Fair trial guarantees

&

breaches in Egyptian criminal legislation

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Introduction

" Let us build a new human world in which truth and justice prevail, in which freedoms and human rights are preserved, and we - the Egyptians - see in our revolution a return to our contribution to writing a new history of humanity."

The current Egyptian Constitution was promulgated on January 18, 2014, with its inauguration, featuring numerous provisions that support human rights, safeguard personal freedom, strengthen justice, equality, and judicial fairness, and establish key democratic principles. These include the separation of powers, judicial independence, and other provisions that, together, provide the guarantees of a fair trial and the foundations of criminal justice.

Although the provisions of the Constitution were consistent with international standards and the principles of criminal justice, the legislation issued after the implementation of the provisions of the Constitution was full of constitutional violations and general and broad concepts and terms that can be applied according to the whims of the ruling authority, which negatively affects criminal justice and, of course, the guarantees of a fair and just trial.

Fair trial standards or guarantees mean those rights and principles guaranteed by the Constitution and the international legitimacy of human rights to any person who happens to be a party to a criminal or civil lawsuit. However, fair trial guarantees are more prominent in the framework of criminal trials, in which a person is suspected or accused of committing a crime, given the danger posed by criminal judicial rulings regarding the deprivation of personal liberty through custodial penalties, as well as the violation of the right to life in the case of death sentences. This seriousness of criminal trial rulings is what justifies the need for real and effective guarantees to ensure that the accused receives all the rights and benefits related to his trial, which are called fair trial standards or guarantees.

Therefore, these standards guarantee him a fair and just trial from the moment of arrest, during the detention and investigation phase, and then referral to an impartial, independent, and impartial court that provides him with all guarantees and rights, such as the right to the presumption of innocence, the right to defense and to the assistance of a lawyer, and all other rights decided at this stage until his innocence is proven or he is convicted by a judicial ruling, and then he has all mechanisms to challenge this ruling until it becomes final and final.

There is no doubt that these guarantees achieve a balance between the right of the accused to a fair trial without detracting from the rights of society before him to charge and punish him to achieve private and public deterrence. This punishment is not retaliation against the accused as much as it must be a deterrent to him and an attempt to reform and integrate him again with society. Therefore, these guarantees were not only decided in the interest of the accused, but they benefit society as a whole and then the state.

When a person finds himself accused in a criminal case, he is at his weakest time terrified and confused. On the other hand, he faces the state represented by the Public Prosecution with all its strength and mechanisms, which has wide powers to initiate a criminal case against him, investigate him, and refer his case papers to the competent judiciary. Therefore, under these difficult circumstances, he must be guaranteed a minimum of rights that help him defend himself and ensure he is not oppressed or abused, along with his rights.

The guarantees or standards of a fair trial are divided into two parts: the first is the pre-trial stage, and the second is the trial stage itself. The pre-trial guarantees are summarized in the right of a person to liberty and security of person to prevent his arrest without a reasoned judicial order required by the investigation, in the absence of flagrante delicto, informing him of the reasons for his arrest, informing him of the guarantees prescribed for him, enabling him to seek the assistance of his lawyers and informing his family of this arrest, as well as not to abuse, torture, intimidate, or coerce him to confess to the crime attributed to him. It is essential to present it to the competent investigative authority for questioning, as defined by law, through a set of principles that ensure its work is conducted with complete independence. However, in the Egyptian judicial system, the Public Prosecution has a set of conflicting powers such as combining the powers of indictment, investigation, and referral, which affects the guarantees of a fair trial, and then referring the accused's papers to the competent court to start the second stage of the guarantees that must be available during the trial. First, the accused must be brought before his natural judge, and not appear before an exceptional judiciary, and the standards of impartiality, integrity, and independence must be met in the court, and he must have the possibility of appealing against a decision His detention If he is being tried while in pretrial detention, one of the most important guarantees of the accused during the trial phase is to be tried free.

Then comes the right of defense, which has several guarantees, such as the right of the accused to hear and discuss with the court the witnesses for the prosecution or the defense, as well as his right to be defended by a lawyer, and if he does not have the financial ability to appoint a lawyer, the court is obligated to assign a lawyer to defend him, and then the right to exclude evidence

extracted from him as a result of violating international standards, and his right to publicize his trial sessions and his right to attend them, as well as his right to be tried within a reasonable period to achieve prompt justice, provided that none of the rights prescribed for him are violated at any of the stages of the case under the pretext of a prompt trial.

Later, the right of the accused, and after the issuance of his conviction comes to appeal against the judgment before a court higher than the court that issued the contested judgment, and this appeal has the same guarantees mentioned above. If these guarantees are considered, it can be said that there is a commitment by the state to the standards and guarantees of a fair trial. Otherwise, even if one of these rights is violated with the availability of the rest of the guarantees, the trial is unfair, which undermines the confidence of litigants in the justice facility.

To determine the extent of Egypt's commitment to fair trial guarantees, we are exposed to Egyptian legal texts that violate fair trial guarantees by monitoring and analysis, especially those issued in the last decade, and comparing them with the general rules stipulated in international conventions and covenants, especially those ratified by Egypt, such as the International Covenant on Civil and Political Rights, which Egypt ratified in January 1982, as well as the African Charter on Human and Peoples' Rights, which Egypt ratified in March 1984. Therefore, according to the Egyptian Constitution, these agreements have entered the Egyptian legislative fabric and have the force of law.

In this study, we deal with the monitoring and analysis of the recent amendments made to the Criminal Procedure Law No. 150 of 1950, as well as the Law of Cassation Appeals and Procedures, especially after the events of June 30, and the implementation of the last Constitution, which was issued during 2014.

As well as commenting on the procedural texts in the laws issued during the last decade that affect criminal justice in Egypt, such as the Anti-Terrorism Law No. 94 of 2015, and the amendments made to the Emergency Law No. 162 of 1985.

Second: - Executive Summary

This study aims to examine the extent to which the Egyptian legislator upholds the guarantees of a fair trial as outlined in the Egyptian Constitution, the International Bill of Human Rights, and in treaties Egypt has ratified or acceded to, as well as other international charters Egypt has not joined, but which serve as key references for global standards in criminal justice. The study also focuses on the essential standards that ensure the minimum guarantees of a fair trial, positioning Egypt as a state committed to international conventions and charters, recognizing that progress whether economic, cultural, or social can only be achieved by upholding the values of justice, fairness, and equality before the law and judiciary for all citizens.

The study also seeks to serve as a reference for legal professionals and those interested in Egyptian judicial matters by reviewing the legal texts concerning fair trial guarantees in the Constitution, domestic, and international law. It will also examine key legal principles established by the rulings of Egypt's Supreme Courts and legal doctrine, analyzing and emphasizing those texts. The study is a comprehensive legal overview that brings together the main fair trial guarantees and evaluates how well Egyptian criminal trials align with these guarantees and justice systems.

This study is one of the analytical studies, which is concerned with studying the legislative text and its interpretation from all aspects, by monitoring the legal text and trying to shed light on all the data raised by this text, from jurisprudential definitions of its terms, and texts related to it, and researching whether the Constitution includes its provisions, as well as its compatibility with international and regional law, and monitoring its judicial applications and providing some examples of them, or mentioning the most important reasons that it has ruled on, and the most important principles that it upholds to finally stand on the extent to which this text achieves fair trial guarantees or that it discards and empties it of its content.

In this study, we concluded that most of the legislative amendments issued - whether by the People's Assembly or by the President of the Republic under the authority of legislation granted to him exceptionally - in the recent era have violated the guarantees of a fair trial, and violated the controls that must be achieved in criminal trials, starting from the pre-trial stage, which includes the controls of arrest, search and detention, the use of a lawyer, as well as the interrogation of the

accused by the investigating authority, then the issuance of pretrial detention orders and grievances against them, and the referral of the case to the court, through the guarantees that must be achieved at the stage of the trial itself, such as the right to equality before the law, the right to public consideration of cases, the right to presumption of innocence, the right to defense, the right to discuss witnesses, and the right to appeal against the judgments issued.

It is a dangerous indicator that undermines confidence in the judicial authorities - equal to that of the ordinary and exceptional judiciary – and affects the principle of judicial satisfaction and the general sense of injustice, which negatively affects all segments of society, and which must not lose confidence in the rulings of the judiciary and the justice facility, the cornerstone among the state authorities.

Criminal trials have a special sanctity in society, and they receive special attention from the general public and the various media because of the direct impact of their rulings on personal freedom and the right to life if the prescribed punishment is the death penalty, in addition to the fact that the jurisdiction of the criminal judiciary includes most public opinion issues, political issues, and important events that turn society upside down, and highlight the corridors of the courts and judicial arenas, and therefore it is important that people do not lose respect and trust in the judicial authorities and their rulings.

Therefore, the legislator must deal with the justice service while enacting the laws related to it in a special manner, bearing in mind the rules of a fair trial guaranteed by the provisions of the Constitution, and taking into account that it does not deviate from the rights and freedoms of citizens, and does not try to undermine them in the interest of the ruling authority, and its favoritism to ensure its survival.

Third: - Methodology of the study

Guaranteeing a fair trial is a key principle that reflects the goals and direction of the ruling authority. It shows whether the state is committed to respecting human rights and freedoms, treating them with care and dignity, or whether it seeks to diminish, undermine, or neglect them to suppress opposition and maintain control.

When the crimes being prosecuted threaten societal security, such as terrorist acts or those committed during exceptional situations like revolutions, wars, or epidemics, the challenge for regimes becomes more complex. Democratic nations that uphold human rights do not amend constitutional protections or fair trial guarantees during the prosecution of such crimes, nor do they excessively resort to exceptional courts. Legal frameworks and penal codes are designed to address violations of the law, irrespective of political events or time periods. Fundamental principles—such as equality before the law, the right to personal freedom except in specific cases authorized by judicial orders, the right to be tried by a competent court, and the right to a fair trial with an opportunity to defend oneself—are rights that cannot be suspended, regardless of political conditions. Violating these principles signals the level of tyranny and dictatorship within a regime, and its disregard for rights and freedoms.

The main purpose of this study is to examine the criminal procedural texts, follow the legislative amendments to them, and ascertain the availability of fair trial guarantees in them, as the large number of political cases pending before the Supreme State Security Courts and the Terrorism Chambers, which have recently issued many aggravated sentences with custodial sentences, and many other death sentences issued against hundreds of people – from which many death sentences have already been implemented – in addition to hundreds of cases pending before the investigation authorities, for which the pretrial detention of hundreds of defendants is renewed, who, despite the lack of final sentences against them, are under pretrial detention without taking into account the maximum limit stipulated in the law, which has recently issued many laws that the legislator circumvents.

Thus, the study aims to determine the extent to which fair trial guarantees have been observed during the consideration of this huge number of cases, as a result of which many death sentences have been carried out, which has been our concern throughout the period of work on them, to be a

witness to this era of history in which the authorities have discarded most of the fair trial guarantees under the pretext of eliminating terrorism, especially since for long periods the declaration of a state of emergency by the President of the Republic has been successive and for nearly five years in violation of the Constitution.

With regard to the conceptual framework of the terms contained in the text of the study, we have adhered to the legal definitions of these terms, whether those that have definitions in the articles of promulgation of Egyptian laws, or the definitions contained in international and regional treaties and charters, as well as we have adopted in clarifying the legal principles related to fair trial guarantees and their concept on the jurisprudence of the Egyptian Supreme Courts, headed by the Supreme Constitutional Court, the Court of Cassation, and the Supreme Administrative Court.

This study comes in three sections. The first section represents the most prominent problems and violations in the legislation issued in the last ten years amending the Criminal Procedure Law, the Law of Cases and Procedures of Appeal in Cassation. The second section then contains the monitoring of violations in the Anti-Terrorism Law as a special law. The last section then comes to monitor and analyze the amendments that violate the fair trial guarantees that have been attached to the Emergency Law, which is an exceptional law.

Chapter One/ Violations of Fair Trial Guarantees in Egyptian Public Law

Section I/Criminal Procedure Law No. 150 of 1950

The Code of Criminal Procedure is the primary law that oversees a criminal case from the commission of the crime to the final, binding judgment. It outlines the procedures followed by the prosecution or investigating judge during the investigation, the referral of the case to court, the court's decision-making process, and the available avenues for appealing judgments. As a result, the Code incorporates many of the fair trial principles enshrined in the Constitution. For this reason, we have examined the amendments made to the law over the past decade to assess their alignment with the Constitution and the International Bill of Human Rights.

One of the most prominent guarantees of a fair trial, especially before the trial stage, is the right to freedom, as it is one of the rights inherent in the person of the citizen, from which no derogation is permissible under Article 54 of the Constitution, except in case of flagrante delicto. The Code of Criminal Procedure guarantees this right and has approved several procedural articles that are consistent with the provisions of the Constitution, such as Article 40, which states that "No person may be arrested or imprisoned except by order of the legally competent authorities. He must also be treated in a manner that preserves human dignity, and he may not be harmed physically or morally." As well as Article 41, which states that "no person may be imprisoned except in the prisons designated for that purpose, and the warden of any prison may not accept any person except by virtue of an order signed by the competent authority and shall not keep him after the period specified in this order" and other articles compatible with the provisions of the Constitution, which guarantee important guarantees of fair trial standards. There are also other provisions that contradict the Constitution and those guarantees, especially in the last decade, in which many laws were issued to amend the Code of Criminal Procedure, which are the focus of our discussion and attention in this part of the study, we analyzed and commented on the amendments made to the Code of Criminal Procedure from 2013 until the beginning of 2024.

Amendments to the Code of Criminal Procedure that adversely affected fair trial guarantees: -

The amendments made to the Code of Criminal Procedure in recent years have brought many articles that violate fair trial standards to the extent that some articles are haunted by the suspicion of unconstitutionality. In the following lines, we have monitored these amendments, commented on them, and compared them with the texts of the Constitution and the rulings of the Egyptian

Supreme Courts, as well as international agreements and charters, especially those that Egypt has signed or ratified.

First/ Law 83 of 2013 regarding the amendment of some provisions of the Code of Criminal Procedure

On 23/9/2013, Law 83 of 2013 was issued under interim President Adly Mansour. The law was issued to amend Article 143 of the Code of Criminal Procedure, which is the article related to the justifications and conditions of pretrial detention. Article 143, after the amendment, stipulates that:

Article 143: -

> If the investigation is not completed and the judge decides to extend the pretrial detention beyond what is prescribed in the previous article, before the expiry of the aforementioned period, the papers must be referred to the Appellate Misdemeanor Court sitting in the Counseling Chamber to issue its order after hearing the statements of the Public Prosecution and the accused to extend the detention for successive periods not exceeding forty-five days if the interest of the investigation so requires or release the accused on bail or without bail.
> However, the matter must be presented to the Public Prosecutor if the accused has been detained for three months in pretrial detention to take the measures, he deems necessary to complete the investigation.
> The period of preventive detention shall not exceed three months, unless the accused has been notified of his referral to the competent court before the end of this period. In this case, the Public Prosecution shall submit the detention order within five days at most from the date of the notification of the referral to the competent court in accordance with the provisions of the first paragraph of Article (151) of this Law to enforce the requirements of these provisions. Otherwise, the accused shall be released. If the charge against him is a felony, it is not permitted for the period of pretrial detention to exceed five months except after obtaining, before its expiry, an order from the competent court to extend the detention for a period not exceeding forty-five days, renewable for a similar period or periods. Otherwise, the accused must be released.
> In all cases, it is not permitted for the period of pretrial detention at the stage of the preliminary investigation and the other stages of the criminal case to exceed one-third of the maximum penalty of deprivation of liberty, if it does not exceed six months in misdemeanors, eighteen months in felonies, and two years if the punishment prescribed for the crime is life imprisonment or death.

However, the Court of Cassation and the referral court may, if the judgment is issued with the death penalty or life imprisonment, order the provisional detention of the accused for a period of forty-five days, renewable without limiting the periods stipulated in the preceding paragraph.

The amendment of the article came with the addition of the last paragraph, which stipulated that "However, the Court of Cassation and the Referral Court may, if the sentence is issued for the death penalty, order the provisional detention of the accused for a period of forty-five days, renewable without adhering to the periods stipulated in the previous paragraph." After the pretrial detention was open for a period limited to the Court of Cassation and the Referral Court only if the sentence was issued for fear of the escape of the accused, after the amendment of both courts, this authority became in cases in which sentences were issued for life imprisonment, which opens the door in most cases of a political nature for the accused to remain in pretrial detention for periods exceeding the maximum limit. This constitutional principle is contrary to the presumption of innocence as well as the principle of no punishment except based on a judicial ruling contrary to the article's storming of the principle of personal freedom guaranteed by the provisions of the Constitution.

Even if the amendment limits the opening of pretrial detention periods to cases in which a life sentence has been issued and allows the right of the Court of Cassation or the Court of Cassation to repeat or refer the case again - if the Court of Cassation overturns the contested judgment – this is also an overreach of the maximum prescribed under the same article, which is set at one-third of the maximum penalty of deprivation of liberty - not exceeding six months in misdemeanors, eighteen months in felonies, and two years if the penalty is life imprisonment or death - especially since in the current situation and this era, in which many laws have been issued that increase penalties, such as the Anti-Terrorism Law, in which most penal provisions include life imprisonment and death sentences, as well as the general and broad terms that can be applied according to whims in acts that do not represent a real criminal danger. [1]

In addition, jurisdiction over crimes that violate the provisions of the Terrorism Law has been assigned to specialized departments, namely the Terrorism Chambers, which have issued arbitrary rulings against thousands of people, including human rights defenders and peaceful

[1] See Articles 12: 39 of the Anti-Terrorism Law, in which most of the penalties are between life imprisonment and execution, please click on the link https://manshurat.org/node/6573.

opponents under the pretext of terrorism. Therefore, this amendment opened the way for opening the periods of pretrial detention without adhering to the maximum limit, which the courts were not originally applying, especially in cases of a political nature. There are many defendants in political cases who are under the weight of open-ended pretrial detention, as well as many who have spent years whose pretrial detention is extended before a judgment is issued against them.[2]

For example, blogger and translator Marwa Arafa has been in pre-trial detention for more than 4 years pending Case 570 of 2020, where she was arrested on April 20, 2020. Therefore, she exceeded the period of pre-trial detention prescribed for her in accordance with Article 143 procedures without a sentence being issued against her and without this sentence being life. As for the charges against Marwa Arafa, she is committing a financing crime, and joining a terrorist group contrary to the provisions of the Constitution and the law, which is a list of canned charges in which many political opponents are tried in trials that lack the minimum guarantees of a fair trial. [3]

There are also many similar cases, such as the young man Mahmoud Shaaban Ghanem, who spent more than 3 years pending the case of the number of those detained pending case 277 of 2019, known in the media as the "O Lord, Revolution" case, and has not yet been sentenced, and many others whose families suffer from humanitarian and material crises following their pretrial detention, especially if they are the only breadwinner of the family and left behind a family and children who cannot afford to spend. This makes pre-trial detention a real crime not only against detainees, but also their families, especially since there are tens of thousands of pre-trial detainees in predominantly political cases that are tried before state security courts, military courts, as well as terrorism departments.[4]

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[2] The Egyptian Initiative for Personal Rights " in violation of the right to a fair trial. The judge of Badr Court renews the detention of about 900 political prisoners without defense. "Please click on the link https://2u.pw/T3hLk0IF. Also, please see the statement of the Egyptian Commission for Rights and Freedoms entitled " Ibrahim Metwally.. 6 years in prison for his search for his forcibly disappeared son 10 years ago" link https://2u.pw/NYfG420n.

