Legal commentary on some provisions of law 1/2014 concerning the amendment of provisions of the law of criminal procedures

Egyptian Commission for Rights and Freedoms (ECRF)

"Stop the Death Penalty in Egypt" Campaign

Preface and context

On January 16, 2024, the Egyptian Parliament issued its approval of the draft submitted by the Egyptian government regarding amending some provisions of the Code of Criminal Procedure, to be published in the Official Gazette on the same day to bear Law No. 1 of 2024. The discussion on amending some provisions of the Code of Criminal Procedure began on January 11, 2024 when the Speaker of the House of Representatives referred a draft law submitted by the government to amend some provisions of the Code of Criminal Procedure to the Constitutional and Legislative Affairs Committee, to discuss, study, and prepare a report on it in preparation for discussion and presentation to the Council. The committee met on January 13, 2024, and issued a report in which it found that the draft law complies with the provisions of the Constitution and international law, represents a qualitative leap in litigation procedures and ensuring human rights, and is consistent with the implementation of the National Human Rights Strategy launched by the President of the Republic in 2021.

Over the past four years, the Stop the Death Penalty in Egypt campaign, of ECRF has demanded in all its activities and research outputs the necessity of the legislative authority's commitment to fulfilling the binding constitutional restriction on the establishment and formation of criminal appeals courts within ten years of the adoption of the 2014 Constitution, as a constitutional and legal guarantee of human rights of defendants. However, the amendments made by the legislator in Law No. 1 of 2024 of some provisions of the Code of Criminal Procedure have raised some constitutional, legal and practical problems, which will be briefly discussed in the following paper.

Introduction

The House of Representatives issued Law No. 1 of 2024 amending some provisions of the Criminal Procedure Code by making litigation in criminal cases at two levels, in fulfillment of the constitutional obligation that has been locked in place since 2014 at the time of its issuance, as Article 240 of the existing Constitution stipulates that "The state ensures providing financial and human capacities pertaining to appealing the rulings issued by criminal courts within 10 years from the date this Constitution comes into effect. The foregoing is organized by law".

With this long-term transitional ruling, the constitutional legislator wanted to achieve an important principle of justice, which is "two-level litigation." This principle means giving the right to whoever believes that he has been harmed by the ruling issued at the first level, to resort again to the judiciary through a higher court in order to recover his right, and remove the harm that he believed was caused to him by the ruling of the court of first instance, by re-presenting the dispute to the court of second instance so that it can have its say with a new judiciary that replaces the previous judiciary.

The legitimacy of this principle comes from the text of the fifth paragraph of Article 14 of the International Covenant on Political and Civil Rights, which stipulates that "every person convicted of a crime has the right to resort, in accordance with the law, to a higher court to review the decision to convict him and the punishment imposed on him".

The Supreme Constitutional Court also affirmed this principle in many of its rulings, where it ruled that "the principle in rulings that decide in a preliminary manner the substantive dispute is that they may be appealed, as considering the dispute at two levels is considered a basic guarantee for litigation that may not be withheld from the litigants without an explicit text and in accordance with objective foundations. This means that deviance from them is not presumed, whether the appeal of the rulings issued in the first instance is viewed as an inevitable way to monitor their integrity and correct their distortion, or as a means of transferring the entire dispute and all the elements it contains to the Court of Appeal so that it can review it again, considering that a single ruling in a dispute does not provide an adequate guarantee that ensures justice and the effectiveness of its management in accordance with the levels committed to by civilized countries". [1]

Therefore, we appreciate the important step taken by the legislative authority in approving the draft law submitted by the government to fulfill the constitutional obligation to make criminal litigation two-level, a right that has long been called for by all legal institutions concerned with criminal justice and human rights. However, we also affirm that leaving the state institutions without studying or discussing this constitutional entitlement for a period of ten years - that is, the transitional period included in the text of the constitution - and submitting it one day before the end of this period for final discussion in the House of Representatives, and approving it without presenting the draft law for specialized community and legal discussion led in the end to its issuance issued without any real preparation for the judicial system to accommodate this huge change. Likewise, these amendments - which are not limited to what is legally necessary for the formation of criminal appeals chambers - will lead to practical problems in their

[1] Supreme Constitutional Court - Appeal No. 39 of Judicial Year 15 - Saturday session, February 4, 1995.

application, especially in light of the ambiguity of some of the newly added texts and their lack of elements of legal control, in addition to changing the legal philosophy upon which the Criminal Procedure Code is based to the effect that it serves the punishment, rather than examine the truth about the innocence of the defendant.

