

NOTAT

Straf for militærunddragelse i Egypten.
US mails af 23. maj 2014 og 4. juli 2014

Udlændingestyrelsen har i forbindelse med behandling af ansøgninger om asyl anmodet om Udenrigsministeriets bistand til at indhente generelle oplysninger om straf for militærunddragelse i Egypten.

Nedenstående oplysninger er fremskaffet med bistand fra Danmarks ambassade i Kairo. Det lovmæssige grundlag er søgt belyst ved henvendelse til et velrenommeret lokalt advokatkontor, som bl.a. er anbefalet af UNHCR. Endvidere har ambassaden været i kontakt med en militæranklager ved "Military Prosecution Office" for at få klarlagt, hvordan det egyptiske lovkompleks implementeres i praksis, og for at få et indtryk af strafudmålingen i konkrete sager. Ambassaden har endelig rådført sig med organisationen "No for Compulsory Military Service Movement", som er en uofficiel NGO, der advokerer imod tvungen værnepligt og som bl.a. følger retssager om værnepligt.

I – Generelle oplysninger om værnepligt i Egypten

Ifølge artikel 3 i "Military Conscription Law No. 127 of 1980" (herefter MCL) er værnepligtsperioden 1 til 3 år. Værnepligtsperioden afhænger først og fremmest af den enkelte værnepligtiges uddannelsesniveau. Således er det praksis at værnepligtige med lange, videregående uddannelser generelt får kortere værnepligtsperioder end ikke-uddannede. Der er dog ingen automatik indbygget i systemet. Personer med lang, videregående uddannelse kan også tildeles 3 års værnepligt.

Fritagelse fra værnepligt

I visse tilfælde kan personer fritages for værnepligt. Disse tilfælde er beskrevet i Artikel 7 under MCL. Følgende er citat fra love:

Complete exemption:

- a. *Not physically fit*
- b. *Only son of a deceased father, or the only son of a father who is completely incapable of providing an income*
- c. *The eldest eligible (for service) son or brother of a citizen martyred or injured during a military operation in a manner that prevents them (the injured) indefinitely from providing an income*

- d. *The eldest eligible (for service) son or brother of an officer or conscript or volunteer who died or was severely injured during service in a manner that prevents them (the injured) indefinitely from providing an income*

Temporary exemption:

- a. *Only son of a living father (until [if] another male sibling is born)*
- b. *The only provider for a father and/or siblings who cannot provide for themselves (not eligible for employment)*
- c. *The only provider for a widowed / divorced mother or a mother whose husband is unable to provide for them (not eligible for employment)*
- d. *The only provider for unmarried female siblings*
- e. *The eldest eligible (for service) son or brother of an officer or conscript or volunteer or citizen who has been declared MLA during a military operation. The exemption condition is inactive as soon as said citizen returns or is proven alive.*

Man kan også fritages for at aftjene værnepligt, hvis der er flere værnepligtige end hvad hæren behøver.

Straf for at unddrage sig fra værnepligt

Straffen for at unddrage sig for værnepligt afhænger af situationen og personens alder. Strafmålingen fremgår af artikel 34, 49, 50, 52 og 54 under MCL:

- Artikel 34: for personer, der er under 30 år, og ikke har meldt sig til værnepligt rettidigt, er straffen at aftjene almindelig værnepligt (1-3 år) plus et års ekstra værnepligt.
- Artikel 49: for personer, der er 30 år eller ældre og ikke har meldt sig rettidigt til værnepligt, er straffen minimum 2 års fængsel og/eller en bøde mellem 2.000 og 5.000 EGP (= Egyptiske Pund).
- Artikel 50: for personer, der bevidst har forsøgt at undgå værnepligten ved at indsende forfalskede dokumenter, er straffen 3-7 års fængsel.
- Artikel 52: for personer, der er indkaldt som reserveofficerer og som har unddraget sig værnepligten, er straffen mindst 1 års fængsel og en bøde på mindst 200 EGP.
- Artikel 54: enhver anden lovovertrædelse, der ikke er omfattet af de ovenstående artikler, straffes med fængsel på mindst 2 år og/eller en bøde mellem 200 og 500 EGP.

Ifølge "Military Prosecution Office" er der praksis for, at personer, der ikke har meldt sig til værnepligt, men ellers ikke er "efterlyst" af militæret, idømmes markant mildere straffe end personer, der er "efterlyst" af militæret eller som har forfalsket dokumenter.

Således er den almindelige praksis, at personer, der er over 30 og ikke har meldt sig til værnepligt, men ellers ikke er efterlyst af militæret, dømmes efter paragraf 49, og at

straffen – hvis de findes skyldige – i langt hovedparten af tilfældene er en bøde mellem 2.000 og 5.000 EGP, men ikke fængsel.

Er den pågældende derimod efterlyst af militæret – eksempelvis fordi vedkommende har forladt landet uden tilladelse, eller har forfalsket sine dokumenter – vil vedkommende blive dømt efter artikel 50 eller artikel 54. I disse tilfælde er straffen oftest mindst 2 års fængsel.