[3] The Egyptian Commission for Rights and Freedoms ("Hen") calls for the release of female prisoners of conscience and highlights their suffering. For more information, click https://2u.pw/XX09Qqt9. Also, see the statement of the Egyptian Initiative for Personal Rights entitled "Marwa Arafa: 3 years of pretrial detention in violation of the law". For more information, please click on the link https://2u.pw/U4fak5Mg.

[4] Train an article entitled "The Letters of a Path.. Freedom for the Unknown| The sister of "Mahmoud Shaaban Ghanem" requests his release " For information, please click on the link https://2u.pw/Qt3PiQOf.

As we have explained, in practice, the Egyptian courts did not comply with these periods stipulated in Article 143 as a maximum for pretrial detention, and they sometimes invoked Article 380 of the Criminal Procedure Law, which allows the Criminal Court the power to detain or release the accused, before amending it under Law 1 of 2024, as it stipulated before this amendment that "the Criminal Court may in all cases order the arrest and bringing of the accused, and it may order his pretrial detention, and release him on bail or without bail for the accused held in pretrial detention." [5]

After the amendment, the article stipulates that "taking into account the provisions of Articles 142 and 143 of this law, the criminal court of both degrees may, in all cases, order the arrest and bringing of the accused, and it may order his detention on remand, and release him on bail or without bail for the accused who is detained on remand."

However, even after this amendment to Article 380 procedures, judges in the various Egyptian courts – especially the State Security Courts, the military courts, and the terrorism departments formed in accordance with Article 50 of the Anti-Terrorism Law - still do not abide by this restriction and the maximum limit for pretrial detention, and there are still thousands of defendants in cases that are predominantly political in nature. Their pretrial detention is extended in violation of the law, and without considering the minimum guarantees of a fair trial. [6]

The nature of pretrial detention is due to the fact that it is only a precautionary measure decided by the legislator in the interest of the preliminary investigation. It has been defined by Egyptian jurisprudence as "depriving the defendant of his freedom for a certain period of time by committing him to prison pending the preliminary or final investigation, under the conditions and restrictions stipulated in the[7] Criminal Procedure Law." It is also "a procedure of criminal investigation, issued by the legislator who granted him this right, and includes an order to the prison director to accept

[5] Article 380 of the Criminal Procedure Law was amended by Law No. 1 of 2024 to stipulate that

[6] The Egyptian Initiative for Personal Rights " Without guarantees, the extension of the detention of more than 1500 defendants by collective decisions in violation of the law is a violation of the right to a fair trial" Please click on the link https://2u.pw/MmKGP9Cv.

[7] Dr. Hilali Abdullah Ahmed, " The Legal Status of the Accused in the Primary Investigation Stage – A Comparative Study of Islamic Criminal Thought 1989 ", issued by Dar Al-Nahda Al-Arabiya, Cairo, p. 726.

the accused and imprison him, and he remains imprisoned for a period that may be prolonged or shortened according to the circumstances of each case, until he ends either the release of the accused during the preliminary investigation or during the trial, or the issuance of a judgment in the case acquitting the accused and the penalty, and the start of its implementation against him[8]."

It is no secret that pretrial detention was originally established for defendants who do not have a known place of residence for fear of fleeing. However, under successive amendments to the Code of Criminal Procedure, pretrial detention has several criteria and justifications required by the interest of the investigation and must not be departed from.

The justifications and conditions of pre-trial detention are provided exclusively in the text of Article 134[9] and Article 136 [10]of the Code of Criminal Procedure.

The conditions of pretrial detention are as follows: -

1/ The incident is a felony or misdemeanor punishable by imprisonment for a period of not less than one year.

2/ That sufficient evidence is based on the charge against the pre-trial detainee.

3/The preventive detention order shall be issued after the interrogation of the accused or after his arrest after his escape.

4/ Availability of one of the cases of preventive detention prescribed exclusively in Article 134.

5/ Hearing the statements of the Public Prosecution.

6/ Hearing the defendant's defense.

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[8] Prof.Dr. Hassan Sadiq Al-Marsafawi, op. Cit., P. 726.

[9] Article 134 of the Criminal Procedure Law No. 150 of 1950 stipulates that **"the investigating judge may, after interrogating the accused or in the event of his escape, if the incident is a felony or misdemeanor punishable by imprisonment for a period of not less than one year, and the evidence is sufficient, issue an order to detain the accused on remand, if one of the following cases or reasons exists:**
1- If the crime is in flagrante delicto, and the judgment must be executed immediately upon its issuance.
2- Fear of the escape of the accused.
3- Fear of harming the interest of the investigation, whether by influencing the victim or witnesses, tampering with evidence or material evidence, or making agreements with the rest of the perpetrators to change the truth or obliterate its features.
4- Preventing the serious breach of security and public order that may result from the gravity of the crime.
However, the accused may be remanded in custody if he does not have a known fixed place of residence in Egypt, and the crime is a felony or misdemeanor punishable by imprisonment. "

[10] Article 136 stipulates that "**before issuing a detention order, the investigating judge must hear the statements of the Public Prosecution and the defendant's defense, and the detention order must include a statement of the crime attributed to the defendant, the punishment prescribed for it, and the reasons on which the order is based. The provision of this article applies to orders issued to extend pretrial detention, in accordance with the provisions of this law.**"

7/The detention order includes a statement of the crime of the accused and its punishment.
8/The provisional detention order shall be issued on a reasoned basis.

Pre-trial detention also has cases mentioned exclusively in Article 134, which are: -

1/If the crime is in flagrante delicto, and the judgment must be executed immediately upon its issuance.

2/ Fear of the escape of the accused.

3 /Fear of harming the interest of the investigation, whether by influencing the victim or witnesses, tampering with evidence or physical evidence, or making agreements with the rest of the perpetrators to change the truth or obliterate its features.

4/Preventing the serious breach of security and public order that may result from the gravity of the crime.

However, the article made some exceptions to these cases and allowed for pretrial detention for the accused who does not have a known place of residence in Egypt, and the felony or misdemeanor was punishable by imprisonment, even if it was less than a year.

It is worth mentioning that the absence of a known place of residence in Egypt is not the only exception to pretrial detention. Rather, the Child Law No. 12 of 1996 prohibits pretrial detention if the accused is a juvenile under the age of 15, in the text of Article 119, which stipulates that "a child who has not exceeded fifteen years shall not be remanded in pretrial detention. The Public Prosecution may place him in an observation home for a period not exceeding one week and submit him upon each request if the circumstances of the case require his detention, provided that the period of deposit does not exceed one week unless the court orders its extension in accordance with the rules of pretrial detention stipulated in the Code of Criminal Procedure. Instead of the procedure stipulated in the previous paragraph, it is permissible to order to hand over the child to one of his parents or guardians to preserve him and submit him upon each request. Violating this duty shall be punished by a fine not exceeding one hundred pounds."

Although the legislator has set conditions for pre-trial detention so that its issuer does not expand its application except to the extent consistent with these conditions and justifications, the second condition has allowed the application of pre-trial detention in most cases. The phrase "sufficient evidence" as a condition for pre-trial detention is no longer a guarantee for the accused to benefit from facing the seriousness of this exceptional measure that clashes with the freedom of the individual. Therefore, stricter and stronger terms should have been used to ensure that it does not

apply except on the basis of serious criminal evidence, so that the freedom of the accused is not taken away simply because security investigations have recommended it, and pre-trial detention becomes the original after it was initially an exception to the general rules that the person should be tried free until a final judgment is issued against him that calls for the implementation of the sentence.

The third condition, which required the interrogation of the accused before issuing the pre-trial detention order, and then the phrase "or in the event of his escape" was added, which means that if the accused escapes, the pre-trial detention decision can be issued without interrogation, which is a violation of a fundamental guarantee of the rights of the accused before the trial stage. Interrogation is one of the guarantees that cannot be ignored even in the event of the escape of the accused, who is issued with an exact and a summons. Therefore, if he is arrested and remains in the possession of the Public Prosecution, it must interrogate him in accordance with Article 36 of the Criminal Procedure Law, which stipulates that "The judicial officer must immediately hear the statements of the seized accused, and if he does not come to acquit him, he sends him within 24 hours to the competent public prosecution. The Public Prosecution shall interrogate him within twenty-four hours, then order his arrest or release, "as well as adhering to the stages of initiating criminal proceedings that the legislator has committed to.[11]

About the amendments to Article 143 of the Criminal Procedure Law and the expansion of the maximum periods of pretrial detention: -

In the beginning, there was no specific period of pre-trial detention in the Criminal Investigation Law 1883, which gave the investigating judge the power of pre-trial detention, while Law 150 of 1950 set a maximum period of pre-trial detention not exceeding six months in misdemeanors and felonies.

However, after Law No. 145 of 2006, the legislator expanded the periods of pretrial detention, making it 6 months and 18 months for misdemeanors in felonies, and two years if the penalty prescribed for the crime is life imprisonment or the death penalty.

[11] Counselor Ibrahim Abdul Khaliq " Reference to the pre-trial detention of the accused in light of Law No. 83 of 2013 and in light of jurisprudence, the judiciary and the instructions of the prosecution " p. 12.

By virtue of Law No. 153 of 2007, the paragraph was added to Article 143, which grants the Court of Cassation the power to renew the detention of the accused without being bound by any of the periods stipulated if the judgment issued by the Criminal Court is the death penalty.

After this amendment by Law 83 of 2013, the legislator expanded further and granted the Court of Cassation, in addition to the Referral Court, the powers to extend pretrial detention without adhering to the maximum limit, not only if the sentence was issued by the Criminal Court to death, but also to include felonies in which a life sentence was issued.

Conflict between preventive detention and the Constitution and international conventions: -

Pre-trial detention of indefinite duration is contrary to many constitutional principles that attach to it the suspicion of unconstitutionality. The first of these principles is the principle of "the origin of the accused is innocence", which is established by the text of Article 96 of the Constitution, which states in its first paragraph that "the accused is innocent until proven guilty in a fair legal trial, in which he is guaranteed the guarantees of self-defense."

The Supreme Constitutional Court established the right of the accused to the presumption of innocence and decided that it is one of the guarantees of a fair trial, as it said in the jurisprudence of its rulings:

" The presumption of innocence of the accused represents a fixed asset related to the criminal charge in terms of proving it, and not to the type of punishment prescribed for it, and it extends to the criminal case at all stages, and throughout its procedures, and therefore it was inevitable that the Constitution, on the assumption of innocence, would make it impossible to overturn it without the conclusive evidence that the court concludes and consists of its unanimous belief, and this is necessary to present this evidence to it, and that it alone says its word in it, and that no other party imposes on it a specific concept of a specific evidence, and that the matter is always due to what it has deduced from the facts of the case and obtained from its papers that is not restricted by the point of view of the Public Prosecution or the defense thereon[12]."

It also ruled that: -

" The origin of innocence extends to every individual, whether suspect or accused, as it is a basic rule in the accusatory system approved by all canons, not to ensure the protection of the guilty, but

[12] Judgment of the Supreme Constitutional Court - Case No. 13 of 12 Judicial - Constitutional - dated 1992-02-02.

to prevent punishment for the individual if the charge against him has been surrounded by suspicions in a way that prevents certainty from the accused's comparison with the incident in question, as the criminal accusation in itself does not displace the origin of innocence that always accompanies the individual and does not remove it, whether in the pre-trial stage or during the trial, and throughout its episodes, and whatever the time taken by its procedures, and there is no way to refute the origin of innocence without evidence whose persuasive power reaches the amount of certainty and certainty, in a way that does not leave reasonable room for suspicion of the absence of the accusation and provided that its significance has been established by a judicial ruling that has exhausted the methods of appeal and has become irreversible[13]."

As for the principle of the presumption of innocence in the International Bill of Human Rights, all international covenants have stressed respect for this principle, and even went further when they recognized another principle, which is the right of the accused to be tried by a released person.
The Universal Declaration of Human Rights states in Article 11/1 that "everyone charged with a crime shall be presumed innocent until proved guilty according to the law in a public trial in which he has been afforded all the guarantees necessary for his defense".
The International Covenant on Civil and Political Rights states in Article 14 that "everyone charged with a criminal offense shall have the right to be presumed innocent until proved guilty according to law ".

Article 16 of the Arab Charter on Human Rights also stipulates that " every accused person is innocent until proven guilty by a final judgment in accordance with the law."
Article 7 of the African Charter on Human and Peoples' Rights states "1. The right of litigation is guaranteed to all, and this right includes: (b) A person is innocent until proven guilty before a competent court. "

Also, pretrial detention, as it has become a punishment to harm political opponents and violates the guarantees of a fair trial in general, is contrary to the constitutional principle of "no punishment except on the basis of a judicial ruling", which is stipulated in the Constitution in Article 95[14].

[13] Judgment of the Supreme Constitutional Court - Case No. 28 of 17 Judicial - Constitutional - dated 1995-12-02.
[14] Article 95 of the Constitution stipulates that "Punishment shall be **personal, and there shall be no crime or punishment except on the basis of a law, and no punishment shall be imposed except by a judicial decision, and no punishment shall be imposed except for acts subsequent to the effective date of the law**."

In this regard, one of the case laws of the Court of Cassation has ruled that: -

"In terms of the above, the constitutional legislator has guaranteed the private freedom of the individual and protected it from any material or moral attack by establishing the principle of equality between citizens, and that the punishment is personal, and no crime or punishment except by a text , and that the punishment is imposed only by a judicial decision and that the accused is innocent until proven guilty in a legal trial, considering that this is one of the most basic principles on which the legal state is based."[15]

It also ruled: -

"Pre-trial detention should in no case be transformed into a punishment, or a precautionary measure that is among the penalties, in compliance with the rules of constitutional legitimacy, which do not allow the imposition of a penalty except by a judicial ruling and after a fair trial in which the accused has the guarantees of self-defense, and it must not deviate from its exceptional nature, or from its objectives, which are limited by the Constitution to the necessity and maintenance of the security of society."

However, the fourth case of pretrial detention, which is "the prevention of a serious breach of security and public order that may result from the gravity of the crime", explicitly violates the text of Article 54 of the Constitution, which states that "personal freedom is a natural right, and it is inviolable. Except in flagrante delicto, no one may be arrested, searched, detained, or restricted in any way except by a reasoned judicial order necessitated by the investigation. Anyone whose freedom is restricted must be immediately informed of the reasons for this, and his rights shall be informed in writing, and his family and lawyers can be contacted immediately, and submitted to the investigation authority within twenty-four hours from the time of the restriction of his freedom. The investigation shall not begin with him except in the presence of his lawyer. If he does not have a lawyer, he shall be assigned a lawyer, with the necessary assistance provided to persons with disabilities, in accordance with the procedures prescribed by law. Anyone whose freedom is restricted, and others, has the right to file a grievance before the judiciary from that procedure, and to decide on it within a week of that procedure, otherwise he must be released immediately.
The law shall regulate the provisions of pretrial detention, its duration, its causes, and the cases of entitlement to compensation that the state is obligated to pay for pretrial detention, or for the

[15] Judgement of the Administrative Court - Judgement No. 10946 of the year 67 Judicial - Administrative Judiciary - First Circuit - dated 2015-01-20.

execution of a sentence for which a final judgment has been issued to annul the sentence executed under it. In all cases, the accused may not be tried for the crimes for which detention is permitted except in the presence of a lawyer assigned or assigned. "

Thus, open-ended pretrial detention contradicts the principle of personal freedom stipulated in Article 54 of the Constitution, especially the latter case - the prevention of a serious breach of security and public order that may result from the gravity of the crime - which had constitutional legitimacy in accordance with the 1971 Constitution, which was applied in Egypt until the revolution of January 25, as it stipulated in Article 41 that "Personal freedom is a natural right that is inviolable and inviolable. Except in the case of flagrante delicto, no one may be arrested, searched, imprisoned, restricted in any way, or prevented from movement except by an order necessitated by the necessity of investigation and the maintenance of the security of society. This order shall be issued by the competent judge or the Public Prosecution, in accordance with the provisions of the law. The duration of pre-trial detention shall be determined by law. "

Although the 2014 constitution closed this loophole, which used to make the justifications for pretrial detention extend to the maintenance of the security of society and was not included in the text of Article 54, the legislator did not correct this error and remained on the last paragraph of Article 134, which can be exploited to be applied at the whim of the authority, which violates fair trial guarantees.[16]

The International Covenant on Civil and Political Rights guarantees the right to personal liberty, in article 9 of which it is established that no one shall be subjected to arbitrary arrest or detention, and that such proceedings shall be conducted in conformity with the law. It also states that detainees should be promptly brought to justice and given a trial within a reasonable period or released provisionally, while avoiding making pretrial detention the default measure. In addition, the article affirms the right of those who have been subjected to unlawful arrest or detention to compensation, thereby strengthening the legal protection of individuals against arbitrary detention and emphasizing the importance of prompt and fair judicial proceedings.

This is also included in Article 8 of the Arab Charter on Human Rights, which stipulates that: -

"Everyone has the right to liberty and security of person and shall not be arrested, detained or detained without the authority of law and shall be brought before a judge without delay."

[16]To view the plea of unconstitutionality of the fourth clause of Article 134 submitted during 2019 to one of the accused, please click on the link https://cutt.us/KURfY.

Article 6 of the African Charter on Human and Peoples' Rights guarantees everyone the right to liberty and security of person. No one may be deprived of his liberty except for motives and in cases specified in advance by law. In particular, no one may be arbitrarily arrested or detained.

The jurisprudence of the higher courts in Egypt has clearly affirmed the importance of personal freedom as a fundamental right that must not be compromised or unduly restricted through judicial rulings. The courts have explained that successive Egyptian constitutions, starting with the 1923 constitution, have granted public freedoms and rights a central place, thus imposing restrictions on ordinary legislation to ensure that these rights are not infringed. If legislation violates this constitutional framework, whether by restricting a constitutionally absolute freedom or by squandering a right under the guise of permissible regulation, it is unconstitutional.[17]

The Court of Cassation has also stressed that personal freedom is a natural right that is inviolable, stressing that it can only be restricted in clearly defined cases in the law, either in flagrante delicto or by order of the judicial authority. The Constitution forbids delegating to the legislature the addition of new cases permitting the restriction of personal liberty, stating that the phrase "in accordance with the provisions of the law" means a reference to ordinary legislation in determining procedures relating to arrest and search and not an extension of the grounds permitting the restriction of liberty.[18]

These provisions confirm the judicial obligation to protect constitutional rights and preserve personal freedom within a strict legal framework that ensures that they are not unjustifiably infringed upon, thus reinforcing the principle of fundamental rights and freedoms in the Egyptian judicial system.