Problems surrounding the amended and updated texts of the law

Initially, the amended law came with an explanatory report issued by the Constitutional and Legislative Affairs Committee, which stated that the Speaker of the Council referred the draft law submitted by the government to this aforementioned committee on January 11, 2024. The committee met and issued this aforementioned report on the 13th of the same month, and on the 15th January the House of Representatives began discussing the articles of this project and finished it on the same day. The law was issued on January 16th and was published in the Official Gazette under No. 1 of 2024, meaning that issuing such an important amendment to a law, considered being one of the laws complementary to the Constitution, did not take more than 6 days only. The Constitutional and Legislative Affairs Committee also clarified in its report that the philosophy and objectives of the draft law are "to apply and activate the rules of the Penal Code, and the Code of Criminal Procedure is a procedural criminal law that aims to implement penalties in a way that preserves citizens' rights and freedoms stipulated constitutionally[2]".

Wasting the protective purpose of the law of Criminal Procedure

The truth is that this is a logical fallacy into which the legislator has fallen, leading to the loss of the protective legal philosophy for which the Code of Criminal Procedure was enacted. It is true that criminal justice requires two elements to be achieved. The first is that the state possesses a means of deterrence and has the right to punish, provided that there is no punishment or crime except by a specific and exclusive provision in the law. Therefore, the Penal Code was enacted, which is the law concerned with defining the crime and determining the appropriate punishment to be implemented on the perpetrator of this crime. As for the second element: It is concerned with achieving a balance between protecting society from crime through the implementation of punishment on the one hand, and ensuring the freedoms of individuals and the rights of defense to reach the truth on the other. Therefore, the Code of Criminal Procedure

[2] Report of the Legislative and Constitutional Affairs Committee on the draft law amending the provisions of some articles of criminal procedure - p. 2.

was enacted to be a guarantee for the implementation of the principle of the presumption of innocence inherent in every human being, and for the absence of arbitrariness by the competent authorities authorized to take evidence and investigation procedures regarding the rights and freedoms of citizens[3].

This violates the second paragraph of Article (14) of the International Covenant on Civil and Political Rights, which stipulates that any person defendant of committing a crime has the right to be considered innocent unless the accusation brought against him by the prosecution is proven legally and by a final and conclusive ruling.

If changing the philosophy upon which the Code of Criminal Procedure is based and making it equal to the philosophy of punishment is the first goal, then the problems that followed regarding ambiguity of some of the texts that were approved and the extent of their agreement or contradiction with the guarantees of a fair and just trial, as well as the problems of application, all of this makes us conclude, that approving the formation of courts of appeal for criminal convictions came to outline the distorted picture that resulted from some of the amended and updated texts included in this amended law.

*** Article (381) linking the referral to the Grand Mufti of Egypt to the judgment session**

The article before the amendment	The article after the amendment
All rulings prescribed for misdemeanors and violations shall be followed before the criminal courts, unless otherwise stated. The Criminal Court may not issue a death sentence except by unanimous opinion of its members. Before issuing this ruling, it must take the opinion of the Mufti of the Republic, and the case papers must be sent to him. If his opinion does not reach the court within ten days following the papers being sent to him, the court shall rule on the case. Judgments of criminal courts may not be appealed except by way of cassation or reconsideration	All rulings prescribed for misdemeanors shall be followed before the criminal courts at both levels, unless otherwise stated The Criminal Court, with both levels, may not issue a death sentence except by unanimous opinion of its members. Before issuing this ruling, it must take the opinion of the Mufti of the Republic, and the case papers must be sent to him. In all cases, he must send his opinion to the court sufficiently before the judgment session. If his opinion does not reach the court before the date specified for pronouncing the ruling, the court shall rule on the case. In the event that the position of the Mufti is

[3] In this sense, see Achievement of international criminal justice: a study within the scope of the national judiciary - Muhammad Adnan Ali Al-Zabr - Arab Center for Research and Policy Studies - pp. 19 et seq. - 2022 edition, as well as the procedural necessity in the criminal procedure law - Ahmed Muhammad Hassan Jaber - Master's thesis. -Qatar University - June 2023 - pp. 2 onwards.

	vacant, absent, or impeded, the Minister of Justice shall appoint, by his decision, someone to take his place. The rulings of the Criminal Court of Appeal may not be appealed except by way of cassation or reconsideration.

