of the evidence justifying the search warrants, it was improper for the trial court to rely on any evidence obtained from the execution of those search warrants. Once challenged, until proven otherwise such evidence is legally presumed to constitute "fruit from a poisonous tree".]

As has been laid out, the sentence being appealed shows the error in the warrant of the Prosecutor General with the arrest and search which was based on non-genuine reports and I will present it in the judge's statement "it was responded to that the two reports dated 24 December 2013 and 2 January 2014 included, according to that which was confirmed to the court absolutely, all the mandatory information necessary to reveal that the previously mentioned defendants were they alone the ones intended with these reports and no one else. In addition to that, the two indicated reports confirmed the information that was collected against them through surveillance and investigation. The information was sufficient evidence for the Prosecutor General to adopt and to issue, based upon the information, the warrant which was pointed to and which was made clear with the papers and this is that which this court has settled on and ignores that which the defense has brought up in this brief."

As has been laid out, the law says that the search warrant is a procedure of the procedures of the investigation whose issuance is not proper except for a crime, "felony or misdemeanor," which truly happened and it is likely to be traced back to a specific

defendant. And there must be sufficient evidence that justify violating the sanctity of his home or his personal freedom. It is expected that the court should evaluate the genuineness and thoroughness of the reports to complete the process of issuing the search warrant, even though the law gave this ability to the investigation authority which issued the warrant under the supervision of the trial court; however, if the defendant claimed the procedure was invalid, then the court should make further inquiry and discuss this essential invalid procedure and to rule on it with sufficient and just reasons.

As has been laid out, the ruling in the response concerning the invalid search warrant was content with the previous phrase and it is an inadequate phrase whose rationale is not able to be explained and which the ruling stipulated in this matter because the court did not show its reasoning concerning the factors of the previous reports based on the search warrant or explain in its totality in order to justify issuing the warrant from the investigation authority and the essence of the of the crime which occurred and the truthfulness of that which was attributed to the appellants. Its sentence is wrong and it is a result of a flawed process which necessitates that it be overturned.

[The court then returns to the issue of the defendants' alleged confessions, lays out the standards for determining voluntariness, and describes the requirement that any finding of voluntariness by a trial court must be accompanied by a description and analysis of the evidence supporting that finding. In this case, after three defendants claimed that their confessions were coerced, the trial court ordered a forensic medical examination of those defendants to determine whether there was any physical evidence on their bodies of physical coercion, but then "rushed" to rule and convict those defendants without waiting for the results of the court-ordered medical examination, and in so doing impermissibly relied in part on the allegations of their confessions.]

As is laid out, the confession that was depended upon should have been voluntary, and it is not considered to be that—if it is honest—if and when it is given under pressure or threats, no matter the amount. The law says that the court must examine the connection between the confession and the alleged compulsion. [Before relying upon the alleged confession,] the court should prove with strong legal justification that the confessions were not coerced. It is proven from the minutes of the trial that the defense of the first, second, and third defendants claimed in front of the court that the confessions that were attributed to them in the investigation of the Prosecutor General were invalid for the confessions occurred under physical and mental compulsion. The defense requested that the medical examiner check them. In the court session held on 31 March 2014, the court decided to send the defendants to be examined by the medical examiner in compliance with the defense's request; however, the court rushed the ruling

before receiving the report from the medical examiner, and the court relied in its verdict on evidence from those confessions. This was done in the proceedings without giving the defense an opportunity to counsel with the judge on this matter. Therefore, the court's ruling is inadequate in its reasoning and for violating the rights of the defense. That is what makes it void. The other evidence does not shelter the invalidity of the confessions. As stated in the criminal laws, all the evidence should be in harmony and support each other and from it collectively create the base upon which the judge builds the ruling. Therefore, if one of the elements fails or was ruled out, then it would be impossible to know the amount of influence that these invalid pieces of evidence had on the court's ruling.

[The court holds that it was error for the trial court to transfer responsibility to conduct further investigation of the facts back to the Prosecutor General after the Prosecutor General had referred the case to the trial court for trial. The authority of the Public Prosecution Office (as an arm of the judiciary) to conduct further investigation ends when responsibility for the case is transferred (referred) from the Prosecutor General to the trial court. Any supplemental investigation after that referral to the trial court should (and can) be conducted by the trial court. All post-referral evidence submitted by the Public Prosecution Office was legally void, and it was improper for the trial court to rely on that evidence in convicting the defendants.]

As has been laid out, it has been established that the court may not transfer the case to the investigation authority after it is in the court's possession. Rather, the court has the authority, if investigating a piece of evidence in front of the court, to appoint one of its members or another judge to investigate it according to the text of article 294 of the Criminal Procedures Law. Once the case is transferred from the investigation authority to the trial judges, then the mandate [jurisdictional authority] of the aforementioned [investigation] authority ceases. Thus, the evidence derived from the supplementary investigation which the office of the Prosecutor General carried out pursuant to the court's order during the trial is invalid, and it is an invalidity that reflects on the legal system because it infringes on the judiciary and is not corrected by the acquiescence of the accused or the one who represents the accused with that [legally invalid] procedure. The [trial] court and in session March 5, 2014, had ordered the Prosecutor General to receive the possessions and repossess them after they were removed and displayed in the session, and the court entrusted to the Prosecution to appoint whoever it needed from among the technicians to examine the possessions clearly to define its type and determine which of the possessions were appropriate for exhibit [as evidence], and to present the results of the examination to the court. Because the court or one of its members failed to undertake this procedure, and instead appointed the Prosecutor General to undertake this procedure, and because the court relied in its ruling on that invalid procedure, the ruling is itself null when it was presented.

Thus, it is incumbent to reverse the sentence being appealed and a retrial for the appellants only without those who were tried *in absentia* since it is not possible for them to appeal the sentence and this without a need to look into the other aspects of the appeal submitted by the appellants.

[Note: Under Egyptian law, defendants who fail to appear for trial are subject to being convict in their absence (in absentia), and are generally sentenced to the maximum potential penalty because if they later do appear in court they are constitutionally entitled to a retrial (or more accurately a real trial), but can receive no sentence higher than was originally imposed in the in absentia proceeding. Similarly, convicted defendants are only eligible to appeal if they make a personal appearance before the Court of Cassation. So, the Court of Cassation noted that its judgment in this case applied only to those defendants who made personal appearances before the court.]

For These Reasons

The Court ruled: to accept the appeal for reasons that could lead to a reversing of the sentence being appealed, and orders a retrial in the criminal court of Giza to try them anew with a different judge.

[Note: A first retrial after reversal on appeal to the Court of Cassation is conducted before a new panel of three Court of Appeals judges sitting as a trial court. If any conviction on the same charges before that second trial court is reversed on appeal, any third trial is conducted by a special panel of five judges from the Court of Cassation itself, and is unappealable.]

At the pen of

The Vice President of the Court