Compensation for Pre-Trial Detention: -

Article 54 obliges the legislator to regulate the rules of entitlement to compensation that the state must provide for pretrial detention if the acquittal of the accused who has been remanded in custody is completed. Article 312 of the Code of Criminal Procedure also stipulates that "the Public Prosecution shall publish every final judgment acquitting the person previously remanded in custody, as well as every order issued that there is no need to file a criminal case before it in two widely circulated daily newspapers at the expense of the government. In both cases, the

[17] *Judgment of the Supreme Constitutional Court No. 37 of 9 judicial year dated 19/5/1990."*
[18] Judgment of the Court of Cassation - Criminal - Appeal No. 2605 of the judicial year 62 dated 15-09-1993.

publication shall be at the request of the Public Prosecution, the accused, or one of his heirs, and with the approval of the Public Prosecution if an order is issued that there is no face to file a lawsuit.

The State shall ensure the right to the principle of material compensation for preventive detention in the two cases referred to in the preceding paragraph in accordance with the rules and procedures promulgated by a special law.

From the article, the legislator granted the person who was acquitted and remanded in custody pending his lawsuit two types of compensation. He has the right to publish the judgment of his innocence in two widely circulated newspapers by the Public Prosecution at the request of the accused or his family. However, this right is limited only to the acquittal judgment, but if a judgment is issued by the Public Prosecution that there is no need to file a lawsuit, the publication decision is suspended based on the approval of the Public Prosecution.

As for the second type of compensation, which is material compensation, the legislator referred its regulation in a special law, which has not yet been issued despite the urgent need to issue such legislation, due to the unjustified cases of pretrial detention used by members of the Public Prosecution and judges as a punishment for the abuse of political opponents of power and the deprivation of their right to movement and residence and their right to freedom in general, in addition to cases of random arrest and the resulting prolonged or shortened periods of time for their victims in pretrial detention, which constitutes an explicit violation of the Constitution. The ruling regime deliberately slackens in issuing this law.

Alternatives to pre-trial detention: -

In line with the global trend of criminal legislation, which tends to dispense with short-term imprisonment as a punishment for crimes that do not pose a high criminal seriousness, it is inconceivable that preventive detention is the general asset, while the prevailing global approach is to suspend the implementation of custodial sentences despite the issuance of final sentences of short-term imprisonment.

There is no doubt that pretrial detention represents a great danger to fair trial guarantees as it deprives the freedom of the accused without a conviction yet, and without taking into account his justifications and conditions, which causes the presence of thousands of defendants – especially in cases of a political nature – inside the corridors of prisons suffering and their families from the consequences of pretrial detention, and deliberately turning a blind eye by members of the

judiciary to alternatives to pretrial detention stipulated in Articles 144, 146, 149, and 201, [19] except in some recent cases in which the judiciary has resorted to less severe measures than pretrial detention.

Alternatives to pretrial detention are: -

1/The provisional release of the accused on financial bail.

2/The accused shall present himself to the police office at the times specified for him in the release order, considering his special circumstances.

3/The accused is asked to choose a place of residence other than the place where the crime took place.

4/ The accused is prohibited from being present in certain places.

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[19] Article 144 of the Code of Criminal Procedure stipulates that "**the investigating judge may at all times, whether on his own initiative or at the request of the accused, order, after hearing the statements of the Public Prosecution, the provisional release of the accused if he is the one who ordered his pre-trial detention, provided that the accused undertakes to appear whenever he requests and not to flee from the execution of the judgment that may be issued against him. If the pre-trial detention order is issued by the Court of Appeal of Misdemeanors sitting in the counseling room based on the Public Prosecution's appeal of the previous release order issued by the investigating judge, a new release order may be issued only from it."**

Article 146 further states that **"Temporary release may be suspended, except in cases where it is imperative, to provide bail.**

The investigating judge or the appellate misdemeanor court sitting in the counseling room shall estimate the amount of the bail..... "،

Article 149 states that "the **examining magistrate, if he considers that the condition of the accused does not allow the provision of bail, may oblige him to present himself to the police office at the times specified by him in the order of release, taking into account his special circumstances.**

He may ask him to choose a place of residence other than the place where the crime was committed, and he may also prohibit him from going to a specific place. "

As well as Article 201, provided that **"the detention order shall be issued by the Public Prosecution from a prosecutor at least for a maximum period of four days following the arrest of the accused or his surrender to the Public Prosecution if he was previously arrested.**

The authority competent with pretrial detention may issue in its place an order for one of the following measures:

1- Obliging the accused not to leave his home or domicile.

2- Obliging the accused to present himself to the police headquarters at specific times.

3- Prohibiting the accused from going to specific places.

If the accused violates the obligations imposed by the measure, he may be remanded in custody.

The period of the measure, its extension, its maximum limit, and its appeal shall be subject to the same rules prescribed related to pretrial detention.

It is not permitted to execute seizure and habeas corpus orders and detention orders issued by the Public Prosecution after the lapse of six months from the date of their issuance, unless they are approved by the Public Prosecution for another period.

Although these alternatives constitute restrictions on the accused's movement and mobility, these restrictions represent a relief from the bad conditions that pre-trial detention constitutes, the consequences of which cannot be remedied, such as imprisonment in places of detention for criminals, especially since pre-trial detainees are not separated from prisoners, as well as the possibility of contracting diseases associated with being in prison places after lack of good ventilation, and the psychological pain that the pre-trial detainee receives as a result of this detention from depriving him of his freedom and distance from his family, and other disadvantages that affect the pre-trial detainee and make the alternatives to pre-trial detention extenuating circumstances required by the defense of all pre-trial detainees until final and final judgments are issued against them.

It is worth mentioning that many of the defendants have benefited from the maximum limit stipulated for pretrial detention, including the deposed President Mohamed Hosni Mubarak, who was released after he fulfilled the legal period prescribed in Article 143, considering that it represented the maximum limit for pretrial detention, in August [20]2013, and then this amendment to Article 143 was issued by Law 83 of 2013 in September 2013, which made some see it as a vexation against the political opponents of the authority, especially since the political circumstance of the amendment came at the peak of the arrest and detention of supporters of former President Mohamed Morsi as well as many political opponents of the military rule, which makes the article contradictory to the characteristics of the legal rule as it must be general and abstract.

[20] BBC News Arabic site News entitled "The **release of Hosni Mubarak, the former Egyptian president**" on 21/8/2013. To view the news, please click on the link https://2u.pw/rKn3ozc3.

Second/ Law No. 11 of 2017 amending some provisions of the Code of Criminal Procedure issued on 27/4/2017.

On 27/4/2017, Law No. 11 of 2017 was issued to amend some legal texts of several laws, namely texts Nos. (12, 277, 289, 384, 395, first and second paragraphs) of the Criminal Procedure Law, as well as some provisions of the Law on Cases and Procedures of Appeal before the Court of Cassation, some provisions of the Law Regulating the Lists of Terrorist Entities and Terrorists, and some provisions of the Anti-Terrorism Law. In this part, we will refute that amendment regarding the Criminal Procedure Law and determine whether this amendment has negative effects on the guarantees of the trial of justice.

It should be noted that some of these provisions have been amended again by Law No. 1 of 2024 regarding the amendment of some provisions of the Code of Criminal Procedure to allow appeals against judgments issued by criminal courts by way of appeal. However, in this part, we have mentioned the provisions as they are according to the penultimate amendment of Law No. 11 of 2017 to clarify how this amendment violated fair trial guarantees in the period between the issuance of Law No. 11 of 2017 and Law No. 1 of 2024.

A/About Article 12.

Article (12) was amended to read: -

> The Criminal Chamber of the Court of Cassation may, when considering the matter, file a lawsuit, in accordance with what is prescribed in the previous article. If the judgment rendered in the new lawsuit is challenged, one of the judges who decided to institute it may not participate in its consideration.[21]

[21] According to the last amendment of Article 12 of Law 1 of 2024, the article now stipulates that "the Appellate Criminal Court, and the Criminal Chamber of the Court of Cassation, when considering the matter, may file a lawsuit, as stipulated in the previous article.
If the judgment issued in the new lawsuit is challenged, one of the judges who decided to institute it may not participate in its consideration. "

The original text of the article stipulated that "the Criminal Chamber of the Court of Cassation, when considering the matter based on the second appeal, has the right to file a lawsuit in accordance with the provisions of the previous article. If the judgment issued in the new lawsuit is challenged for the second time, one of the consultants who decided to institute it may not participate in its consideration.

This provision is closely related to Article 39 of the Cassation Appeals Law No. 57 of 1959, which was also amended by Law No. 11 of 2017 to constitute a radical change in the criminal legislative environment in Egypt.

Article 39 now states that: -

> If the appeal or its reasons are submitted after the deadline, the court shall rule that it is inadmissible in form. If the appeal is admissible and it is based on a violation of the law or an error in its application or interpretation, the court shall correct the error and rule in accordance with the law.
> If the appeal is based on the invalidity of the judgment or the invalidity of the procedures that affected it, the court shall quash the judgment and consider its subject matter, and the legally prescribed principles for the crime that occurred shall be followed. The judgment issued in all cases shall be in presence.

Prior to this amendment, Article 39 stipulated that "if the appeal or its reasons are submitted after the deadline, the court shall rule that the appeal is inadmissible. If the appeal is admissible and it is based on the first case set forth in Article 30, the court shall correct the error and rule according to the law. If it is based on the second case in the aforementioned article, the court shall revoke the judgment and return the case to the court that issued it for a new judgment formed by other judges. However, if necessary, it may be referred to another court. If the reversed judgment is issued by an appellate court or by a criminal court in a misdemeanor that occurred in its session, the case shall be returned to the court originally competent to hear the lawsuit for consideration in accordance with the usual procedures."

These amendments granted the Court of Cassation the right to address the appeal, even if this appeal is considered before it for the first time, after this right was granted to it only if the appeal was filed before it for the second time in the same lawsuit.

Thus, Article 39 empowered the Court of Cassation to address the subject matter of the lawsuit and rule on it without requiring that this appeal be filed before it for the second time.

Thus, the right of response under Articles 12 and 39 obligated the Court of Cassation to address the subject matter of the case and, of course, the possibility of initiating the criminal case for new defendants or other facts not supported by the facts of the case or the existence of a felony or misdemeanor related to it, which changed the essence of the Court of Cassation, which was originally characterized as a court of law rather than a trial court, that is, it monitors the validity of the application of the law in the case before it, and whether the court that issued the contested judgment has applied the legal rules in the body of its judgment or not.

The judgment of the Court of Cassation before this amendment was limited to either upholding the contested judgment – if it is acceptable in form[22] - or overturning it and then correcting it if there is an error in the application of the law or a violation in it or in its interpretation, such as an error in the elements of the crime or the punishment prescribed for it or the existence of a reason for permissibility, and prohibitions of liability and punishment or a reason for tightening or easing it, without referring the judgment to the trial court, or to overturn the judgment and then return it to the trial court issued by a problem of other judges or another circuit, in this case called the Repatriation Court, all when the appeal in cassation is considered before it for the first time, but if this appeal is considered before it for the second time, it may consider the subject matter of the lawsuit and then rule in it.

If the principle is that the Public Prosecution alone has the competence to initiate criminal proceedings, the legislator has granted this right to some other judicial bodies, in specific cases, and as an exception, from these bodies, the Criminal and Cassation Court in accordance with the

[22] The judgment of the Court of Cassation in the appeal shall be issued either by the forfeiture of the cassation appeal, if the appeal was filed by the accused sentenced to a final judgment and a penalty depriving him of liberty, and he did not apply for the implementation of this judgment before the day of the hearing unless the court sees at the time of hearing the appeal that the execution is suspended until it is decided, or that he is released with or without bail, in accordance with the text of Article 41 of the Law on Cases and Procedures of Appeal in Cassation, as well as a ruling that the appeal is not accepted in form if he does not meet the required form, that the appellant has no capacity to be a party to the lawsuit or does not have an interest in the appeal, or the appeal report was filed after the deadline has passed, or the memorandum of the reasons for the appeal in cassation has not been deposited in accordance with Article 34, or the guarantee has not been deposited in accordance with Article 36, or the contested judgment is not subject to cassation, and if the appeal is acceptable in form, it considers the subject matter.

provisions of articles 11 and 12 of the Criminal Procedure Law, as well as the criminal and civil courts with regard to hearing offences[23].

Article 11 of the Criminal Procedure Law stipulates - before the amendment again by Law 1 of 2024 - regarding the initiation of the criminal case by the Criminal Court: "If the Criminal Court considers in a lawsuit filed before it that there are defendants other than those against whom the lawsuit has been filed or other facts not assigned to them or that there is a felony or misdemeanor related to the charge presented to it, it may file the lawsuit against these persons or with regard to these facts and refer it to the Public Prosecution for investigation and disposal in accordance with Part Four of Book One of this Law. The court may delegate one of its members to carry out the investigation procedures. In this case, all the provisions of the investigating judge apply to the delegated member. If a decision is issued at the end of the investigation to refer the lawsuit to the court, it must be referred to another court, and it is not permitted for one of the consultants who decided to file the lawsuit to participate in the judgment. If the court has not adjudicated the original case and is indivisibly connected with the new case, the whole case must be referred to another court. "[24]

Thus, we are facing a new approach in the Egyptian criminal legislation system that makes the Court of Cassation address since the first challenge to the subject of the lawsuit and move it, although this amendment is a step to achieve prompt justice and remedy the prolongation of litigation, but it was a violation of the principle of litigation on two levels, which is an essential guarantee of a fair trial, before the amendment of the Code of Criminal Procedure under Law No.

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[23] Article 13 of the Criminal Procedure Law gives both the Criminal Court and the Court of Cassation, in the event of acts that would violate the hearing, the court's orders, the respect due to it, or affect its judiciary or witnesses during the hearing, the right to file a criminal case in accordance with the text of Article 11 of the Criminal Procedure Law, which is the right granted to all courts of all types and degrees.

[24] Article 11 of Law No. 1 of 2024 amending some provisions of the Code of Criminal Procedure stipulates that " if a criminal court of first instance considers in a lawsuit filed before it that there are defendants other than those against whom the lawsuit has been filed or other facts not assigned to them or that there is a felony or misdemeanor related to the charge presented to it, it may file the lawsuit against these persons or with regard to these facts and refer it to the Public Prosecution for investigation and disposal in accordance with Part Four of Book One of this Law.
The court may delegate one of its members to carry out the investigation procedures. In this case, all the provisions of the investigating judge apply to the delegated member.
If a decision is issued at the end of the investigation to refer the lawsuit to the court, it must be referred to another court, and it is not permitted for one of the consultants who decided to file the lawsuit to participate in the judgment.
If the court has not adjudicated the original case and is indivisibly connected with the new case, the whole case must be referred to another court. ".

1 of 2024 to allow the appeal of judgments issued by the criminal courts and the establishment of the appealed criminal courts.

The right of response granted to both the Criminal Court and the Court of Cassation is limited to three cases: -

First/ If the Criminal Court considers that there are new defendants other than those against whom the lawsuit was filed and the referral order is supposed to include them, whether they are original perpetrators or accomplices with the original perpetrator of the crime.

Second: If other facts committed by the defendants before it occurred in the original lawsuit, but the latter did not include them in its papers.

Third: The court shall consider that a felony or misdemeanor has been committed by persons other than those against whom the lawsuit was filed, and this felony or misdemeanor was related to the original lawsuit.

The text of Article 11 has given the Criminal Court the right to initiate a criminal case that has not been initiated by either the Public Prosecution or the plaintiff of the civil right. Although this right was given to the Criminal Court and the Court of Cassation as an exception to the basic rule that the indictment authority and the sentencing authority should be separated, this exception was intended to give a kind of judicial control exercised by the higher courts over the indictment authority if they failed or made a mistake of judgment about not filing a lawsuit against some persons or omitting some facts.[25]

It is worth mentioning that the right of response granted to the Criminal and Cassation Court is limited only to the initiation of the criminal case without investigation in order to enforce the principle of separation between the power of accusation, investigation and judgment, which is a major guarantee of criminal trial so that it does not take over one party and the fate of the accused is in its hands alone, so it can abuse or underestimate his rights.

The two courts must refer the new lawsuit to the Public Prosecution for investigation, which becomes free to dispose of it and has all the competences entrusted to it by the legislator, so it may decide that there is no need to file the lawsuit or refer the papers to the court, and in this case it must be referred to a circuit other than the one that initiated the lawsuit so that the accusatory

[25] Explanation of Criminal Procedure Law by Dr. Sameh Al-Sayed Gad, Professor of Criminal Law, Faculty of Sharia and Law, and former Vice President of Al-Azhar University, pp. 74,75.

authority is not combined with the judgment in accordance with Article 247 [26]of the Criminal Procedure Law.

In this regard, the Court of Cassation has a lot of case law that limits the right of appeal granted to the criminal and cassation courts to initiating criminal proceedings without investigating them themselves, as it ruled that:

"Whereas Article 11 of the Criminal Procedure Law, and this is its text, if the Criminal Court considers in a lawsuit filed before it that there are defendants other than those against whom the lawsuit was filed or other facts not assigned to them, or there is a felony or misdemeanor related to the charge presented to it, it may file the lawsuit against these persons, or for these facts and refer it to the Public Prosecution for investigation and disposal in accordance with Chapter Four of Book One of this law. The court may delegate one of its members to carry out the investigation procedures. In this case, all the provisions of the investigating judge shall apply to the delegate member. If a decision is issued at the end of the investigation to refer the lawsuit to the court, it must be referred to another court, and one of the advisers who decided to file the lawsuit may not participate in the judgment. If the court has not adjudicated the original case and is indivisibly linked to the new case, the whole case must be referred to another court, which has indicated that although the original is to separate the powers of accusation and trial in order to ensure the guarantees that must be surrounded by criminal trials, except as an exception The Criminal Court, as well as the Criminal Department of the Court of Cassation, may, in the event of a second appeal pursuant to Article 12 of the same law, for reasons of supreme interest and for considerations determined by the legislator himself in connection with the lawsuit before it, file a public lawsuit against other than those against whom the lawsuit has been filed or for facts other than those assigned to them or for a felony or misdemeanor related to the charge presented to it. The use of this right, which is called (the right to address the criminal lawsuit), shall not entail anything other than initiating the lawsuit before the investigating authority or before the delegated advisor to investigate it from among the members of the circuit that dealt with it. The entity conducting the investigation shall then be free to dispose of the papers as it deems fit. If the prosecution or the delegated advisor decides to refer the lawsuit to the court, The referral must be to another court,

[26] Article 247 of the Criminal Procedure Law No. 150 of 1950 stipulates that **"the judge shall not participate in the consideration of the lawsuit if the crime has been personally committed by him, or if he has done in the lawsuit the work of the judicial officer, the function of the Public Prosecution, or the defense of one of the litigants, or he has given a certificate in it, or started an expert work, and he shall also be prevented from participating in the judgment if he has done in the lawsuit an act of investigation or referral, or to participate in the judgment in the appeal if the contested judgment was issued by him."**

and it is not permissible for one of the consultants who decided to file the lawsuit to participate in the judgment. "[27]

It also ruled that: -

"It is established that in criminal trials, the accused may not be tried for an incident other than the one mentioned in the referral order or the request for summons to appear pursuant to Article 307 of the Criminal Procedure Law, and that it is permissible, as an exception, for the Criminal Court if it considers in a lawsuit filed before it that there are facts other than those attributed to the accused, to file the lawsuit regarding these facts and refer them to the Public Prosecution for investigation and disposal in accordance with Chapter Four of Book One of this Law. This right does not entail anything other than initiating the lawsuit before the investigating authority without ruling on it, pursuant to Article 11 of the Criminal Procedure Law. "[28]

This is confirmed by many other cases law of the Court of Cassation, which ruled that the separation between the powers of accusation and trial is an asset of the criminal trial and is related to public order, and therefore many judgments have been issued to overturn judgments that violated this rule.[29]

The effect of amending Article 12 of the Code of Criminal Procedure, and Article 39 of the Code of Cases and Procedures of Appeal in Cassation on the principle of litigation in two degrees in the years following this amendment and before the issuance of Law No. 1 of 2024 to allow the appeal of felony judgments: -

Although the amendment of the text of Article 12 of the Criminal Procedure Law and Article 39 of the Law of Cases and Procedures of Appeal in Cassation was intended to try to shorten the duration of litigation in order to achieve prompt justice, this desired justice must not be achieved at the expense of the guarantees of a fair criminal trial and the rights of the accused. There is no doubt that Article 12, 39 after this amendment, which gives the Court of Cassation the authority to address the subject matter of the lawsuit, affects the principle of litigation in two degrees in felonies, which was originally lacking in the Egyptian judicial system - before the amendment of the Criminal Procedure Law by Law No. 1 of 2024, which was issued on January 16, 2024 - as the judgment that was issued by the criminal courts was not subject to appeal and its rulings are

[27] Judgment of the Court of Cassation - Appeal No. 2208 of 64 Judicial Year – Criminal Appeal - dated 08-02-1996.
[28] Judgment of the Court of Cassation, Appeal No. 2154 of 50 Judicial Year - Criminal Appeal - dated 19/03/1981.
[29] The judgment of the Court of Cassation, Appeal No. 4997 of 80 Judicial – Criminal Appeal - dated 16-02-2011, as well as the judgment of the Court of Cassation, Appeal No. 1092 of 26 Judicial – Criminal Appeal – dated 04-12-1956.

challenged directly before the Court of Cassation, which is a serious violation of the principle of litigation in two degrees, and the same situation remained about seven years until the Criminal Procedure Law was amended to allow appeal against the judgments of the criminal courts in early 2024.