Article 381 essentially frames the general procedural rules regulating the ruling of the two-level criminal court in cases in which the penalty reaches the death penalty, despite the persistent demands and constant appeals to the Egyptian government to stop using the death penalty as a criminal deterrent in fulfillment of its international obligations. However, this is still a distant hope, given the difficulty of changing the humanitarian and legal culture of society, which most of the time desires revenge, not deterrence, nor reducing the increase in the rate of committing crimes, and rehabilitating and integrating the perpetrators into society.

But if the report of the Constitutional and Legislative Affairs Committee made it clear that amending the Code of Criminal Procedure in its new form is consistent with the provisions of the Constitution and international law, and represents a qualitative shift in litigation procedures and ensuring human rights, it would have been better for these amendments to increase the guarantees and procedures for criminal trials in which punishments reach the death penalty, and to reduce the limits of criminal judges' discretion over the conduct of these trial procedures; but even that did not happen.

Although the amendment added to this article confirmed a necessary guarantee, which is that the death sentence must be issued by unanimous consent of the members of the court at both levels, it maintained the permanent problem of referring such cases to take the opinion of His Eminence the Mufti. So, the amendment also required - as in the original article - the necessity of taking an opinion of the Mufti on the application of the death penalty. Despite this obligation, the article gives the court the right to decide on the case if the Mufti does not express his opinion on the case within a sufficient period before the ruling hearing, after it was limited before the amendment to ten days from the date the case papers reached him. The opinion of the Mufti is not binding on the Criminal Court at both levels, but failure to refer to it renders the ruling invalid, making it a formality and an obligation at the same time.

Previously, the text of the article was criticized for specifying a short period of 10 days as a maximum period for obtaining the advisory Sharia opinion. However, the amended text was incorrect in that it did not specify any time periods for preparing this opinion. The amended

article stipulates that His Eminence the Mufti - or his representative if his position becomes vacant by a decision of the Minister of Justice - to send his opinion to the court sufficiently before the judgment hearing. If the Sharia opinion is not received before the date specified for the judgment hearing, the court shall rule on the case. In the practical reality of death sentences, a different reality emerges. For example, but not limited to, the case of the murder of Naira Ashraf, a student at Mansoura University, where the trial court set the date of the sentencing session a week after the trial court ended and gave His Eminence the Mufti a deadline of one week out of the ten days specified at that time. Therefore, linking the legal opinion - even if it is advisory to the court - to the sentencing session undermines the legal and humanitarian purpose of referring death sentences to His Eminence the Mufti. Therefore, we believe that the legislator should have set a minimum time limit for taking the Sharia opinion. We believe that it should not be less than 30 days - the period for formulating the reasons for the conviction in the felony articles - and that the period for preparing and sending the Sharia opinion should not exceed 60 days - the period for the defendant to overturn the criminal rulings, if the Criminal Court of both levels considers that the papers and documents of the case require the implementation of the maximum period for obtaining the legal opinion*, and thus one of the guarantees established by Article 14 of the International Covenant is achieved, in that the defendant is given sufficient time and facilities to ensure adequate and sufficient preparation for his defense.*

Article (419 bis/2) regarding the Public Prosecution's permissibility of appealing judgments in absentia issued by criminal courts

This article is completely new and has no equivalent in the Code of Criminal Procedure before the amendment. This article concerns the Public Prosecution's appeal of judgments in absentia in criminal provisions.

The rulings of the Court of Cassation define judgments in absentia as those "that are issued in the case despite the defendant's failure to attend all the sessions in which the case is being considered, neither in person nor by an agent on his behalf after being notified, or his absence after his presence without answering the case by acknowledgement or denial.[4]"

Despite the authority that the legislator gave to the Public Prosecution to appeal criminal rulings, the Cassation rulings ruled that the Court of Appeal may not decide on the appeal submitted by the Prosecution as long as opposition or re-proceeding therein remains permissible for the defendant, *as the rulings of the Egyptian Court of Cassation have repeatedly ruled that the authority of the higher court, which in this case is (felony appellate), is suspended*

[4] Egyptian Court of Cassation - Appeal No. 239 of Judicial Year 63 - Session of November 10, 1997.

until the defendant exhausts all the legal procedures stipulated to respond to the ruling in absentia issued against him. [5]

The cassation rulings also stated that “the Public Prosecution’s appeal of a ruling in absentia lapses if this ruling is annulled or amended in the opposition, because by canceling the ruling in absentia or amending it with the ruling issued in the opposition, the merger between these two rulings does not occur. Rather, the last ruling is considered as if it were the only one issued in the case, and it is legally valid for the subject concerned to contest it by appeal, and therefore the appealed ruling, if it decided to accept the prosecution’s appeal of the initial absentee ruling in its form despite its amendment, would have erred in applying the law[6]”.