Det egyptiske retsvæsen

Det skal i denne sammenhæng bemærkes, at det egyptiske retssystem ikke er kendt for at levere en konsekvent og ensartet retshåndhævelse, og at domsafsigelser og stafudmålinger kan variere betydeligt afhængig af den konkrete sag og domstol.

II Besvarelse af Udlændingestyrelsens konkrete spørgsmål:

1: “What is the penalty for draft evasion in Egypt?”

The penalty depends on the situation: If the draft evader is under the age of 30 and simply did not show up for the medical examination or did not submit his papers to confirm his military status upon turning 18, then the penalty is one extra year of service (Article 34)

If the draft evader submitted fraudulent documents in order to evade conscription, the penalty is 3–7 years of imprisonment; without denying the military the right to draft the individual if he is fit for service (Article 50)

If the draft evader is over the age of 30 and simply did not show up for the medical examination or did not submit his papers to confirm his military status upon turning 18, he stands trial in a military court and if found guilty is penalized either with no less than 2 years in prison or a fine between 2,000 and 5,000 EGP or both penalties. According to the Military Prosecutor, common practice in such cases is to hold a quick hearing session in a Military Court and issue the defendant a penalty of a fine that would normally range between 2,200 to 2,300 EGP, but not the prison sentence.

If the draft evader is found guilty of evasion in a manner that entails a more serious breach of the law (i.e. escaping the country illegally) then the defendant is either subject to article 54, which pertains to “other violations”, and issued a penalty of either no less than 2 years in prison or a fine between 200 and 500 EGP or both. According to the Military Prosecutor, the sentence would normally be at least 2 years of prison. However, depending on the case, the defendant could also be subject to stricter articles from the civil Penal Code. In such cases, the Military Prosecution requests the assistance of the General Prosecution.

1a: “Is the penalty for draft evasion that is committed after handing in his military journal to the army any different from the general penalty?”

According to the Military Prosecution Office, the penalty will always be meted out in accordance with the abovementioned penalties.

2: “Is it possible that a draft evader can avoid conscription by leaving the country?”

It is not possible to leave the country legally, since no male over the age of 18 can be issued a passport or leave the country without a certificate from the military either allowing him access to leave the country while drafted or proving him an exemption.

2a: “If not, will he be forced to perform his military service upon return?”

Assuming he managed to leave the country in the first place, then upon return he will first be tried in a Military Court and will be subject to articles 50 or 54 of the MCL or possibly stricter penalties in the civil Penal Code. If he is found guilty and is penalized according to article 50 (3–7 years in prison for fraud), then the Armed Forces retains the right to draft him once out of prison as long as he is under the age of 30. According to the Military Prosecution, the common practice in this case is that the defendants are sentenced to imprisonment, but not drafted once released. They are usually dismissed from the Armed Forces after being released from prison. If he is found guilty and penalized according to either article 54 or another article from the Penal Code then no, he will not be forced to perform his military service upon return.

2b: “What is the penalty for leaving the country to avoid conscription?”

There is no article in the MCL that addresses leaving the country to avoid conscription specifically. A few similar situations are however addressed including submitting fraudulent documents and deliberately causing oneself injury. However, Article 54 addresses “all other violation” by imposing a penalty of no less than 2 years and in prison or a fine between 200 and 500 EGP or both penalties. Since leaving the country without submitting the relevant military documents is not allowed, avoiding conscription in that manner would fall under the “other violations” punishable by Article 54, or stricter articles from the (civil) Penal Code if the Military Prosecution seeks the assistance of the General Prosecution.

2c: “According to CIA World Factbook the upper age limit for conscription in Egypt is 30 years. Will a draft evader above 30 years of age be punished upon return?”

Yes. If “upon return” refers to return from abroad, then the fact that the draft evader travelled without presenting their military service status documentation, will place

person on the “wanted list” by the Egyptian authorities. The person would then either be subject to articles 50 or 54 or stricter penalties in the civil Penal Code if the Military Prosecution seeks the assistance of the General Prosecution. See også “svar Ad 4”.

3: “Is there any increased penalty for repeated draft evasion?”

Yes, according to Article 50, the penalty for repeated draft evasion is no less than 7 years imprisonment.

3a: “What penalty will be meted out to a draft evader who left Egypt, then re-entered the country and was detained by the authorities in the airport for 6 days and requested to meet at the conscription office, after which he has left Egypt again without reporting at the conscription office?”

According to the Military Prosecution Office, he would be considered a repeat draft evader and is subject to Article 50 of the MCL, i.e. no less than 7 years imprisonment. However, the Military Prosecution could also seek the assistance of General Prosecution in such cases since the draft evader would be classified as “Wanted” by the Egyptian authorities and stricter penalties from the (civil) Penal Code could apply.

4: “Is it possible to say to what extend the penalty for draft evasion is normally enforced by the Egyptian authorities in such cases?”

According to the Military Prosecution Office the penalty for draft evasion is normally enforced. This has been confirmed by ”No for Compulsory Military Service movement”.

Flygtningesekretariatet, den 26. august 2014