Also, despite the fact that the Constitution in Article 96 in the second paragraph stipulates that "the law regulates the appeal of judgments issued in felonies" and thus allows the appeal against the judgments of the Criminal Court, Article 381 of the Criminal Procedure Law prevented this right and stipulated in its last paragraph that the judgments of the criminal courts may not be appealed except by way of cassation or reconsideration, but this amendment was delayed for a full 10 years since the Constitution was issued, and between this amendment, which gives the Court of Cassation the right to address the subject of the appeal and the amendment that allows the appeal of the judgments of the criminal courts, for 7 years there has been a loss of the rights of the defendants pending cases in this period, since the defendant had a guarantee to return the case in full to the Criminal Court with a different judicial body after the Court of Cassation's ruling of cassation and referral, so he could appeal again against the judgment of the Court of Reconsideration before the Court of Cassation, which compensated for the legislative deficiency in the non-applicability of felonies.

This is a serious breach above the breach caused by the Egyptian judicial system, which was based on a single degree of criminal litigation, which existed throughout the previous decades, but the 2014 Constitution took a commendable course in obliging the legislator to amend that situation when it stipulated in Article 240 that "the State shall ensure the provision of material and human capabilities related to the appeal of sentences issued in felonies, within ten years from the date of entry into force of this Constitution, and the law regulates this." It obligated the State to amend this legislative deficiency and authorize the accused to appeal against the sentence issued by the Criminal Court. In order to bring about the legislative revolution - as Parliament called it - the legislator is in the process of issuing Law 11 of 2017 to amend the criminal legislative structure to allow the appeal of the judgments of the criminal courts and not delay the amendment for a full seven years in which the rights of defendants in criminal cases in this period and those sentenced to harsh sentences amount to the death penalty in addition to custodial penalties.

The Supreme Constitutional Court has ruled in this regard that: -

"Limiting litigation in the matters in which it has been decided to one degree, even if it falls within the discretionary authority of the legislator, and to the extent and within the narrow limits required by a public interest that has its weight, but if the legislator chooses to litigate in two degrees, each

of them should complete their features, and their exhaustion after benefiting from their guarantees should be without decrease, as litigation in two degrees - and whenever it is decided by jus cogens texts - is considered an asset in the requirement of the disputed rights, to the effect that the judicial litigation does not reach its end until after it takes its two stages to adjudicate it appealingly, and this necessarily requires that the right of defense be withdrawn to them together, and that its eyesight should be iron, as they are two complementary rings, and determined together for the judicial litigation is its final outcome, so the facts of justice do not have the same if one of them is closed.[30]"

It also ruled that: -

"Whereas the openness or closure of the methods of appeal against judgments is determined on objective grounds that do not include the mere speed of adjudication of cases contrary to their nature, especially in the field of implementing criminal laws that affect the right to life, freedom or property[31]."

B/ Amendment of Articles 277 and 289 of the Criminal Procedure Law on Hearing Witnesses: -

Article (277) stipulates that: -

> Witnesses shall be assigned to appear at the request of the litigants by one of the bailiffs or clerks twenty-four hours before the hearing other than the time limits. They shall be notified to his person or place of residence in the ways prescribed in the Civil and Commercial Procedures Law, except in the case of flagrante delicto. They may be assigned to appear at any time, even orally, by one of the judicial clerks or clerks. The witness may attend the hearing without notice at the request of the litigants.
> Without prejudice to the provisions of the first paragraph of this article, the litigants shall specify the names of the witnesses, their data, and the evidence against them. The court shall decide who it deems necessary to hear his testimony. If the court decides that it is not necessary to hear the testimony of any of them, it shall cause this in its judgment.
> During the hearing of the lawsuit, the court may summon and hear the statements of any person, even by issuing a restraining and habeas corpus order, if necessary, and it may order that he be

[30] Judgment of the Supreme Constitutional Court No. 64 of 17 Judicial – Constitutional - issued on 7/2/1998.
[31] Ibid.

summoned to attend another hearing.
The court may hear the testimony of any person who appears on his own initiative to give information in the case.

Before the amendment, the article stipulated that "witnesses shall be summoned to appear at the request of the litigants by one of the bailiffs or one of the policemen twenty-four hours before the hearing, except in case of flagrante delicto, they may be summoned at any time, even verbally, by one of the judicial officers or one of the policemen. The witness may attend the hearing without notice at the request of the litigants. During the hearing of the lawsuit, the court may summon and hear the statements of any person, even by issuing a restraining and habeas corpus order if necessary. She may order him to attend another session. The court may hear the testimony of any person who comes of his own accord to give information in the case. "

Article 289 also stipulates that: -

The court shall decide to recite the testimony given in the preliminary investigation, in the record of gathering evidence, or before the expert, if the witness cannot be heard for any reason.

The text before the amendment was "The court may decide to recite the testimony that was shown in the preliminary investigation or in the record of collecting evidence or before the expert if the witness cannot be heard for any reason."

Therefore, the amendment came by adding a paragraph to Article 277, which obliges the litigants to specify the names of witnesses and their evidence and statements. It also gives the court the discretionary authority to hear these witnesses, in the event that it deems it unnecessary to hear them, which was discarded by the guarantees of a fair trial and the right of the accused to summon witnesses, who believe that hearing their statements has an impact on his position before the court, whether as witnesses for the defense or evidence. As for Article 289, the amendment came by obliging the court – after it was permissible for it – to hear the testimony that was expressed in the preliminary investigation papers that were presented before the Public Prosecution, whether in the record of collecting evidence or before the expert, if the witness could not be heard based on its discretion not to hear witnesses.

Contrary to the expectation of issuing a law for the protection of witnesses and whistleblowers as a constitutional entitlement stipulated in the last paragraph of Article 96 of the 2014 Constitution necessitated by the need of the Egyptian reality for such legislation, the amendments disappointed many who are interested in human rights and the legal profession[32].

Before the amendment, the text obligated the court to respond to the defendant's defense request to hear witnesses, whether by using the defence witnesses or discussing the prosecution witnesses, and gave the court the discretionary authority to hear them, provided that the defense explicitly waives its right to adhere to the hearing of witnesses or implicitly to request the original acquittal and in the alternative to hear them, and the matter is that the court is obligated to meet the defense request with the testimony of witnesses and the merit it requires, as the court is the last resort for the defendant and his defense to investigate the incident and try to prove the defenses, which is a necessity necessitated by the nature of criminal trials in which the death penalty or severe penalties can be eliminated. It is not permissible to leave a basic pillar of proof – which is the testimony of witnesses - in the hands of the court and its discretionary authority, which it has the best ability to respond or reject. Therefore, this amendment is pursued by the suspicion of unconstitutionality, and is not justified by saying that this amendment is necessary to mitigate the prolongation of litigation. The principles of accomplished justice must not be built over the discard of their rights in a trial in which he can defend himself and prove by means of proof.

Hearing witnesses in the Constitution and the International Bill of Human Rights: -

Article 96 of the 2014 Constitution states: "The accused is innocent until proven guilty in a fair legal trial, in which he is guaranteed the guarantees of self-defense. The law shall regulate the appeal of sentences handed down in felonies, and the State shall provide protection for victims, witnesses, accused persons and whistleblowers, if necessary, in accordance with the law."

Similarly, the International Covenant on Civil and Political Rights provides in article 14 (3) that "every person charged with a criminal offense shall, during the hearing of his case, enjoy, in full equality, the following minimum guarantees:

(e) To examine, in person or by third parties, the witnesses against him and to obtain the attendance of witnesses on his behalf under the same conditions as witnesses against him. "

[32]**The** last paragraph of Article 96 of the Constitution stipulates that "**the State shall provide protection to victims, witnesses, defendants and whistleblowers when necessary, in accordance with the law**."

The European Convention on Human Rights states in Article 6 (3) that “Everyone charged with a crime shall have the following rights as a minimum: (d) To question witnesses against him, and to be able to call witnesses against him and to question them under the same rules as witnesses against him”.

The Arab Charter on Human Rights also stipulates in Article 7 that "the accused is innocent until proven guilty by a legal trial in which the necessary guarantees for his defense are provided."

Contrary to the provisions of international law, the Court of Cassation has many jurisprudences that obliges the court to hear witnesses. It has ruled:

"Whereas the principle established in Article 289 of the Code of Procedure is that the trial must be based on the oral investigation conducted by the court in the hearing and in which the prosecution witnesses are heard in the presence of the accused as long as they can be heard, but it is permissible for it to be satisfied with reciting the testimony of the witness if it cannot be heard, or if the accused or the defendant accepts this, and it is not permissible to attack this principle, which was assumed by the street, whatever it is, except by the explicit or implicit waiver of the litigants. The defense insisted at the beginning and conclusion of its hearings on the need to hear the statements of the prosecution witnesses, but the court did not respond to his request, and what was stated by the judgment was a justification for refusing to hear the prosecution witnesses is not permissible, as the court had to take the means it deems necessary to hear them, even if by ordering to arrest and bring them pursuant to Article 277 of the Code of Criminal Procedure, the foregoing, the contested judgment is above corruption in the inference of the violation of the right of the defense, we must then overrue it"[33]

It also ruled: -

"It is established that the law, when drawing the path followed by the accused in announcing the witnesses whose interest he sees in hearing them before the criminal court, was not intended to violate the essential foundations of criminal trials, which are based on the oral investigation conducted by the court at the trial session against the accused and in which witnesses are heard,

[33] Judgment of the Court of Cassation - Criminal - Appeal No. 6301 of the judicial year 61 dated 09/06/1993.

whether to prove the charge or deny it, as long as it is possible to hear them, and then combine what they extract from their testimony with the total of their belief in the case[34]."

Also, the Court of Cassation considered it necessary to meet the defense's request to hear the witnesses of the incident, otherwise the judgment is considered tainted by the violation of the right of defense, as it said in one of its judicial precedents: -

"It was not scheduled that the defense should respond to his request to hear the witnesses of the incident, even if there was no mention of them in the list of prosecution witnesses or the accused announcing them because they are not considered witnesses who were denied in the sense of the word in order to abide by their declaration, and because the court is the last resort that must be allowed to investigate the incident and investigate it properly, which is not restricted by the action of the Public Prosecution in what it shows in the list of prosecution witnesses or drops it from the names of the witnesses who saw the incident or could have seen it, otherwise the seriousness in the court was negated and the door of the defense closed in the face of his right, which is what justice cares most about[35]."

It also ruled that: -

"Whereas the principle in criminal judgments is to be based on the oral pleading that takes place before the same judge who issued the judgment , and on the oral investigation that he conducts and in which witnesses are heard as long as possible, resulting in this doctrine of confidence that the statements of the witness suggest or do not suggest, and the impact that these statements have on himself as he listens to them , which indicates that the court that decided on the lawsuit must hear the witness as long as it is possible to hear him, and the accused or his defender has not waived this explicitly or implicitly; Because the examination of the psychological condition of the witness at the time of testimony, his integrity, frankness, or evasion and disturbance is one of the things that help the judge to assess his statements properly, and it was not permissible to violate this principle prescribed in Article 289 of the Code of Criminal Procedure to be followed before the Criminal Court pursuant to Article 381 of the same law, which was assumed by the street in the rules of the trial for any reason whatsoever, unless the witness could not be heard for any

[34] Judgment of the Court of Cassation - Criminal - Appeal No. 2957 of the judicial year 66 dated 15-02-1998.
[35] Judgment of the Court of Cassation - Criminal - Appeal No. 2957 of the judicial year 66 dated 15-02-1998.

reason or the accused or his defender accepted this explicitly or implicitly, and if she did not, she must Justifies why he did not hear with justifiable reasons."[36]

There are many other cases in the law have confirmed that the criminal trial must be based on the oral investigation conducted by the court at the hearing and the hearing of witnesses, and the Court of Cassation has issued many judgments in which it stated that the courts' violation of this rule makes the judgment defective, which is necessary to overturn it.[37]

[36] Judgment of the Court of Cassation – Criminal - Appeal No. 18386 of the judicial year 86 dated 21-01-2017.

[37] Judgment of the Court of Cassation - Criminal - Appeal No. 259 of the 42nd Judicial Year on 30/04/1972., as well as the judgment of the Court of Cassation - Criminal - Appeal No. 1242 of the judicial year 52 dated 29/04/1982.

Third/ Law No. 1 of 2024 amending the Criminal Procedure Law on Appealing the Judgments of the Criminal Courts: -

On January 16, 2024, Law No. 1 of 2014 was issued regarding the amendment of some provisions of the Code of Criminal Procedure to allow the appeal of judgments issued by the criminal courts for the first time in the Egyptian legislative criminal environment. With this law, felonies are considered before two degrees of litigation similar to misdemeanors. These amendments come in implementation of the constitutional entitlement stipulated in Article 96 of the 2014 Constitution that a law must be issued regulating the appeal of judgments issued by the criminal courts, as the article stipulates that:

"The accused is innocent until proven guilty in a fair legal trial, in which he is guaranteed the guarantees of self-defense. The law shall regulate the appeal of judgments rendered in felonies. The State shall provide protection to victims, witnesses, accused persons, and whistleblowers when necessary, in accordance with the law."

However, this law was delayed by 10 full years, which is the period specified by Article 240 of the Constitution as a deadline within which the state must provide the material and human capabilities related to the appeal of sentences issued in felonies within ten years from the date of entry into force of the Constitution issued in 2014, where Article 240 stipulates that: -

"The State shall guarantee the provision of material and human resources related to the appeal of judgments issued in felonies, within ten years from the date of the entry into force of this Constitution, and the law shall regulate this."

As for the circumstances of the issuance of the law, the Council of Ministers submitted to the House of Representatives a draft of the draft law, and after it was reviewed by the Legislative and Constitutional Affairs Committee of the House of Representatives and discussed, the law was issued, but it is remarkable that the period in which the draft law was submitted and then discussed and issued is very short.

The Council of Ministers submitted the draft law to the Legislative and Constitutional Affairs Committee of the House of Representatives on January 11, 2024, which held a meeting to discuss it on January 13, 2024, and put the amendments it considered on it, and then submitted it to the

House of Representatives for discussion on January 15, 2024, to be finally approved on January 16, 2024, and then published on the same day in the Official Gazette. On January 17, 2024, the decision of the President of the Cairo Court of Appeal No. 8 of 2024 was issued to form the Appellate Criminal Chambers, meaning that the law was submitted by the Council of Ministers, discussed by the House of Representatives, and published in the Official Gazette within a period not exceeding six days, which is not sufficient to discuss a law that would regulate the procedures for the most serious crimes.

There is no doubt that this short period has affected some of the texts within his body of work, which will constitute a dilemma in practice, which we will address as we analyze and comment on these articles. The following texts are the most important texts in which we see constitutional and legal defects that violate fair trial guarantees, but before that we can explain why the failure to appeal the judgments issued by the criminal courts represents a violation of fair trial guarantees.

Non-appeal of judgments issued by the criminal courts before the issuance of Law 1 of 2024: -

Since the issuance of legislation regulating criminal procedures in Egypt, there has been no way to appeal the judgments of the criminal courts, which was a violation of the principle of litigation in two degrees, which is applied in the Egyptian judicial system in both civil cases and misdemeanors. As for felonies, there was no way to appeal them. Instead, the judgment issued by the criminal court was challenged directly before the Court of Cassation, which was discarded on the degree of litigation against the accused in a felony.

Before the issuance of Law No. 1 of 2024 on the amendment of some provisions of the Code of Criminal Procedure No. 58 of 1950, Article 381 stipulated that: -

"All judgments prescribed in misdemeanors and violations shall be followed before the criminal courts, unless otherwise stipulated. It is not permitted for the Criminal Court to issue a death sentence except with the unanimity of the opinions of its members. Before issuing this judgment, 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 the ten days following the sending of the papers to him, the court shall rule on the lawsuit. In the event that the function of the Mufti is vacant, he is absent, or there is an impediment to him, the Minister of Justice shall, by a decision from him, delegate

whoever takes his place. It is not permitted to appeal against the judgments of the criminal courts except by way of cassation or reconsideration. "

The last paragraph of the article stipulates that it is not permissible to appeal against the judgments issued by the criminal courts except by appeal in cassation and reconsideration. However, this method of appeal is one of the unusual methods of appeal, as the methods of appeal decided by the Egyptian legislator are divided into two parts, which are the normal methods of appeal, and the unusual methods. This division is due to the fact that the normal methods of appeal stop the implementation of the judgment, unlike the unusual methods of appeal that do not stop the implementation. 4

The normal methods of appeal are objection[38] and appeal. These methods are characterized by the fact that they are[39], according to the origin, permissible for the litigants of the lawsuit, whether they are based on legal reasons or on objective reasons. Resorting to the normal methods of

[38] Article 398 of the Code of Criminal Procedure stipulates that **"the opposition shall be accepted in the convictions in absentia issued in misdemeanors punishable by a penalty restricting freedom, by the accused or by the person responsible for civil rights within ten days following his announcement of the judgment in absentia other than the legal time limit. This announcement may be by a summary on a form issued by a decision of the Minister of Justice. In all cases, the announcement of the judgment shall not be considered by the administration. However, if the announcement of the judgment did not occur to the accused person, the date of the objection for him with regard to the sentenced punishment shall start from the day he becomes aware of the announcement. Otherwise, the objection shall be permissible until the lawsuit is dropped by the lapse of time. The announcement of the judgments in absentia and judgments considered in presence in accordance with Articles 238 to 241 may be made by a member of the public authority in the cases provided for in the second paragraph of Article 234."**

[39] Article 402 of the Code of Criminal Procedure stipulates that **"The accused and the Public Prosecution may appeal the judgments issued in the criminal case by the District Court in misdemeanors. However, if the judgment was issued in one of the misdemeanors punishable by a fine not exceeding three hundred pounds in addition to the restitution and expenses, it may not be appealed except for violation of the law, for an error in its application or interpretation, or for the invalidity of the judgment or the procedures that affected the judgment.**

As for the judgments issued by it in the articles of violations, they may be appealed:

(1) By the accused, if he is sentenced to a penalty other than a fine and expenses.