The Court of Cassation explained that if the Court of Appeal responded to the Public Prosecution’s request to appeal the ruling in absentia, decided on the merits of the case, ruled to convict the defendant, and sentenced him to a more severe punishment, then its ruling would be invalid and must be overturned[7]."

The principles that the Court of Cassation established in these rulings are essentially consistent with the rights stipulated in Article 14 of the International Covenant on Civil and Political Rights, and in particular regarding that the defendant has the right to be tried in his presence and to defend himself in person or through a lawyer.

The question that revolves here is, if this is the judiciary - previously mentioned above - on which the rulings of the criminal chambers of the Court of Cassation were settled and repeated with regard to the Public Prosecution’s appeal of absentia judgments, then why was this article stipulated without any clarification of what the absentia judgments are that the Public Prosecution can exclusively resume instead of falling into this baseless controversy. In addition to the consequences of this new article in disrupting stable legal positions and wasting the course of other criminal procedures in litigation stipulated by the law, which is the right of the person sentenced to preliminary rulings.

[5] The Court of Cassation ruled that “it is not permissible for the Court of Appeal to decide on the appeal filed by the prosecution against the judgment in absentia as long as the opposition to it is permissible from the accused. In this case, the authority of the Court of Appeal is suspended until the opposition is decided, if it has been filed, or until the deadline for appeal passes.” If it was not filed, then if a ruling was issued in absentia by the court of first instance punishing the accused, and the prosecution appealed it and the accused objected to it, then the Court of Appeal must stop hearing the appeal until it decides on the opposition, otherwise its ruling on the merits of the appeal will be invalid and must be overturned.” Appeal No. 542 of Judicial Year 10 - February 12, 1940 session.

[6] Egyptian Court of Cassation - Appeal No. 1950 of Judicial Year 40 - Session of March 22, 1971.

[7] In this regard, the Court of Cassation said, “If the Court of Appeal ruled to convict the accused and increased his punishment based on this appeal despite the convict’s objection and the court of first instance not ruling on it, then its ruling would be wrong, as it should have stopped deciding on the appeal until the opposition was decided.” . Appeal No. 1808 of Judicial Year 16 - Session of October 28, 1946.

It is worth noting that the session to discuss the law project articles witnessed controversy specifically over this article, and the extent to which it disrupts the state's resources, and wastes the time of the Criminal Court, which is already crowded with a large number of cases. It was necessary for the legislator to specify the cases in which the Public Prosecution could appeal judgments in absentia, so as not to confuse the right of the defendant with the right of the Public Prosecution to appeal, and to limit the Public Prosecution's right to appeal in the event of an acquittal, for example. In this regard, the previous scenario was proposed by MP Ayman Abu Al-Ela, and the Minister of Justice agreed with him, reviewing some rulings of the Court of Cassation that supported his opinion[8]. However, members of the Constitutional and Legislative Committee rejected this proposal for amendment, which led to the issuance of the article as stated in the draft law, which is characterized by ambiguity, vagueness, and lack of elements of legal control.

Also, the legislator himself was obligated to be satisfied with what was previously stipulated in Article 381 of the amended law, which is that "all rulings prescribed for misdemeanors shall be followed before the Criminal Court at both levels…", because the Criminal Procedure Code had given the Public Prosecution the right to appeal rulings in misdemeanors articles in specific cases stipulated in Article 402 of the same law[9]. Therefore, when drafting that article, it was necessary for him - that is, the legislator - to scrutinize it and make it accurate, specific and unambiguous. The basic principle in approving the legal rule is that it be clear and specific so as not to open the door to interpretation in a way that contradicts the established legal rules. In this context, the Court of Cassation ruled that "the legal rule is characterized by its generality and abstractness, as it entails equality in its application among all individuals subject to the provisions of this rule under the conditions stipulated by the law. [10]" It also ruled that "what is established - in the jurisprudence of this court - is that when the text is clear, the meaning is clear, and it is conclusive in indicating what is intended by it, then it is not permissible to deviate from it or interpret it under the pretext of being guided by the wisdom that dictated it, because research into the wisdom of legislation and its reasons only occurs when the text is ambiguous or there is confusion." It is also established that if the law requires a specific