(2) From the Public Prosecution if it requests a ruling other than the fine and expenses and the accused is acquitted or does not rule on what it requested.

With the exception of these two cases, it is not permissible to file an appeal from the accused or from the Public Prosecution except for a violation of the law, an error in its application or interpretation, or the occurrence of an invalidity in the judgment or in the procedures that affected the judgment.

appealing the judgment results in a review of the matter before the same court in the case of objection or before a higher court in the case of appeal.

As for the unusual methods, they are represented in cassation[40] and seeking reconsideration[41], and these methods are characterized as permissible only to the opponent granted by the law this right and in specific cases and based on established reasons – legal reasons for the cassation appeal and objective for the request for reconsideration – and resorting to them does not result in

[40] Article 30 of the Law on Cases and Procedures of Appeal in Cassation stipulates that **"the prosecution, the convicted person, and the person responsible for civil rights and the plaintiff may appeal in cassation against the final judgment issued from the last degree in the articles of felonies and misdemeanors, in the following cases:**

1- If the contested judgment is based on a violation of the law or an error in its application or interpretation.

2- If the judgment is null and void.

3. If the proceedings are null and void, it shall have an effect on the judgment.

With the exception of judgments issued in misdemeanors punishable by a fine not exceeding twenty thousand pounds, and it is not permissible to appeal in relation to the civil lawsuit alone if the required compensation does not exceed the quorum of the cassation appeal stipulated in the Civil Procedure Law

and commercial. It is not permissible to appeal from any of the litigants in criminal and civil lawsuits, except with regard to his rights. However, the Attorney General may appeal the judgment in the interest of the accused. The original consideration is that the procedures were taken into account during the consideration of the lawsuit. However, the person concerned may prove by all means that these procedures have been neglected or violated, unless they are mentioned in the minutes of the session or in the judgment. If it is stated in one of them that they were followed, it is not permissible to prove that they were not followed except by means of an appeal for forgery. "

[41] Article 441 of the Code of Criminal Procedure stipulates that "it is **permissible to request a review of the final sentences issued for felonies and misdemeanors in the following cases:**

1- If the accused is convicted of a murder, then the plaintiff finds his murder alive.

2. If a person is sentenced for an incident, and then another person is sentenced for the same incident, and there is a contradiction between the two judgments so that the innocence of one of the two convicted persons can be inferred from it.

3- If a witness or expert is sentenced to punishment for perjury in accordance with the provisions of Chapter Six of Book Three of the Penal Code, or if he is convicted of forging a paper submitted during the hearing of the lawsuit, and the testimony, the expert's report, or the paper has an impact on the judgment.

4- If the judgment is based on a judgment issued by a civil court or a family court * and this judgment is canceled.

5. If facts occur or appear after the judgment or if papers were submitted that were not known at the time of the trial, and these facts or papers would prove the innocence of the convicted person. "

the suspension of the execution of the sentence – unless it is issued by the death penalty, it stops its execution – in addition to that it is not permissible to resort to appealing to the request for reconsideration unless the judgment becomes final.[42]

Thus, the text has confiscated the right of the convict in felonies to resort to ordinary methods of appeal, which give him advantages that affect his trial, which violates the guarantees of a fair trial, whether those advantages are established in accordance with the law or practice.

Consequences of the one-degree litigation in felonies and violation of fair trial guarantees: -

A/One of the most prominent defects faced by the single-degree litigation system in the judgments issued by the criminal courts is that the judgment is considered final and enforceable, because the cassation appeal does not suspend the execution of the contested judgment, according to the text of Article 469, which stipulates that "the cassation appeal shall not result in the suspension of execution unless the judgment is issued by the death penalty or is issued with jurisdiction in the case indicated in the last paragraph of Article 421." Thus, the defendant against a judgment in a felony begins to execute the judgment after its issuance, even if he challenges the judgment by cassation and the case is returned to the Court of Repatriation.

B/ Prolonging the duration of the litigation, as the cassation appeal takes a long time until the setting of a hearing for the appeal and the commencement of the lawsuit, as this period may extend to years from the filing of the appeal before the Court of Cassation until the setting of a hearing, which destroys the idea of prompt justice, which is one of the guarantees of a fair trial, especially since in many cases a judgment of acquittal is issued against the convicted person, who has served the prescribed sentence or three quarters of it before the issuance of a judgment, whether by the Court of Cassation or the Court of Repeat.

The reason for the slow litigation between the filing of the cassation appeal memorandum and the setting of a hearing in it is that the Court of Cassation is only one court throughout the Republic, based in Cairo, in which all cassation appeals are filed from all parts of the courts of the Arab Republic of Egypt, which disrupts the progress of the case due to the large number of cases that are considered before its circuits.[43]

[42] D. Sameh Al-Sayed Gad – Criminal Procedure Law – Professor of Criminal Law, Faculty of Sharia and Law, p. 484.
[43] Article 2 of the Judicial Authority Law No. 46 of 1972 stipulates that"the **seat of the Court of Cassation shall be the city of Cairo**".

A historical overview of single-degree litigation in felonies that has remained for decades and in violation of the Constitution and the International Bill of Human Rights.

The Code of Criminal Procedure is derived from the provisions of the French legislation issued in 1810, which introduced a one-tier system of litigation in felonies. The first Code of Criminal Procedure was issued in Egypt in 1875 and was called the Code of Criminal Investigation and was applied to mixed courts. As for the civil courts, Law No. 1883 was issued to them, until foreign privileges were canceled following the signing of the Treaty of Fautre in 1937 and the issuance of a new Code of Criminal Investigation applied by mixed courts. In 1950, the current Code of Criminal Procedure was issued by Law No. 150 of 1950 and has been amended throughout the past decades by issuing laws of amendment according to the will of the legislator and the changing needs of society until the last amendment in 2024. [44]

The French legislation continued to operate a one-tier litigation system in felonies until 2000 by Law No. 516 and amended the unjust legal situation with fair trial guarantees after the international criminal approach obligated States to abide by the two degrees of litigation in felonies, which was approved by the International Covenant on Civil and Political Rights, which Egypt signed on January 14, 1982, and published in the Official Gazette on April 14, 1982, as Article 14/5 of it stipulated that "Every person convicted of a crime has the right to resort, in accordance with the law, to a higher court in order to review his conviction and the punishment he was sentenced to."

The Arab Charter on Human Rights, which was adopted at the Sixteenth Arab Summit in 2004, stipulates in Article 16(7) that "Every accused person is innocent until proven guilty by a final judgment in accordance with the law, provided that during the investigation and trial procedures he enjoys the following guarantees: 7. If convicted of a crime, he has the right to appeal in accordance with the law before a higher judicial level."

as well as the African Charter in Article 7 "1. The right of litigation is guaranteed to all, and this right includes:

[44] The booklet " Litigation on two degrees in felonies is a necessity required by law and imposed by reality, Dr. Khairy Al-Kabbash.

A-The right to resort to the competent national courts to consider an act that constitutes a violation of the fundamental rights recognized to him, which are contained in conventions, laws, regulations, and prevailing custom. "

In addition to international agreements that recommend that States change their national legislation and guarantee the right of the convicted person to the felony of appeal, the Egyptian Constitution, in Article 96, establishes this right "The accused is innocent until proven guilty in a fair legal trial, in which he is guaranteed the guarantees of self-defense. The law shall regulate the appeal of sentences handed down in felonies, and the State shall provide protection for victims, witnesses, accused persons and whistleblowers, if necessary, in accordance with the law. "

This is in addition to the text introduced in the Constitution, which obliges the State to amend the Code of Criminal Procedure to allow the appeal of sentences issued in felonies and gives a period of ten years to provide material and human capabilities, as it stipulates in Article 240 that "the State shall ensure the provision of material and human capabilities related to the appeal of sentences issued in felonies, within ten years from the date of the entry into force of this Constitution, and the law shall regulate this."

Although the legislator has made many amendments to the Code of Criminal Procedure in recent years, it delayed the issuance of this law until the last hours of this deadline and issued Law No. 1 of 2024 on January 16, 2024, just 48 hours before the expiry of the ten-year deadline.

The ten-year period, which is a very long period for preparing and discussing the law, was not exploited. We were surprised that by issuing the parliamentary discussion of the draft law and then issuing it in a very short period, the House of Representatives took a period not exceeding six days only since the Council of Ministers submitted it to the Legislative and Constitutional Affairs Committee in Parliament and then discussed it with the members of the House of Representatives and issued it only 48 hours before the end of the ten-year period, which was reflected, of course, on the texts that came in the body of the law, which in some of them did not adhere to the guarantees of a fair trial.

It is worth mentioning that the situation has become more unfair to the rights of the accused in a fair trial after Article 12 [45]of the Criminal Procedure Law was amended by Law No. 11 of 2017,

[45] Article 12 of the Criminal Procedure Law No. 150 of 1950, after amendment by Law No. 11 of 2017, stipulates that "**the Criminal Chamber of the Court of Cassation may, when considering the matter, initiate the case, as stipulated in the previous article, and if the judgment issued in the new case is challenged, one of the judges who decided to institute it may not participate in its consideration**."

which gave the Court of Cassation the right to address the subject and the possibility of initiating the criminal case since the first appeal, which misses the opportunity for the convict to return the case to the Criminal Court again and even challenge the judgment issued by it for the second time, which is a serious violation of the guarantees of a fair and equitable trial and an attack on the rights of the convict in felonies, and discarded the rights of many convicts in felony cases in the period between the issuance of Law No. 11 of 2017 and the new law No. 1 of 2024.

There are many jurisprudences of the Egyptian Supreme Courts in which it is decided that the principle of litigation should be adhered to on two levels, including what the Supreme Constitutional Court stressed that the dispute should be considered on two levels as a guarantee of the right to litigation, as it ruled in one of its jurisprudences that:

"It is decided that, except in cases where the partial Sharia courts adjudicate in a dispute that falls within their final jurisdiction, and limiting the right of litigation in matters that adjudicate in one degree is within the discretionary power of the legislator in the field of regulating rights, and within the limits required by the public interest, the principle in the provisions that adjudicate in a preliminary manner in the substantive dispute is the permissibility of appeal, as the consideration of the dispute at two levels is a basic guarantee for litigation that may not be withheld from the litigants without explicit text and according to objective grounds, to the effect that derogation from it is not assumed, whether the appeal is considered_in the judgments issued in a preliminary capacity_as an inevitable way to monitor its integrity and correct its crookedness or as a means of transferring the dispute in its entirety, and with all the elements contained in it to the appellate court, to reconsider it, as a single judgment on this dispute does not provide a sufficient guarantee that takes care of justice, and ensures the effectiveness of its management in accordance with the levels committed by civilized countries."[46]

The rulings of the Supreme Constitutional Court have also confirmed the seriousness of criminal crimes in which penalties are often deprivation of liberty, which requires the need to achieve criminal justice to ensure the right of the accused to a fair trial, as they stipulate that:

" The conviction of the accused of the crime exposes him to the most serious restrictions on his personal freedom and the most threatening to his right to life , which are risks that can only be prevented in the light of effective guarantees that balance the right of the individual to freedom on

[46] Judgment of the Supreme Constitutional Court - Case No. 39 of 15 Judicial - Constitutional - dated 04-02-1995.

the one hand , and the right of the group to defend its basic interests on the other hand, and this is achieved whenever the criminal accusation is known as a charge , indicating its nature , detailing its evidence and all the elements associated with it , taking into account that the decision on this accusation is made by an independent and impartial court established by law , and that the trial is held publicly , Within a reasonable time, and that the court bases its decision to convict - if it concludes it - on the objectivity of the investigation it conducts, on an impartial presentation of the facts , and on a reasonable appreciation of the conflicting interests, all of which are essential guarantees without which a fair trial does not take place, and then guaranteed by the Constitution in Article 67 of it, and coupled with two guarantees that are considered among its components and fall under its concept , namely the presumption of innocence on the one hand , and the right of defense to refute a criminal charge on the other , which is a right reinforced by Article 69 of the Constitution and This is done by stipulating that the right to defend in person or by proxy is guaranteed." [47]

It is noteworthy that the Court of Cassation rejected the plea of unconstitutionality of the last paragraph of Article 381 of the Code of Criminal Procedure, which, prior to this amendment, stated that: It is not permitted to appeal against the judgments of the criminal courts except by way of cassation or reconsideration. " Based on its conflict with Article 96 of the Constitution, in Appeal No. 29658 of the judicial year 86 issued at the session of June 7, 2017, as the Court of Cassation also stated in another judgment in Appeal No. 9835 of the judicial year 83:

"What the appellant raises about the new constitution in terms of making the prosecution of felonies in two degrees, which allows him to decide to appeal against the judgment issued by him, is that what is included in the constitution in this regard does not mean that this amendment must be applied except with the response of the legislator and intervention from him to empty what is included in a specific and disciplined legislative text that transfers it to the field of work and implementation, according to which everyone is obligated, starting from the date specified by the legislative authority, to enforce its provisions, and therefore this aspect is an obituary for the wrong judgment in the application of the law and has no basis."

If the previous judiciary is correct in its result, it is considered incorrect in its basis, as the ordinary legislator does not have the right to suspend a right approved by the Constitution by failing to regulate it. Otherwise, the person concerned has the right to appeal against the unconstitutionality of the legislator's omission of a right decided by the Constitution, regardless of whether this right

[47] Supreme Constitutional Court - Case No. 13 of the 12th Judicial Year - Constitutional - dated 2-2-1992.

is directly enforceable or whether the intervention of the ordinary legislator is necessary to enforce it. Rights receive an umbrella of protection from the Constitution itself and the law is only a means of regulating them. Therefore, once the ten-year period prescribed in the Constitution has passed without regulating the legislator, everyone concerned has the right to appeal against unconstitutionality on the basis of legislative omission. The legislator does not have the right to suspend the implementation of a right decided by the Constitution by refraining from regulating the right after it has been decided by the Constitution.

As for litigation in two degrees in the International Bill of Human Rights, it stems from the right to resort to justice, which was approved by Article 8 of the Universal Declaration of Human Rights, which stipulates that:

"Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted to him by the Constitution or by law."

Article 14 (5) of the International Covenant on Civil and Political Rights also states: -

"Every accused person convicted of a criminal act has the right to resort to a higher court to review the conviction and punishment imposed on him."

Article 16 (7) of the Arab Charter: "Every accused person is innocent until proven guilty by a final judgment in accordance with the law, provided that during the investigation and trial procedures he enjoys the following guarantees:

7- His right, if convicted of a crime, to appeal in accordance with the law before a higher judicial level."

Also, Article 2(1) of the Seventh Protocol to the European Convention stipulates that: -

"Every person who has been convicted of a criminal offence by a court has the right to have his conviction or sentence reviewed by a higher court. The law shall regulate the exercise of this right and the grounds on which it may be exercised. "

The provisions of Law No. 1 of 2024 amending the Criminal Procedure Law, which represent a violation of fair trial guarantees: -

Article 419 bis 2

> The Public Prosecution may appeal the judgments issued in absentia in the felonies articles.

This article was added among the articles that were added to the Code of Criminal Procedure by virtue of the amendment to Law 1 of 2024, where some new texts were added, namely from Article 419 bis to 419 bis 10, which are procedural articles related to the appeal procedures before the new appellant criminal courts, and the dates of appeal before them, which were approved by 40 days from the issuance of the judgment for the Public Prosecution, the accused and the civil plaintiff, and 60 days for the Public Prosecutor, and also clarifies the owners of the right to appeal against the appeal and other procedures and conditions for accepting the appeal in felonies.

As for Article 419 bis 2, it allows the Public Prosecution to appeal in absentia judgments issued by the Criminal Court, whether the judgment has been convicted or acquitted. The law gives the Public Prosecution the right to appeal only in absentia judgments issued by acquittal, which is the practice of the legislator, without giving it the right to appeal in absentia judgments issued by conviction, except for those issued in violation of the law.

This raises important legal questions, especially since jurisprudence has tended to limit the right of the Public Prosecution to appeal to acquittals only, since giving the Public Prosecution the right to appeal against convictions in absentia would obstruct cases and distract judges, especially if the accused made an objection before the same court in the judgment issued against him in absentia. At the same time, the Public Prosecution appealed the same judgment before the Appellant Criminal Court, and therefore the same case will be pending before the courts of the Criminal Court and the Appellant Criminal Court. As soon as the accused appears, this will mean that the judgment issued in his absence is null and void, which is approved by the judicial precedents of the Court of Cassation.

It is noteworthy that the possibility of appeal by the Public Prosecution against judgments in absentia in an absolute manner was not new in the Egyptian legislative environment. Article No. 33 of Law No. 57 of 1959 on cases and procedures for appeal before the Court of Cassation granted the Public Prosecution a cassation appeal against the judgment issued by the Criminal Court in the absence of the accused of a felony, as it stipulated that: -

"The Public Prosecution, the plaintiff of civil rights, and those responsible for them, may appeal by way of cassation against the judgment issued by the Criminal Court in the absence of the accused of a felony."

Then Law No. 74 of 2007 was issued to repeal that article, which resulted in the inadmissibility of the Public Prosecution's appeal in cassation against the judgment issued by the Criminal Court in the absence of the accused of a felony. Therefore, Article 419 bis 2 was a reproduction of previously canceled texts.

Prior to the issuance of the new amendment to the Criminal Procedure Law, the Court of Cassation approved that the judgment in absentia shall not lapse in the event of the arrest of the accused against whom a judgment in absentia is issued in an article of felonies on the sentence issued for punishment or compensation in the absence of the accused of a felony. The forfeiture of a default judgment issued in a felony is limited to a case if the judgment is a conviction. As for the judgments issued without conviction, they are not forfeited in accordance with the text of Article 395 of the Criminal Procedure Law and do not entail the reinstatement of the procedures.[48]

The judicial rulings of the Court of Cassation have also been repeated not to rely on the Public Prosecution's appeal against the convictions issued in the absence of the accused, especially after

[48] Article 395 of the Criminal Procedure Law stipulates that: "If the convicted person appears in his absence, is arrested, or his private agent attends and requests a retrial before the lapse of the sentence by the lapse of time, the President of the Court of Appeal shall determine the earliest hearing for the review of the case, and the person arrested shall be remanded in custody at this hearing. The court may order his release or remand in custody until the completion of the consideration of the case. In this case, the court may not emphasize what the judgment in absentia ruled. If the convicted person in his absence or his special agent fails to attend the hearing specified for the review of his lawsuit, the judgment against him shall be considered as standing. If the convicted person appears in his absence again before the lapse of the sentence, the prosecution shall order his arrest. The president of the court of appeal shall specify the nearest hearing for the review of the lawsuit, and he shall be offered detention at this hearing. The court may order his release or provisional detention until the completion of the lawsuit. If the previous judgment on the guarantees has been implemented, the court shall order the refund of all, or part of the amounts collected. If the person sentenced to death dies in his absence, the provisions shall be re-sentenced against the heirs. "

the appearance of the accused or his arrest before the lapse of the sentence by the lapse of the period and ruled the invalidity of the judgment ruled by force of law, which was confirmed by the judicial precedents of the Court of Cassation, as it ruled that: -

"Whereas the Code of Criminal Procedure, in Chapter Three of Part Two of Book Two, entitled" Procedures to be followed in the articles of felonies against absent defendants ", stipulates in Article 395 that "If the convict is present in his absence or arrested before the lapse of the sentence by lapse of time, the previous judgment shall inevitably be nullified, whether with regard to punishment or inclusions, and the case shall be reconsidered before the court. " This provision states that the judgments issued by the Criminal Court in a felony shall inevitably be nullified by force of law in the presence of the convict in his absence or arrest, and the reason is that the retrial in accordance with this article is not a grievance filed by the convict, but rather it is by law as a trial commenced. Accordingly, the text of Article 33 of the Law on Cases and procedures of appeal before the Court of Cassation promulgated by Law No. 57 of 1959 is limited to authorizing the Public Prosecution, the civil rights plaintiff, and the person responsible for such judgment, each with regard to it."[49]

It also ruled in the same matter in another judgment that: -

"Whereas Article 395 of the Code of Criminal Procedure stipulates that "if the convicted person appears in his absence or is arrested before the lapse of the sentence by the lapse of time, the previous judgment shall inevitably be nullified, whether with regard to the penalty or the implications, and the case shall be reconsidered before the court, and if the previous judgment with the implications has been executed, the court shall order the refund of all or part of the amounts collected. " - The meaning of this provision is to determine the nullity of the judgment issued in the absence of the accused of a felony and to consider it as if it had not been. Whereas the Appellee - as disclosed by the Public Prosecution - was arrested on December 7, 1986 and the case was sent to the Court of Appeal to repeat the procedures against him, and then the contested default judgment becomes null and void. Whereas this nullity has the meaning of the lapse of the judgment issued in the absence of the respondent, which makes the appeal irrelevant, and therefore the appeal submitted by the Public Prosecution is considered lapsed by its lapse. " [50]

[49] Court of Cassation - Criminal - Appeal No. 89 of 55 Judicial on 07-03-1985.

[50] Court of Cassation - Criminal - Appeal No. 891 of 57 Judicial on 22/12/1987

The Court of Cassation also recognized that the judgment issued in the absence of the accused shall not be considered, as it ruled that: -

"It is decided in the Court of Cassation that the lesson in describing the judgments is the reality of reality, so the judgment is not considered in the presence of the opponent unless he attends and has the opportunity to present his full defense."[51]

It is worth mentioning that this article has already sparked a wide legal debate in the discussion session of the draft law in Parliament when one of the MPs, Ayman Abu Al-Ela, spoke about this problem and said that this article should be amended so that the right of the Public Prosecution to appeal is limited to only the acquittal judgments issued in absentia. The Minister of Justice, Omar Marwan, approved this amendment proposed by MP Ayman Abu Al-Ala, saying that "the amendment was appropriate. It is more accurate to limit the prosecution's appeal to only the acquittal judgments issued, based on the ruling of the Court of Cassation that the prosecution's appeal in these cases is limited to acquittal only." However, this amendment was rejected on the grounds that this would cause a waste of public money to the state due to some lawsuits.[52]

Law 1 of 2024 also amended Article 374 of the Code of Criminal Procedure and added a final paragraph to the article stipulating that the court shall not contact the case until after the accused is notified of the referral, as it states that: -

"The accused and witnesses shall be summoned to appear before the Criminal Court of First Instance at least ten full days before the hearing. In cases where the appeal of the judgment is from the Public Prosecution, the accused shall be notified of the appeal and shall appear before the appellate criminal court at least ten full days before the hearing. The court shall communicate the case only by notifying the accused of the referral order. "

Thus, Article 419 bis 2 was legislated without extensive discussions on it and Parliament was not given enough time to discuss it and clarify the legal and factual problems that will result from it when the article is applied in practice.

[51] Court of Cassation - Criminal - Appeal No. 652 of the year 44 judicial on 24-06-1974.

[52] Al-Masry Al-Youm " Debate in the"Deputies" about the right of the prosecution to appeal against absentia judgments" https://2u.pw/L5NHUCW.

Article 419 bis 8

If the judgment is issued in the presence of the death penalty, and it is not appealed within the legally prescribed time limit, the Public Prosecution shall follow the provision of Article 46 of the Law on Cases and Procedures of Appeal before the Court of Cassation promulgated by Law No. 57 of 1959.

This article is one of the texts that have also been added to the Code of Criminal Procedure under Law No. 1 of 2024. If the dates of appeal against the death penalty convict have expired, the Public Prosecution shall conduct the cassation appeal procedures in accordance with Article 46 of the Law on Cases and Procedures of Cassation Appeal, which stipulates that:

"Without prejudice to the foregoing provisions, if the judgment is issued in presence of the death penalty, the Public Prosecution shall submit the case to the Court of Cassation accompanied by a memorandum of its opinion on the judgment, within the date indicated in Article (34). The court shall rule in accordance with the provisions of the second paragraph of Article (35) and the second paragraph of Article (39)."

Thus, from the viewpoint of the legislator, he obligated the Public Prosecution in the event that the person sentenced to the death penalty does not appeal against the judgment issued against him, it is conducting cassation appeal procedures in order to preserve the right of the person sentenced to the death penalty in a trial in which the methods of appeal are exhausted. However, we believe that despite the relevance of the point of view, the legislator in this way has missed a degree of litigation against the person sentenced to death, which is the appeal, and at the same time can not oblige the Public Prosecution to appeal because it is one of its rights that cannot be forced upon it.

Thus, we see if the legislator can not force the Public Prosecution to appeal the death sentence before the Appellant Criminal Court, for which the judgment was issued in favor of the case as an indictment authority, and it is the one who assigned the indictment to the convict, and the appeal in the end is a right that should not force the Public Prosecution, the accused, or the plaintiff of the civil right against him, but the legislator had to carefully avoid the seriousness of the death penalty if he truly fears for the rights of the convict and ensure a fair trial and not The judgment shall be

executed except that the judgment has been appealed before the Court of Appeal if the Public Prosecutor – if the convict misses the dates of his appeal, which are 40 days - with his appeal authority within a period of 60 days – in accordance with Article 419 bis 4 – to [53] appeal the death sentence issued by the Criminal Court before the Court of Appeal if the convict does not appeal. Therefore, the legislator guarantees the right of the convict of the death penalty to exhaust the legal methods of appeal and adheres to the principle of litigation on two levels, especially since the death penalty is a cruel and very dangerous punishment, and it is impossible to correct any error after its implementation.

As for the text in this case, although it tried to remedy the right of the person sentenced to death to appeal in cassation by the prosecution if he missed the dates of his appeal, he nevertheless missed a degree of litigation, which is the appeal stage, and we have already mentioned the need to litigate two degrees as a right of the accused, especially in a serious and harsh punishment such as the death penalty.

The case law of the Court of Cassation has settled on the need for the legislator to adhere to litigation in two degrees, as it ruled: -

"The decision - and according to the practice of the Court of Cassation - that the principle of litigation in two degrees is one of the basic principles of the litigation system, which the court may not violate, and the litigants may not waive."[54]

The Supreme Constitutional Court also ruled that: -

" The conviction of the accused of the crime exposes him to the most serious restrictions on his personal freedom and the most threatening to his right to life , which are risks that can only be prevented in the light of effective guarantees that balance the right of the individual to freedom on

[53] Article 419 bis 4 of the Code of Criminal Procedure stipulates that "an appeal shall be filed with a report in the registry of the court that issued the judgment, within forty days from the date of the judgment. If the appeal is filed with the State Lawsuits Authority, the report must be signed by at least one counsel. If the appeal is filed with the Public Prosecution, the report must be signed by at least one public defender. The Attorney General may appeal the judgment within sixty days from the date of its issuance, and he may decide to appeal in the registry of the court competent to hear the appeal. "

[54] Court of Cassation - Civil - Appeal No. 1627 of the year 58 Judicial on 12-06-2005.

the one hand , and the right of the group to defend its basic interests on the other hand, and this is achieved whenever the criminal accusation is known as a charge , indicating its nature , detailing its evidence and all the elements associated with it , taking into account that the decision on this accusation is made by an independent and impartial court established by law , and that the trial is held publicly , Within a reasonable time, and that the court bases its decision to convict - if it concludes it - on the objectivity of the investigation it conducts, on an impartial presentation of the facts , and on a reasonable appreciation of the conflicting interests, all of which are essential guarantees without which a fair trial does not take place, and then guaranteed by the Constitution in Article 67 of it , and coupled with two guarantees that are considered among its components and fall under its concept , namely the presumption of innocence on the one hand , and the right of defense to refute a criminal charge on the other , which is a right reinforced by Article 69 of the Constitution and This is done by stipulating that the right of defense, whether in person or by proxy, is guaranteed."[55]

International human rights covenants and treaties have also taken the principle of litigation on two levels as a principle that cannot be waived and considered it one of the guarantees of a fair trial, as Article 5/14 of the International Covenant on Civil and Political Rights stipulates that: -

"Every accused person convicted of a criminal act has the right to resort to a higher court to review the conviction and punishment imposed on him."

As well as Article 16/ (7) of the Arab Charter: "Every accused person is innocent until proven guilty by a final judgment in accordance with the law, provided that during the investigation and trial procedures he enjoys the following guarantees:

7- His right, if convicted of a crime, to appeal in accordance with the law before a higher judicial level."

[55] Supreme Constitutional Court - Case No. 13 of the 12th Judicial Year - Constitutional - dated 2-2-1992.

Section Two/ Law of Cases and Procedures of Cassation Appeal No. 57 of 1959.

Law No. 151 of 2022 on Amending Some Provisions of the Law of Cases and Procedures of Appeal in Cassation.

On 8/7/2022, Law No. 151 of 2022 was issued to continue Law No. 7 of 2016 amending some provisions and texts of the Law of Cassation Procedures and Cases Law No. 57 of 1959, and it was decided to apply this law as of 1/10/2022. Article 3 stipulated that it shall be applied for a period of three years only. Article 36 bis was amended to establish in the Cairo Court of Appeal one or more departments to consider cassation appeals against judgments issued by the Appellate Misdemeanors Court and gave it the authority of the Court of Cassation to decide on these appeals in terms of form and objectivity. It obliged it to refer to the principles established by the Court of Cassation and not to retract from them, otherwise it referred the appeal to the President of the Court of Cassation, including the reasons for this retraction, and the latter may refer it to the competent authority in accordance with Article 4 [56] of the Judicial Authority Law to discuss the justifications for this retraction, and it gave the Attorney General only, whether on his own or at the request of the litigants, to request the Court of Cassation to review this judgment by the General Authority for Criminal Materials to consider the retraction of a legal principle contained in it decided by the Court of Cassation, and specified a period of three years as a period to be applied In this article, it was said that this period – when Law 7 of 2016 was enacted - would be sufficient to revolutionize Egyptian criminal legislation, and then three years later Law 151 of 2022 was issued to continue Law 7 of 2016.[57]

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[56] Article 4 of the Judicial Authority Law No. 46 of 1972 stipulates that "the General Assembly of the Court of Cassation shall form two bodies of the Court, each of which shall be composed of eleven judges headed by the President of the Court or one of his deputies, one of them for criminal matters and the other for civil, commercial, personal status and other matters. If one of the circuits of the Court decides to withdraw a legal principle decided by previous judgments, the case shall be referred to the competent authority of the Court for adjudication. The authority shall issue its judgments by amendment by a majority of at least seven members. If one of the circuits decides to withdraw a legal principle decided by previous judgments issued by other circuits, the case shall be referred to the two bodies jointly for adjudication. The judgments in this case shall be issued by a majority of at least fourteen members."

[57] To view an article published by Al-Ahram newspaper entitled “Amendments to the "Cassation". Do you end court overcrowding? " Please click on the link https://gate.ahram.org.eg/daily/News/551351.aspx https://gate.ahram.org.eg/daily/News/551351.aspx Published on September 17, 2016, year 141, issue 47402, and monitor the opinion of Counselor Bahaa Abu Shaqqa, former Chairman of the Constitutional and Legislative Affairs Committee of the House of Representatives in Law 7 of 2017 amending some articles of the Law on Cases and Procedures of Appeal in Cassation, as well as Counselor Muhammad Adel Al-Shourbaji, First Vice-President of the Supreme Judicial Council and the Court of Cassation, and lawyer Sameh Ashour, former Bar President.

Article 36 bis - Law on Cases and Procedures of Cassation Appeal: -

1. The appellant may, in a judgment issued by the criminal court with a restrictive penalty or deprivation of liberty, request in the memorandum of the reasons for the appeal to temporarily suspend the execution of the judgment issued against him until the appeal is decided. The president of the court shall promptly determine a session to consider this request, in which the prosecution shall announce it.

The court shall, if it orders the suspension of the execution of the punishment, set a hearing to consider the appeal before it within a time limit not exceeding six months, and refer the appeal file to the prosecution to deposit a memorandum of its opinion within the time limit it specifies.

2-The appeal against the judgments of the Misdemeanors Court of Appeal shall be before one or more of the Criminal Courts of the Cairo Court of Appeal, sitting in a counseling chamber, to decide by a reasoned decision on the disclosure of such appeals of non-acceptance in form or substance, and to decide to refer other appeals for consideration at the hearing before it as a matter of urgency. In this case, it may order the suspension of the execution of the penalty restricting freedom until the appeal is decided. The provisions of the Law on Cases and Procedures of Appeal before the Court of Cassation shall apply to the appeals that these courts have jurisdiction to hear.

However, if the court decides to accept the appeal, it must, if the reason for the appeal relates to the subject matter, set a next session to consider the subject matter and rule on it.

Such courts shall abide by the established legal principles established in the jurisdiction of the Court of Cassation. If they decide to waive a stable legal principle decided by the Court of Cassation, they shall refer the case, along with the reasons for which they decided to do so, to the President of the Court of Cassation to implement the provisions of Article No. (4) of the Judicial Authority Law.

If those courts rule on the appeal without complying with the provisions of the preceding paragraph, the Attorney General alone, whether on his own initiative or at the request of the concerned parties, may request the Court of Cassation to present the matter to the Public Authority for Criminal Materials to consider this ruling. If the Authority finds that the presented judgment violates a legal principle of the established principles decided by the Court of Cassation, it shall cancel it and rule again on the appeal. If the Authority deems that the judgment is approved, it shall rule that the request is not accepted.

The request must be submitted by the Attorney General within sixty days from the date of the judgment, accompanied by a memorandum of reasons signed by a public defender at least.

3-The court may, in all cases, if it orders a stay of execution, order the submission of a bail, or the procedures it deems necessary to ensure that the appellant does not flee.

Due to the accumulation of felony appeals before the Court of Cassation, every few years from the enactment of a similar law, the legislator resorts to relieving the burden before the courts of cassation, so that the appeals of misdemeanors are considered before the courts of appeal.

The amendment included several points that we believe can negatively affect the guarantees of a fair trial, including the consideration of cassation appeals - on the judgments of the Appellate Misdemeanors Court – before the judges of the Court of Appeal – instead of the Court of Cassation – even if they are obligated while in the process of ruling in the cassation before them to judge in accordance with the principles established in the judgments of the Court of Cassation, due to the fact that the judges of the Court of Cassation are more experienced and knowledgeable of the law and its interpretations, and more familiar with the legal and constitutional principles that enable them to develop A new legal principle that has absolute authority can be relied upon in subsequent judgments, and therefore the judgment by the judges of the Court of Appeal will deprive the appellant from having his case considered by the judges of the Court of Cassation themselves, which is higher than the Court of Appeal, especially since the formation of the Court of Cassation includes five judges and thus differs from the formation of the Court of Appeal[58], which includes three judges in accordance with the provisions of Articles 3 and 7[59] of the Judicial Authority Law No. 46 of 1959, which shows the importance of the Court of Cassation and confidence in it, which goes to the will of litigants to present their case before it, and thus depriving the litigants from being considered The judges of the Court of Cassation in their appeals in cassation, especially since

[58] Article 3 of the Judicial Authority Law No. 46 of 1972 stipulates that "**the Court of Cassation shall be composed of a president and a sufficient number of vice-presidents and judges. It shall have chambers for the consideration of criminal matters and chambers for the consideration of civil, commercial, personal status and other materials. Each chamber shall be headed by the president of the court or one of his deputies. If necessary, the chamber may be headed by the most senior judge, and judgments shall be issued by five judges.**"

[59] Article 7 of the Judicial Authority Law No. 46 of 1972 stipulates that "**in each court of appeal, one or more courts shall be formed to hear criminal cases, each of which shall be composed of three judges of the Court of Appeal. The Criminal Court shall be presided over by the President of the Court, one of his deputies, or one of the heads of departments. If necessary, it may be presided over by one of its judges.**"

according to the text of Article [60]47 of the same law, the judgments issued by this court are final and not subject to appeal.

As for the fourth paragraph of the second clause of the article, it poses a greater danger, as it decided that in the event that the Court of Appeal formed to hear cassation appeals against the provisions of the appealed misdemeanors, and violated one of the principles established in the court of cassation, the Attorney General alone has the right to refer to the President of the Court of Cassation until this judgment is decided by the body competent to review the judgments, and this represents a violation of the right of the convict, which the article also did not allow this right, but only stated that the Attorney General has this right, whether on his own or at the request of the litigants, which makes the Public Prosecution a litigant and a judgment at the same time, as it is considered a litigant throughout the stages of the lawsuit and has the right to claim, so how can the recourse to the Court of Cassation be suspended by the litigants on a request submitted to the Attorney General and the Public Prosecution originally biased against the accused, who filed the indictment against him!!

This constitutes a denial to the appellant of the privilege granted by the article to the Attorney General responsible for the work of the members of the Public Prosecution, which is a litigant in the lawsuit and is discrimination that violates the guarantees of a fair trial.