[8] https://www.almasryalyoum.com/news/details/3077243

[9] Code of Criminal Procedure - Text of Article 402: "Both the accused and the Public Prosecution may appeal the rulings issued in the criminal case by the District Court in misdemeanor matters. However, if the ruling was issued in a misdemeanor punishable by a fine not exceeding three hundred pounds, in addition to restitution and costs, it may not be appealed except for a violation of the law, an error in its application or interpretation, or an invalidity in the ruling or procedures that affected the ruling. As for the rulings issued by them regarding violations, they may be appealed: (1) By the accused if he is sentenced to a fine other than a fine and costs. (2) By the Public Prosecution if it requests a ruling other than a fine and costs and the accused is acquitted or does not rule according to what it requested. Except for these two cases, an appeal may not be filed by the accused or by the Public Prosecution except for a violation of the law, an error in its application or interpretation, or an invalidity in the ruling or procedures that affected the ruling..

[10] Appeal No. 18257 of Judicial Year 62 dated 9/6/1992, Technical Office No. 43, Part 1, Page No. 47.

procedure and creates a legal effect, this effect will not be achieved unless the procedure is completed[11].

Article (419 bis/4) 12 regarding the distinction in the time limit between the right of the defendant and that of the Public Prosecutor to appeal the rulings of the criminal courts of first instance

In this article, the legislator differentiates between the right of the defendant to appeal the ruling issued against him by the Criminal Court of First Instance, and the right of the Public Prosecutor to appeal the same ruling. The legislator granted the Public Prosecutor the right to appeal criminal rulings issued by the court of first instance within 60 days, while the article stipulated a period of 40 days only for the defendant or his representative to acknowledge the appeal. The legislator did not clarify the necessity of this distinction, which he made clear between the defendant and the Public Prosecutor. This distinction is also repeated in Appeal procedures for misdemeanor crimes, as Article 406 of the Code of Criminal Procedure stipulates that rulings issued by district courts in misdemeanor matters must be appealed within 10 days from the date of issuance of the ruling, and the Public Prosecutor is given the same right, but within 30 days.

In this regard, Article 26 of the International Covenant on Civil and Political Rights states that "all people are equal before the law and have the equal right to its protection without discrimination." The United Nations Principles considered that equality before the courts in particular must be a basic principle inherent in the right of the defendant to a fair trial. The United Nations Guidelines explain the principle of equality before the courts to mean, first and foremost, that no person appearing before the courts shall be exposed to discrimination during the consideration of the case or in the manner in which the law is applied on him[13].

In view of the above, the principle of equality must be guaranteed at all pre-trial stages as well as during the trial proceedings themselves, so that every individual has the right to access the courts in order to claim his rights on an equal footing. The legislator should have taken into account the international obligations that fall on the state. If it did not provide the defendant with more guarantees to prove his innocence, then at least the defendant and the Public

[11] Egyptian Court of Cassation - Appeal No. 18564 of 85.
[12] Article 419 bis/4 of Law No. 1 of 2024 amending some provisions of the Code of Criminal Procedure: - "The appeal shall be filed with a report in the clerk's office of the court that issued the ruling, within forty days from the date of issuance of the ruling. If the appeal is filed by the State Cases Authority, the report must be signed by at least one of its advisors. If it is submitted by the Public Prosecution, the report must be signed by at least a public defender. The Public Prosecutor may appeal the ruling within sixty days from the date of its issuance, and he may decide to appeal to the secretary of the court competent to hear the appeal.
[13] United Nations - High Commissioner for Human Rights - Guide on the Human Rights of Judges, Prosecutors and Lawyers - Chapter Six - Page 5 et seq.

Prosecution would be on an equal footing with regard to the dates for appealing criminal rulings.