In justifying this amendment, it was said that it will achieve the desired justice and reduce the burden on the Court of Cassation due to the large number of cases pending before it, especially since after Law No. 11 of 2017, its powers expanded by becoming an arbitrator after it was a court of law under Article 381 of the Criminal Procedure Law and Article 39 of the Cassation Appeal Cases and Procedures Law. However, this justification is counterproductive, as there are many solutions that could have alleviated this burden without causing a breach of fair trial guarantees, such as the establishment of a court of cassation in another governorate, for example, which is competent to hear appeals of its circuits. It is obvious that there is a huge amount of cases when there is a single court of cassation that is competent to hear appeals across the twenty-seven governorates, especially with the high rates of poverty and the low level of public education, which affect the high rate of crimes and then the courts are overcrowded with cases, and therefore judges are chosen for the new court of cassation based on the conditions of the Judicial Authority Law to

[60] Article 47 of the Law on Cases and Procedures of Appeal in Cassation stipulates that "**Neither the judgments of the Court of Cassation nor the judgments of the courts stipulated in Article 36 bis of this law may be appealed by any means of appeal unless one of the cases of review stipulated in the Criminal Procedure Law is available, whenever the court has overturned the contested judgment and dealt with the consideration of the matter.**"

appoint cassation judges, and if real discussions are held on the search for solutions, many jurists do not undertake by Others to provide solutions that balance this burden and the right of the litigants to consider their criminal case according to fair and equitable standards.

It is never right to issue laws that negatively affect the rights of litigants and fair trial standards as a whole in exchange for paying lip service to prompt justice. Justice will not be happy with the injustice of the arbitrators and the issuance of flawed judgments in exchange for the illusory investigation of prompt justice.

It is worth mentioning that this provision is not new to the Egyptian legislative environment. In 2007, Article 36 bis was amended by Law No. 74 of 2007. The Article stipulated that "the appeal against the judgments of the Appellant Misdemeanors Court issued in misdemeanors punishable by imprisonment for a period not exceeding two years or a fine not exceeding a maximum of twenty thousand pounds before one or more criminal courts, the Cairo Court of Appeal, sitting in a consultation room, shall be decided by a reasoned decision on what to disclose of its non-acceptance in form or subject matter, and to decide to refer other appeals for consideration at the hearing before it as a matter of urgency. In this case, it may order the suspension of the execution of the freedom-restricting penalty until the appeal is decided. The provisions of the Law on Cases and Procedures of Appeal before the Court of Cassation shall apply to the appeals that are competent to be heard by these courts. However, if the court decides to accept the appeal, it must, if the reason for the appeal is related to set a subsequent hearing to consider and adjudge the matter. These courts shall abide by the established legal principles established in the jurisdiction of the Court of Cassation. If they decide to abandon a stable legal principle decided by the Court of Cassation, they shall refer the case, along with the reasons for which they decided to do so, to the President of the Court of Cassation to implement the provisions of Article 4 of the Judicial Authority Law. If these courts rule on the appeal without complying with the provisions of the preceding paragraph, the Attorney General alone, whether on his own initiative or at the request of the concerned parties, may request the Court of Cassation to present the matter to the Public Authority for Criminal Materials to consider this ruling. If the Authority finds that the presented judgment violates a legal principle established by the Court of Cassation, it shall cancel it and rule again on the appeal. If the Authority deems that the judgment is approved, it shall rule that the request is not accepted. The request must be submitted by the Attorney General within sixty days from the date of the judgment accompanied by a memorandum of reasons signed by a public defender at least. "

The aforementioned article was applied for a period of five years only, after which the appeals against the judgments issued by the Misdemeanors Court appealed before the Court of Cassation were re-examined. However, this article was more accurate than the present article, which was amended by Law 7 of 2016, as it specified the misdemeanors that the Court of Appeal can consider as a court of cassation, so it specified the misdemeanors punishable by imprisonment for a period not exceeding two years or a fine not exceeding a maximum of twenty thousand pounds.

Law No. 74 of 2007 was challenged before the Supreme Constitutional Court in Case No. 61 of the 32nd Constitutional Judicial Year, especially Article 36 bis, which gives the right of the Cairo Court of Appeal to consider cassation appeals against the rulings of the Appellate Misdemeanors Court.[61]

The lawsuit summarizes that one of the persons was accused by the Public Prosecution of publicly insulting and insulting the Supreme Administrative Court. The Public Prosecution referred the lawsuit to the Misdemeanors Court, which sentenced the plaintiff to three years in prison with effect. The plaintiff appealed that judgment before the Appellant Misdemeanors Court, which amended the appealed judgment to become one year in prison with work and enforcement. However, the plaintiff did not accept this ruling, which led him to challenge it by cassation before the Court of Cassation, which referred him to the Criminal Court – pursuant to Law No. 74 of 2007 By amending some provisions of the Criminal Procedure Law and the Law on Cases and Procedures of Appeal before the Court of Cassation – The competent Court of Cassation ruled to reject the appeal. The plaintiff submitted a request to the Public Prosecutor to submit the order to the General Authority for Criminal Materials to consider the aforementioned judgment pursuant to Article (36 bis, item 2) of the aforementioned Law No. 74 of 2007. However, the Public Prosecutor rejected the request, which prompted the plaintiff to file a lawsuit before the Administrative Court against the Public Prosecutor requesting a ruling to suspend the execution and cancel the decision of the Public Prosecutor to reject his request. During the consideration of that lawsuit, the plaintiff argued that the text of Article (36) was unconstitutional Repeating item (2) of Law No. 74 of 2007 , including the right to request the concerned parties to submit the order of judgments issued by the Criminal Chambers of the Cairo Court of Appeal, which considers cassation appeals in misdemeanors, to the Court of Cassation is limited to the Attorney General alone, despite being an opponent in the criminal case.

[61] Judgment of the Supreme Constitutional Court No. 61 of the 32nd Constitutional Judicial Year dated 1/4/2012 (**Source: -** East Laws Network website accessed 22/6/2021). To view the full judgment published on the Supreme Constitutional Court website, please click on the link https://www.eastlaws.com/data/ahkam/details/336964.

The Administrative Court ruled to accept the lawsuit in form, and to suspend the implementation of the contested decision to reject the plaintiff's request to submit the order of the judgment issued by the Cairo Court of Appeal referred to to before the Court of Cassation. However, the judgment did not satisfy the Public Prosecution, which challenged it before the Supreme Administrative Court, and then issued a decision to suspend the consideration of the lawsuit and set the respondent (the plaintiff in the present case) a period of three months to file the lawsuit of unconstitutionality of the text of Article (36 bis item 2) of Law No. 74 of 2007, so he filed the lawsuit before the Supreme Constitutional Court, which issued the ruling of inadmissibility of the lawsuit in form, and did not address the subject matter of the lawsuit, and its reasons stated that the case did not reach the Supreme Constitutional Court in the manner specified by law in Article 29 [62]of the Supreme Constitutional Court Law No. 48 of 1979. "

Thus, although the judgment of the Supreme Constitutional Court did not address the subject of the appeal, the violation of the principle of inequality before the law regarding the fact that only the Attorney General decides to refer to the Criminal Public Authority to decide whether the judgment of the Appeals Chambers entitled to hear the appeals of the appeals of misdemeanors is reflected in this judgment, as the plaintiff in this case has submitted a request to the Public Prosecution, which is considered his opponent in the criminal case to present the judgment to the body entrusted with this in the Court of Cassation, and therefore its rejection of this request was presumed, as it accused him of the charge in which he was sentenced, which highlights how Article 36 bis violated the guarantees of a fair trial, as well as the appellant's sense of dissatisfaction, which he hoped to be considered by the judges of the Court of Cassation.

[62] Article 29 of the Supreme Constitutional Court Act No. 48 of 1979 stipulates that "the **Court shall exercise judicial control over the constitutionality of laws and regulations in the following manner:**
(a) If, during the hearing of a lawsuit, a court or body of competent jurisdiction finds that a provision in a law or regulation necessary for the adjudication of the dispute is unconstitutional, the lawsuit shall be stayed and the papers shall be referred, free of charge, to the Supreme Constitutional Court for adjudication of the constitutional question.
(b) If, during the hearing of a lawsuit before a court or body of competent jurisdiction, a litigant pleads the unconstitutionality of a provision of a law or regulation, and the court or body considers that the plea is serious, it postpones the hearing of the lawsuit and specifies a time limit not exceeding three months for the person who raised the plea to file the lawsuit before the Supreme Constitutional Court. If the lawsuit is not filed within the time limit, the plea shall be deemed null and void. "

Article 36 bis of the Law on Cases and Procedures of Appeal in Cassation contradicts the Constitution and international law:

There is no doubt that Article 36 bis violates the discrimination it carries in contradiction to the Constitution, as Article 96 states: "The accused is innocent until proven guilty in a fair legal trial, in which he is guaranteed the guarantees of self-defense. The law regulates the appeal of judgments issued in felonies. "It is obvious that his right to equality before the courts with the Public Prosecution as his opponent in the criminal case, as well as the right to equality between the defense and the prosecution, are two guarantees of the right to defend himself, as well as his right to have his appeal reviewed by a higher court than the court that issued the contested judgment. In this case, the Court of Cassation, especially since Article 92 prohibits the law from impairing or diminishing the rights of the citizen, as it stipulates that" the rights and freedoms inherent in the person of the citizen are neither accepted as impairment nor derogation, and no law regulating the exercise of rights and freedoms may restrict them in a way that affects their origin and essence. "As well as Article 53, whose first paragraph states that "Citizens are equal before the law. "

As for the International Bill of Human Rights, which Article 93 of the Constitution stipulates[63] that international conventions and treaties ratified by Egypt are part of the Egyptian legislative fabric and have the force of law, Article 2 (1/2) of the International Covenant on Civil and Political Rights stipulates that "1. Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

2. Where not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such legislative or other measures as may be necessary to give effect to the rights recognized in the present Covenant."

It also states in Article 14/1 regarding equality before the courts that "All people are equal before the judiciary. In the determination of any criminal charge against him or of his rights and

[63] Article 93 of the Constitution stipulates that "**the State shall abide by international human rights conventions, covenants and instruments ratified by Egypt, and shall have the force of law after their publication in accordance with the prescribed conditions.**"

obligations in any civil action, everyone shall be entitled to a fair and public hearing by a competent, independent, and impartial tribunal established by law. "

Similarly, the Universal Declaration of Human Rights stipulates in article 7 that "All are equal before the law. They are entitled to equal protection of the law without discrimination. They are also entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination."

The principles of fair trial in Africa in relation to equality of arms between the prosecution and the defense state in section A (2) (a) that "one of the fundamental criteria for the fair hearing of claims is the principle of equality of arms".

The Public Prosecution, as a prosecutor, thus finds the state and its institutions next to it in the face of the accused, so legislation must ensure equal opportunities between them so that the accused feels reassured and does not prejudice his rights and insult them, as it also said in the principles of fair trial in Africa Section 6 (a) " In criminal cases, where the prosecution finds all state agencies behind him, the principle of equal opportunities between the defense and the prosecution becomes an important guarantee of the right of the accused to defend himself, and it also ensures that the defense has a real opportunity to prepare and present his case in the case, and to discuss the arguments and evidence presented to the court."

Amnesty International has previously stated in a report called "Fair Trial Evidence" that: -

"The guarantees of equality in the context of the trial stages involve several aspects. It prohibits the use of discriminatory law, and discrimination in the implementation of laws. It includes the right to equality before the law and the right to be protected by the law on an equal basis with others; it also includes the right of everyone to have recourse to the courts, and to be treated in the same way as others are treated by the courts. "[64]

The case law of the Egyptian Supreme Courts has confirmed the need not to distinguish between litigants – considering that the Public Prosecution is an opponent in the lawsuit on an equal footing with the rest of the litigants – as the Supreme Constitutional Court said in this regard: -

" Whereas the jurisprudence of this court has been that people do not differentiate among themselves in the field of their right to access their natural judge, nor in the scope of the procedural

[64]"Fair Trial Guide" report prepared by Amnesty International - Second Edition - p. 103.

and substantive rules governing the same judicial litigation, nor in the effectiveness of the defense guarantee guaranteed by the constitution or the legislator for the rights they claim, nor in their requirement according to uniform standards when the conditions of their request are met, nor in the methods of appeal that regulate them, but the same rights must have uniform rules, whether in the field of litigation, defense, performance, or appeal against the provisions that relate to them."

The same judgment also stated about the Public Prosecution and the need to ensure the right of defense of the litigants and that their weapons are equalized on proving the accusation and denying it, as it said: -

" Whereas the procedural means possessed by the indictment authority in the field of proving the crime are supported by huge resources that the accused falls short of, and are only balanced by the presumption of innocence coupled with a competent defense to ensure that the crime is not convicted unless the evidence is clear of every suspicion that has its basis, and therefore it is not permissible to confer constitutional legitimacy on punitive texts that are not equivalent to the means of defense that it made available to both the indictment authority and its accused, so their weapons are not equalized in proving and denying them, and since the Constitution, as stipulated in Article 68, guarantees the right of defense - whether through originals in it, or through their clients - assumes that the role of lawyers is not formal or symbolic, but rather an actor that is not hindered, especially through legal texts that the legislator intervenes to discard it at a certain stage of litigation."

There are also many provisions that affirmed the presumption of innocence of the accused until he is convicted for the crime he is accused of committing in accordance with fair rules that do not prejudice his right to defense, and that this means that the procedural rules regulated by the legislator must ensure his rights from the tyranny or abuse of power, and that ensuring the right to litigation is only a single way to exercise the right of litigation stipulated in the Constitution, which is an inalienable right of the rule of law, which is the focus of the legal system of the state and the basis of its legitimacy. " [65]

[65] Judgment of the Supreme Constitutional Court No. 64 of 17 judicial year issued on 7/2/1998, as well as the judgment of the Supreme Constitutional Court No. 15 of 17 judicial year - Constitutional - dated 1995-12-02., as well as

Article 37 - Law on Cases and Procedures of Appeal in Cassation: -

The court shall rule on the appeal after reading the report drawn up by one of its members, and it may hear the statements of the Public Prosecution and lawyers on behalf of the litigants if it deems it necessary to do so.

This text and the discretionary power it grants to the Court of Cassation to hear or not hear the litigants if it deems it logical, aligns with the period when the Court of Cassation was a court of law that did not address the subject matter of the appeal—if the appeal against the judgment was before it for the first time. However, the text changed after the issuance of Law No. 11 of 2017, which amended some provisions of the Criminal Procedure Law and the Law on the Cases and Procedures of Appeal in Cassation—and other laws—granting the Court of Cassation the right to address the subject of the appeal even if the appeal is before it for the first time, whereas previously this was allowed only if the appeal had been filed for the second time. The discretionary power here poses a threat to the right of defense, especially for the defendant convicted of a felony with a custodial sentence. For him, litigation is limited to one degree according to Egyptian law - until 16/1/2024 sand the issuance of Law No. 1 of 2024 - which did not allow appealing against the articles of felonies, and he decided to appeal in cassation - according to the text of Article 12 [66]of the Criminal Procedure Law and Article 39[67] of the Law on Cases and Procedures of Appeal in Cassation - before the amendment twice if the appeal was Before the Court of Cassation the first time, it ruled either to reject or to return to the Criminal Court in a different circuit, and it had the

[66] Article 12 of the Criminal Procedure Law No. 150 of 1950 stipulates that "**the Criminal Chamber of the Court of Cassation may, when considering the matter, initiate the case, as stipulated in the previous article. If the judgment issued in the new case is challenged, one of the judges who decided to initiate it may not participate in its consideration**."

[67] Article 39 of the Law of Circumstances and Procedures of Cassation Appeal No. 57 of 1959 stipulates that "**If the appeal or its reasons are submitted after the deadline, the court shall rule that it is not acceptable in form. If the appeal is accepted and it is based on the violation of the law or the error in its application or interpretation, the court shall correct the error and rule according to the law.**
If the appeal is based on the invalidity of the judgment or the invalidity of the procedures that affected it, the court shall quash the judgment and consider its subject matter, and the legally prescribed principles for the crime that occurred shall be followed. The judgment issued in all cases shall be in presence.

right to appeal against its ruling for the second time before the Court of Cassation, which compensated for the imbalance in the Egyptian criminal legislation that the judgments of the Criminal Court are not subject to appeal in accordance with Article 381 [68]of the Criminal Procedure Law - before the issuance of Law 1 of 2024 - despite the provisions of the Constitution in Article 96 of the Law Regulation to appeal against the judgments of the Criminal Court. Therefore, after this amendment, there is no other opportunity for the defendant to be sentenced to deprivation of liberty, who must make all possible efforts and attempts to prove his defense before the Court of Cassation in contradiction with this text, which gives the Court of Cassation a permissible authority to hear the defense of the litigants, especially between this amendment and the issuance of Law 1 of 2024. Thus, for eight years, the rights of defense have been violated by the power of the Court of Cassation to hear the defense of the litigants.

In the midst of the package of differential amendments in the Egyptian criminal legislation by Law 11 of 2017, the legislator had to amend this text to oblige the Court of Cassation to allow the litigants before it to present their defense and give them the opportunity to prove their defenses and clarify and refute the facts to ensure the achievement of the guarantee of the right of defense and not to violate it, as the defense is one of the most important foundations of the right of litigation, that sacred right, which the trial is devoid of its content if it is violated, especially in felony articles whose punishment is depriving of freedom and even ends life in the event of a death sentence.

The Egyptian Constitution guarantees the right of defense and considers it one of the basic guarantees of a fair legal trial in Article 96: "The accused is innocent until proven guilty in a fair legal trial, in which he is guaranteed the guarantees of defending himself."

As well as the Supreme Constitutional Court in many jurisprudences, as it ruled that: -

" The defense guarantee guaranteed by the Constitution in the text of Article 69 cannot be separated or isolated from the right to litigation, as they are complementary and work together in the circle of judicial satisfaction, the avoidance of which is the final goal of judicial litigation. The right of litigation has no value, unless it is in support of the guarantee of the defense, confirming its dimensions, as a factor for enforcing its provisions. Also, there is no value in ensuring defense away from the right of access to justice, otherwise, saying and implementing it would be behind the silenced walls of Behind Walls OF Silence. This is supported by the fact that the rights guaranteed by the Constitution or the regulations in force are deprived of their practical value if

[68] The last paragraph of Article 381 of the Code of Criminal Procedure No. 150 of 1950 stipulates that "the **judgments of the criminal courts may not be appealed except by way of cassation or review**."

those who request them are unable to achieve them through the right of litigation, or if the litigants whose interests conflict with them do not share among themselves the weapons they legislate to require[69].

It also ruled that: -

" The Constitution, in its article 67, guarantees the right to a fair trial by stipulating that the accused is innocent until proven guilty in a legal trial in which he is guaranteed the guarantees of self-defense, which is a right stipulated in the Universal Declaration of Human Rights in its articles 10 and 11, the first of which states that every person has a full and equal right to a public and fair trial based on an independent and impartial court, which shall adjudicate in his civil rights and obligations, or in the criminal charge against him, and the second of which is the right of every person charged with a criminal charge to be presumed innocent until proven guilty in a public trial that provides him with the necessary guarantees for his defense. The previous paragraph is the one from which Article 67 of the Constitution derives its origin , and it repeats a rule that has been applied in democratic countries, and within it lies a set of basic guarantees that ensure its integration with a concept of justice that is generally consistent with contemporary standards in force in civilized countries and is thus related to the formation of the court , the rules of its organization , the nature of the procedural rules in force before it, and how to apply them in practice , and it is also considered within the scope of criminal indictment closely related to personal freedom, which Article 41 of the Constitution stipulates that it is one of the natural rights that may not be violated or restricted in violation of its provisions , and therefore this rule may not be interpreted narrowly , as it is a principled guarantee to repel aggression from the fundamental rights and freedoms of citizens, and it guarantees their enjoyment within a framework of equal opportunities, and because its scope, although not limited to criminal indictment, extends to every lawsuit, even if the rights raised in it are of a civil nature, but a fair trial is more necessary in a criminal case, regardless of the nature of the crime and regardless No matter how dangerous it is. "[70]

As for the right to defend and plead in international law, the Universal Declaration of Human Rights in Article 11/1 states that "everyone accused of a crime shall be presumed innocent until proved

[69] Judgment of the Supreme Constitutional Court No. 15 of 17 Judicial - Constitutional - dated 1995-12-02.