Article (419 bis/8) 14 regarding wasting a degree of litigation in death penalty cases in the event that the defendant does not appeal the death sentence, the Public Prosecution follows the text of Article 4615 of the Law on Cases and Procedures for Appeals by Cassation

In the event that the assumption occurs that the defendant or his representative does not appeal the death sentence issued in his presence by the court of first instance, Article 419 bis \8 of the Code of Criminal Procedure has referred the entire matter to the application of the provisions of Article 46 of the Law of Cases and Procedures for Appeals before the Court of Cassation. The latter article imposes a general obligation on the Public Prosecution in the event that death sentences are issued in the presence of the judge. It is obligated to present the case to the Court of Cassation, accompanied by a memorandum of the Public Prosecution's opinion on the ruling, within 60 days from the date of issuance of the death sentence[16]. In this regard, Article 46 of the Cassation Law obliges the court that it may overturn the ruling in favor of the defendant on its own initiative, if it becomes clear that the death sentence issued in the presence of the defendant is based on a violation of the law or an error in its application or interpretation, or that the court that issued the ruling has no jurisdiction to decide on the

[14] Article 419 bis/8 of Law No. 1 of 2024 amending some articles of the Code of Criminal Procedure: "If the ruling was issued in the presence of the death penalty, and it is not appealed within the legally prescribed time limit, the Public Prosecution must follow the provisions of Article 46 of the Law on Cases and Procedures for Appeals before a Court." Cassation issued by Law No. 57 of 1959.

[15] Without prejudice to the previous provisions, if the death penalty was issued in person, the Public Prosecution must present the case to the Court of Cassation, accompanied by a memorandum of its opinion on the ruling, within the time specified in Article (34), and the court shall rule in accordance with what is stipulated in the second paragraph of Article (35) and the second paragraph of Article (39).

[16] Article 34 of the Law on Cases and Procedures for Appeals before the Court of Cassation: "The appeal shall be submitted by a report to the clerk of the court that issued the ruling within sixty days from the date of the judgment in the presence of the court, or from the date of expiry of the period for opposition, or from the date of the ruling issued in opposition. The reasons upon which the appeal was based must be filed within this time limit. However, if the ruling was an acquittal and the appellant obtained a certificate that the ruling was not deposited with the clerk's office within thirty days from the date of its issuance, the appeal and its reasons shall be accepted within ten days from the date of his notification of the filing of the ruling with the clerk's office, and the appellant in this case must The case is for him to specify in his application submitted to obtain the aforementioned certificate a chosen place in the town in which the court's headquarters is located in which to announce the filing of the ruling. Otherwise, it is valid to announce it in the clerk's office. If the appeal is filed by the Public Prosecution, the report and reasons for the appeal must be signed by at least a public lawyer. If it was submitted by the State Cases Authority, the report and reasons for the appeal must be signed by at least one of its advisors, and if it was submitted by someone else, its reasons must be signed by a lawyer acceptable to the Court of Cassation.

case[17]; the court may also overturn the ruling and review its merits, if it becomes clear that there is invalidity in the ruling or invalidity in the procedures that affected it[18].

In accordance with the International Bill of Human Rights and the guarantees of a fair and just trial, every defendant convicted of a crime has the right to resort, in accordance with the law, to a higher court in order to reconsider the decision to convict him and the punishment imposed on him. Therefore, we find that the legislator was wrong in linking Article 419 bis/8 of the Law Criminal procedures with Article 46 of the Law on Cases and Procedures for Cassation Appeals. The last article reserves the right of the person sentenced to the death penalty to a trial in which all methods of appeal are exhausted whenever there are no criminal courts of appeal. However, we believe that if the legislator cannot force the Public Prosecution to appeal the death sentence before the Criminal Court of Appeal, which has the ruling issued in its favor as an indictment authority, and it is the one who assigned the accusation to the convict, and the appeal is ultimately a right, the prosecution should not be forced on the prosecution, the defendant, or the civil plaintiff. However, the legislator had to carefully avoid the seriousness of the death penalty, if he truly feared for the rights of the person sentenced to the death penalty, and to ensure that he was given a fair trial, and that his sentence was not executed unless his ruling was appealed before the Criminal Court of Appeal. In the new article, the legislator was required to assign the Public Prosecutor - if the convict missed his appeal deadline, which is 40 days - with the authority he has to appeal within a period of 60 days - in accordance with Article 419 bis/4 - to appeal the death sentence issued by a criminal court of first instance before an appeal court if the convict or his representative do not acknowledge the appeal. Thereby, the legislator would guarantee the right of the person sentenced to the death penalty to exhaust all legal methods of appeal, and adhere to the principle of two-level litigation, especially since the death penalty is a cruel and extremely dangerous punishment, and it is impossible to correct any mistake after its implementation.

[17] Second paragraph of Article (35) of the Law on Cases and Procedures for Appeals before the Court of Cassation. However, the court may overturn the ruling in favor of the accused on its own initiative if it becomes clear to it that it is based on a violation of the law or on an error in its application or interpretation, or that the court that It was not issued in accordance with the law and has no jurisdiction to decide the case, or if a law is issued after the contested ruling that applies to the incident of the case..

[18] The second paragraph of Article (39) of the Law on Cases and Procedures for Appeals before the Court of Cassation states that if the appeal is based on an invalidity in the ruling or an invalidity in the procedures that affected it, the court will overturn the ruling and examine its merits. In doing so, the procedures prescribed by law for the crime that occurred will be followed, and the ruling issued will be, in all cases, in the presence of the defendant.

Article (419 bis/9) [19] regarding the appellate criminal court assigning the defense without considering the wish of the defendant or his original defense, which represents an infringement on the right of defense

This article includes two paragraphs. The first paragraph includes procedures for halting the execution of judgments issued by a first-degree criminal court. The legislator decided that an appeal of these rulings by the defendant does not result in a stay of execution of the judgment except in two cases: The first case is if the court decides to suspend the execution of the judgment for reasons and formulations that it saw and included in the merits of its ruling; the second case is if the court has sentenced the defendant to the death penalty, which is an important guarantee for the harshest criminal punishment with the sensitivity of the death penalty.

As for the second paragraph, it represents the major problem with regard to this article. This paragraph stipulates that "if the convict or his representative fails to appear without excuse at the session scheduled to consider his appeal or at any subsequent session, the court will appoint a lawyer for him to defend him and decide on the appeal".

At the beginning, we must clarify that the right to defense is a constitutional right. Indeed, it rises to the point of being one of the supra-constitutional principles without which justice cannot be established. This is because the Constitution regulates the right to defense, specifying some of its aspects, and stipulating its guarantee as a primary guarantee for not violating personal freedom, and for preserving all rights and freedoms. The right to defense is a necessary and imperative guarantee as a deterrent to men of public authority if they intend to violate the law and are confident that their actions will not be monitored or neglected. This means that the practical value of the defense guarantee is not limited to the trial stage alone, but rather its umbrella and related aspects of protection preceding the trial itself, the outcome of which could determine the final fate of the person arrested or detained and make his trial a formal framework that does not avert any harm.

In this context, the right of the defendant to obtain the legal advice he requests from the lawyers he chooses must be surrounded by a fence of trust and confidence, and the lawyer must provide his client with the necessary and effective assistance that helps him remove suspicions surrounding him. The defense must also confront any restrictions that the public

[19] Article 419 bis/9 of Law No. 1 of 2024 amending some articles of the Code of Criminal Procedure: "An appeal of a ruling issued by a criminal court of first instance does not result in a stay of execution of the ruling, unless the appellate criminal court decides to suspend the execution, or if the ruling was a death sentence." If the convict or his representative fails to appear without excuse at the session scheduled to consider his appeal or at any subsequent session, the court will appoint a lawyer for him to defend him and decide on the appeal.

authorities may impose on its client's personal freedom, which makes it impossible to separate the defendant from his lawyer, which could harm his legal position in the case in which his client is accused, whether that is during the investigation stage or during the trial. *Article 14 of the International Covenant on Civil and Political Rights stipulates that there must be two basic conditions for achieving the defendant's defense in a fair and equitable manner. The first is that he be given sufficient time and facilities to prepare his defense with a lawyer of his choice, and the second is that the defendant choose this lawyer himself, even if the interest of justice requires that the court appoint this lawyer for the defense without bearing the defendant's defense costs*.

The Supreme Constitutional Court stressed in its rulings that "denying the guarantee of defense or imposing restrictions that limit it violates the principled rules on which a fair trial is based, which reflects a system with integrated features that seeks to preserve human dignity and protect basic rights, and prevents, with its guarantees, the misuse of punishment in a manner that deviates from it." It would also undermine the defense's guarantee of innocence, since the assumption of the defendant's innocence of the charge against him is always accompanied, from a constitutional standpoint - and to ensure its effectiveness - by mandatory procedural means that are also considered - on the other hand - closely related to the right to defense, which is represented by the right of the defendant to confronting the evidence presented by the Public Prosecution as proof of the crime, and the right to refute it with the negative evidence it presents. [20]"

Because a defendant in a felony is often anxious, threatened with being convicted of committing it and having a punishment disproportionate to the seriousness of the crime if he mispresents his defense and lacks legal arguments, the role of the defense guarantee in securing the individual's rights and freedoms seems more necessary in the field of criminal accusations, considering that the conviction that may result in it may realistically separate him from the group to which he belongs, ending - sometimes - his legitimate hopes in life.

Therefore, the guarantee of defense is not considered a luxury that can be overlooked, and therefore the Constitution does not permit the legislative authority to waste this right or diminish it in a way that disrupts or limits its effectiveness. Rather, the legislator's denial of the guarantee of the right to defense or restricting it in a way that deviates from its intended purposes is interpreted in most cases, as the cancellation of the guarantee provided by the Constitution to every citizen in the area of recourse to his natural judge. Judicial intervention with the aim of imposing a certain path of defense for the defendant exposes a person's right

[20] Supreme Constitutional Court - Case No. 6 of the 13th Constitutional Judicial Year - Session of May 16, 1992.

to life, personal freedom, and the dignity due to the preservation of his humanity to profound risks, which is considered a subversion of justice itself. Moreover, the restriction imposed by the legislator extends to both the right to defend in person or by proxy. The first is based on ensuring the complete freedom of every individual to present his point of view regarding the facts attributed to him and to explain the rule of law in their regard. As for the right to defend by proxy when a person chooses a lawyer is more capable of securing the interests he aims to protect, on the basis of experience, legal knowledge, and mutual trust.

The Supreme Constitutional Court has established this principle in many of its rulings, so that it becomes a constitutional rule in itself, as it is the only court competent to interpret what legislative texts and decide whether or not they are constitutional. The court ruled that "even if it is true that the insolvent have no right to choose their lawyer and that their rights in the field of defense guarantee do not exceed the right to adequate representation that protects their interests and repel the consequences of aggression through the lawyers appointed for this purpose, it is also true that a person's choice of a lawyer who is able to bear his fees takes place within the framework of a legal relationship based on trust. The right to this choice must therefore remain surrounded by the protection guaranteed by the Constitution to the right of defense, so that whoever resorts to this right can obtain the assistance in obtaining the lawyers he chooses, with the impression that he is the most capable - due to his knowledge, experience and specialization - to tip the balance in his favor. Within the framework of a relationship based on mutual trust between a person and his lawyer, he is more prepared to accept the results in his case, in addition to the fact that the limits of this relationship provide the lawyers, who were a party to it, the freedom to manage the defense and direct it in the direction that he deems best to serve the interests of his client, within the framework of the principles and requirements of the profession[21] ".

In view of the above, the legislator, in this text, has risked violating the constitutional guarantees for a fair and equitable trial of the defendant in criminal cases, and may even reach the point of attacking the right to defense in a way that undermines the practical benefit of the right to litigation itself. The legislator should not have violated the legal protection imposed under the Constitution for the privacy of the relationship between the defendant and his lawyer, as well as the right of the defendant to choose the appropriate representation to carry out his defense from whom he alone believes is more talented and has insight into the rules of the law and its meanings. It is not correct for the legislative text to exist to force individuals to represent them before the court by force, without referring to their free will regarding an inherent right such as the right to be represented by defense. If the defendant decides - in

[21] Ibid.

accordance with his constitutional right - to be represented with a defense assigned by the court, then the legislator, in order to preserve the right of defense and to enhance the guarantees guaranteed by the fair trial of this defendant, must oblige the Criminal Court of both levels to assign a lawyer with an appellate level. This is because the appellate lawyer has better experience and knowledge to present the defendant's point of view in response to the accusations against him.

Conclusion

Thus, some amendments to the provisions of the Code of Criminal Procedure were hastily approved one day before the end of the constitutional limitation period, which is the 10-year deadline approved by the 2014 Constitution, which obligated the legislative authority to establish appellate chambers for criminal court rulings. The strange thing is that these amendments did not only address what is binding on the formation of criminal appeals courts, but also addressed legal issues related to the right to defense, judgments in absentia, and the authority of the Public Prosecution in these matters. Ultimately, these amendments were approved and became part of national legislation without any legal and societal discussions being held by actors, such as the Bar Association and civil society organizations. Legal practitioners did not participate seriously and effectively in amendments that affected a law of such seriousness and sensitivity that directly affects guarantees of fair trial and defense rights. Therefore, these legal amendments raise many constitutional, legal and human rights problems, and also highlight obstacles and challenges in terms of their practical application.