[70] Judgment of the Supreme Constitutional Court No. 13 of 12 Judicial - Constitutional - dated 1992-02-02.

guilty according to law in a public trial in which he has been provided with all the necessary guarantees to defend himself."

Article 14/3 of the International Covenant on Civil and Political Rights states that "3. Every person charged with a criminal offense shall, during the hearing of his case, enjoy, in full equality, the following minimum guarantees:

(b) To have adequate time and facilities for the preparation of his defense and to communicate with counsel of his own choosing.

(d) To be tried in his presence, to defend himself in person or through a lawyer of his choice, to be notified of his right to the presence of a defender if he has no one to defend him, and to be provided by a court, whenever the interest of justice so requires, with a lawyer to defend him, without charging him a wage if he does not have sufficient means to pay this wage.

(e) To examine, in person or by third parties, the witnesses against him and to obtain the attendance of witnesses on his behalf under the same conditions as witnesses against him. "

The African Charter on Human and Peoples' Rights also stipulates in Article 7 that: -

"The right of litigation is guaranteed to all, and this right includes:

(a) The right to resort to the competent national courts to consider an act that constitutes a violation of the fundamental rights recognized to him, which are contained in conventions, laws, regulations, and prevailing custom.

B- A person is innocent until proven guilty before a competent court.

C- The right of defense, including the right to choose a defender."

The Arab Charter on Human Rights also stipulates in Article 13/1 that: -

"1. Everyone has the right to a fair trial with adequate guarantees conducted by a competent, independent and impartial tribunal previously established by law. In the face of any criminal charge against him or to decide on his rights or obligations, each State Party shall ensure to those who are financially unable the judicial aid to defend their rights. "

The European Convention on Human Rights, which was concluded in Rome in 1950, stipulates in its article 3/6 that " everyone charged with a crime shall have the following rights as a minimum:

(b) Granting him sufficient time and appropriate facilities to prepare his defense.

(c) Presenting his defense in person or with the assistance of a lawyer of his choice. If he does not have sufficient means to pay for this legal aid, it must be provided to him free of charge whenever justice so requires.

(d) directing questions to prosecution witnesses and enabling him to summon defense witnesses and direct questions to them under the same rules as prosecution witnesses. "

Thus, Article 37 of the Law on Cases and Procedures of Appeal in Cassation in its current form and after the Court of Cassation has become a court subject to the lawsuit under Law 1 of 2024, there is no room to talk about a permissible power of the Court of Cassation to hear the defense as a basic guarantee of a fair trial, which includes the right to use and discuss witnesses, as well as the right to use experts and other means of defense guaranteed to the opponents in the criminal trial. The legislator must quickly amend this provision to oblige the Court of Cassation to hear the opponents so that many of those sentenced to crimes of deprivation of liberty or death do not suffer injustice, especially with the large number of these cases in the last decade in which many very severe judgments were issued, which reached the verdict of mass executions of hundreds of people, especially in cases of a political nature.

Article 39 cannot be invoked that the Court of Cassation, in the event that the appeal is based on the nullity of the judgment or the nullity of the proceedings, it annuls the judgment and considers the subject matter of the lawsuit, which presupposes the setting of a hearing to consider the subject matter of the lawsuit, as in practice the Court of Cassation often does not inform the litigants whether they will consider the matter or not, which increases the fear that Article 37 will be used to violate the right of defense and not to hear the litigants, especially since Article 39 did not oblige the cassation judges to hear the litigants when considering the matter. [71]

''Laws that silence voices and break pens end up destroying themselves.''

[71] Article 39 of the Law on Cases and Procedures of Appeal in Cassation stipulates that: " If the appeal or its reasons are submitted after the deadline, the court shall rule that it is inadmissible in form. If the appeal is admissible and it is based on a violation of the law or an error in its application or interpretation, the court shall correct the error and rule according to the law.
If the appeal is based on the invalidity of the judgment or the invalidity of the procedures that affected it, the court shall quash the judgment and consider its subject matter, and the legally prescribed principles for the crime that occurred shall be followed. The judgment issued in all cases shall be in presence.

Baruch Spinoza

(Part Two)

Violations of fair trial guarantees in special laws.

Section I/ Violations of fair trial guarantees in the Anti-Terrorism Law No. 94 of 2015: -

The Anti-Terrorism Law is considered by the special laws that were enacted to confront a specific type of crimes, namely crimes of violence and terrorism. With the rise of slogans to eliminate terrorism on the one hand and the high rates of terrorism crimes, especially after the assassination of the Attorney General "Hisham Barakat" on the other hand, and after President Abdel Fattah ElSisi stated that the hand of justice is shackled, pointing to the invalidity of Egyptian general laws to keep pace with events and hinder them from confronting terrorism, Law No. 94 of 2015 regarding the Anti-Terrorism Law was issued on August 15, 2015.

The draft of this law has provoked a lot of human rights criticism, which denounced that it violated the guarantees of a fair trial, and the destruction of the rights and freedoms guaranteed by the Constitution to citizens, as well as the existence of actual laws to confront exceptional cases such as Emergency Law No. 162 of 1958 through which it is possible to confront the dangers of terrorist crimes and punish their perpetrators in a manner that achieves public deterrence, as well as the second book of the Egyptian Penal Code No. 58 of 1937, which devotes a full section to confront terrorism entitled" Felonies and misdemeanors harmful to the government from the inside ". It also determines deterrent penalties to reduce terrorist crimes, but the authority, as usual, did not pay attention to these criticisms and seriousness and issued the law with texts that chase suspicion of unconstitutionality, violate fair trial guarantees, and turn on personal freedom and all rights and freedoms guaranteed by the Constitution.

In this section, we monitored and analyzed the provisions of the Anti-Terrorism Law in accordance with the stages of a fair trial, especially the rights of the accused before the trial and since the occurrence of the crime and his arrest. In the second section, we referred to the provisions that allocate severe penalties that are not commensurate with the crime committed as a violation of fair trial guarantees.

For the accused, the pre-trial stage is the basic building block, which, if correct legal procedures are taken into account, is supportive of the validity of all stages of the trial. On the contrary, any illegal procedure at this stage invalidates all other trial procedures, leading to nullity, which challenges the achievement of justice in this case and the violation of fair trial guarantees.

Among the basic rights of the accused in the pre-trial stage in accordance with international standards for a fair and equitable trial are the right to freedom and freedom from arbitrary arrest or detention, the right to inform the accused of his rights, the reasons for his arrest and the charges against him, the right to have access to a lawyer, the right to communicate with the family of the accused and inform them of his arrest immediately, the right to a prompt investigation and release of the accused if detention is not necessary, the right to challenge this detention, the right not to be subjected to torture or to the irrelevance of statements extracted under his influence, and finally the right to be detained in legal and humanitarian settings.

Article 40: -

When there is a danger from the dangers of the crime of terrorism and the need to confront this danger, the judicial officer has the right to collect evidence about it, search for its perpetrators, and detain them for a period not exceeding twenty-four hours.
The judicial officer shall draw up a record of the procedures, and the detainee shall present the record to the Public Prosecution or the competent investigating authority, as the case may be.
The Public Prosecution or the competent investigating authority may, for the same necessity stipulated in the first paragraph of this article and before the expiry of the period stipulated in it, order the continuation of the detention, for a period of fourteen days, and it shall not be renewed except once, and the order shall be issued with a reason from at least a public lawyer or its equivalent. The period of detention shall be calculated within the period of pretrial detention, and the accused must be placed in one of the legally designated places.
The grievance against the order to maintain the reservation shall be subject to the provisions stipulated in the first paragraph of Article (44) of this Law.

In the pre-trial stage, the accused has some rights that must be available to him in order to be able to say that the arrest and investigation procedures were characterized by the observance of fair trial guarantees. One of the most important and sacred of these guarantees, which relate to the pre-trial stage, is the right to freedom, which means that the arrest and detention of the accused

must be based on the Constitution and the law and based on a judicial order, and that the person is not subject to arbitrary detention without justification.

However, this article violates this right by stipulating the possibility of detaining persons suspected of involvement in a terrorist crime during the collection of evidence by the arresting officers, which may lead to suspected suspects. That is, we are not facing a case of flagrante[72] delicto that requires the arrest of the accused without a reasoned judicial order and then his pretrial detention. However, the article empowered the arresting officer to detain the accused for a period starting from twenty-four hours without obliging the arresting officer to interrogate him, and the period may reach fourteen days after the permission of the prosecution or the competent investigation authority, renewable once, that is, the possibility of the accused remaining for up to twenty-eight days.

Thus, the article exceeded the authority of the Public Prosecution to detain or remand the accused for a period exceeding the maximum period given to it by the Criminal Procedure Law, which is only four days, and then after this period, the accused is presented to an investigative judge to decide to imprison or release him after interrogation, as stipulated in Articles 201 and 202 of the Criminal Procedure Law. [73]

It is worth mentioning that when the law was issued, the duration of the reservation was decided to be only seven days non-renewable, but the article was amended by Law No. 15 of 2020 and the duration of the reservation became up to twenty-eight days!

It is noted that the legislator used the term " custody " instead of arrest, as well as the term " grievance " against the decision of custody and not appeal, as is the usual terminology used in the Code of Criminal Procedure.

The matter is that in the application of this article, we are not in front of a case of arrest[74] or flagrante delicto that requires the arrest and pre-trial detention of the accused. Rather, the

[72] Article 30 of the Code of Criminal Procedure No. 150 of 1950 stipulates in the concept of flagrante delicto that **"the crime shall be flagrante delicto when it is committed or shortly after its commission. The crime shall be deemed flagrante delicto if the victim follows the perpetrator, or the public follows him with shouting after its occurrence, or if the perpetrator is found soon after its occurrence carrying machines, weapons, luggage, papers, or other things from which it is inferred that he is the perpetrator or an accomplice, or if there are traces or signs indicating this at this time.**

[73] The first paragraph of Article 201 of the Criminal Procedure Law stipulates that "the detention order shall be issued by the Public Prosecution at least by a prosecutor for a maximum period of four days following the arrest of the accused or his surrender to the Public Prosecution if he was previously arrested."

[74] Suspension is a procedure carried out by the men of the public authority in order to investigate the crimes and detect the perpetrators and justified by suspicion justified by the circumstances, which is permissible

legislator gave the judicial officer the right to seize whoever is deemed to pose a threat of the crime of terrorism at the stage of inference or search for the perpetrators of the terrorist crime without the article requiring the issuance of a judicial order to seize the accused, which has no meaning other than arrest. This is clear from the second and third paragraphs, which entitles the Public Prosecution or the investigating authority to continue the seizure to fourteen days, renewable, as well as placing the detainee in the places prescribed for pre-trial detention, and therefore the seizure here means arrest.

This article poses a great danger to the guarantees of a fair trial before the trial stage, especially the principle of presumption of innocence, infringement of the right to liberty, and arrest only on the basis of a reasoned judicial order necessitated by the investigation, except in flagrante delicto. Article 54 of the Constitution stipulates in its first paragraph that: -

"Personal freedom is a natural right, and it is inviolable. Except in the case of flagrante delicto, no one may be arrested, searched, imprisoned, or restricted in any way except by a reasoned judicial order required by the investigation."

Article 35 of the Code of Criminal Procedure also stipulates, with regard to the suspicion of a person committing a crime, the need to issue an arrest warrant and habeas corpus from the Public Prosecution before arresting the suspect, in its second paragraph, which states that: -

" Or in cases other than those indicated in the previous article, if there is sufficient evidence that a person has been accused of committing a felony or a misdemeanor of theft, fraud, or severe assault and resistance to the men of public authority by force and violence, the judicial officer may take appropriate precautionary measures and immediately request the Public Prosecution to issue an arrest warrant against him. In all cases, the orders of seizure, habeas corpus, and precautionary measures shall be executed by one of the bailiffs or by the men of the public authority. "

Article 40 of the same law also stipulates that " no person may be arrested or imprisoned except by order of the legally competent authorities. He must also be treated in a manner that preserves human dignity, and he may not be harmed physically or morally."

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for the men of the public authority if the person voluntarily and voluntarily places himself in a position of suspicion and suspicion, and this situation indicates the need for the intervention of the detainee to investigate to reveal his truth pursuant to the text of Article 24 of the Code of Criminal Procedure " Appeal No. 1044 of 41 s session 20/12/1971".

It is noted that Article 35 of the Code of Criminal Procedure allows the judicial officer to take "appropriate precautionary measures" before issuing an arrest warrant and bringing the suspect but is the detention and arrest of the accused considered one of the precautionary measures intended by the article?!

Of course, custody, which means the arrest and detention of the suspect, is not considered one of these precautionary measures, which are covered by Article 35 of the Code of Criminal Procedure. These procedures must not amount to a restriction on personal freedom guaranteed by Article 54 of the Constitution. This is what the Court of Cassation has adopted as one of its principles that it does not deviate from, as it ruled in one of its judicial precedents that:

"The Constitution is the nominal positive law that has precedence over the legislation below it, which must be subordinated to its provisions. If these contradict those provisions, the provisions of the Constitution must be adhered to and all other provisions must be discarded. This is equal to the contradiction before or after the implementation of the Constitution, because it is established that it is not permissible for a lower authority in the runways of the legislation to repeal to amend or violate legislation issued by a higher authority. If the lower authority does so, the court must adhere to the application of the legislation of His Highness and the primacy, which is the Constitution, and discard the other provisions that are contradictory or contrary to it, as they are considered to be copied by the force of the Constitution itself. Whereas, the text of the first paragraph of Article 41 of the Constitution is conclusive to the effect that in cases other than flagrante delicto, no restriction may be placed on personal freedom except with the permission of the competent judge or the Public Prosecution, and this is not altered by any phrase in accordance with the provisions of the law that appeared at the end of that paragraph after the aforementioned guarantee was given, as it refers to referral to ordinary law in determining the cases in which the order may be issued by the investigating judge and the cases in which it may be issued by the Public Prosecution in accordance with the text of Articles 64 and 199 of the Code of Criminal Procedure. Whereas this is the case, and it was decided that justice does not benefit the impunity of a criminal as much as it harms them by violating the freedoms of people and arresting them unlawfully, and the provisions of the second paragraph of Article 35 of the Criminal Procedure Law stipulate that the judicial police officer may be authorized in cases other than cases of flagrante delicto that are punishable by imprisonment for a period exceeding three months by taking appropriate precautionary measures if there is sufficient evidence that a person has been accused of committing a felony or misdemeanor that is exclusively specified in this paragraph. These

procedures may not extend to what is considered a restriction on personal freedom in accordance with the explicit text of the first paragraph of Article 41 of the Constitution [75].

In fact, the Court of Cassation has gone even further when it considered the search of the suspect following an arrest by the arresting officer to be invalid and not considered a preventive or precautionary measure in many judicial precedents, so it ruled that: -

" Whereas Article 52 of Law No. 260 of 1960, as amended by Law No. 11 of 1965 regarding civil status, required every citizen to present his identity card to the representative of the public authorities whenever requested to do so, and Article 60 of the same law punished every violator with a fine not exceeding five pounds, and if the contested judgment proved that the officer searched the appellant when he was asked to present his identity card and did not provide it to him, the incident in this way does not provide the appellant with the case of flagrante delicto stipulated in Articles 34 and 35 of the Code of Criminal Procedure, and therefore does not allow the judicial officer the right to arrest and conduct the search, even if it is preventive, and if the contested judgment violated this consideration, he may have erred in the application and interpretation of the law."[76]

Therefore, the reservation intended in this article constitutes a clear violation of the Constitution and an attack on the guarantees of a fair trial, which requires the issuance of a reasoned judicial order followed by an interrogation of the suspect in order to preserve his right to freedom, and to prevent the arbitrary detention of persons on the basis of false accusations and the ease with which the arresting officers can violate the rights of the accused and abuse in the use of this right granted by the article to them in custody and detention, and in this the jurisprudence of the Egyptian Supreme Courts ruled that arrest should be made only on the basis of a reasoned judicial order that: -

"Whereas the first paragraph of the text of Article 41 of the Constitution stipulates that "Personal freedom is a natural right, which is inviolable and cannot be touched. No one may be arrested, searched, imprisoned, or have their freedom restricted in any way, or be prevented from moving, except by an order necessitated by the need for investigation and the necessity to maintain the

[75] Judgment of the Court of Cassation - Criminal - Appeal No. 63528 of the judicial year 75 dated 05-01-2008.

[76] Judgment of the Court of Cassation - Criminal - Appeal No. 4870 of the year 68 judicial on 02-02-1999.

security of society. This order shall be issued by the competent judge or the Public Prosecution, in accordance with the provisions of the law." It is understood from this text that any restriction on personal freedom, as one of the sacred natural rights of humans, in terms of being so, is equivalent to a restriction on arrest, search, imprisonment, prohibition of movement, or other limitations on personal freedom. Such measures may only be carried out in cases of flagrante delicto as defined by law, or with permission from a competent judicial authority. The Constitution was the supreme positive law that took precedence over the legislation below it, which must be subject to its provisions. If these laws contradict each other, the provisions of the Constitution must be followed, and the others disregarded. Furthermore, the contradiction must either precede or follow the implementation of the Constitution.[77]. "

It is worth mentioning that the Constitution has stressed the rights and freedoms attached to the person of the citizen and stated that they do not accept obstruction or derogation, therefore these constitutional guarantees cannot be violated and terrorism can be invoked to infringe on the right of persons not to be restricted in their freedom, regardless of criminal seriousness, except by correct legal means, as Article 92 of the Constitution stipulates that: -

"The rights and freedoms inherent in the person of a citizen are neither subject to derogation nor derogation, and no law regulating the exercise of rights and freedoms may restrict them in a manner that affects their origin and essence."

The term "terrorist crime", which in order to confront one of its dangers allows, in accordance with this law, to arrest or "detain" suspects and detain them without a reasoned judicial order, is in fact a broad and undefined term, as the first article of the Anti-Terrorism Law, when defining the terrorist crime, stipulates that: -

" In the application of the provisions of this law, the following words and phrases shall have the meaning assigned to each of them: (c) Terrorist crime: Every crime stipulated in this law, as well as every felony or misdemeanor committed using one of the means of terrorism or with the intention of achieving or implementing a terrorist purpose, or with the intention of calling for the commission of any of the foregoing or threatening to do so, without prejudice to the provisions of the Penal Code."

[77] Judgment of the Court of Cassation - Criminal - Appeal No. 15008 of the judicial year 59 dated 12-21-1989.

Article 2 of the law also states that: -

"Terrorist act means any use of force, violence, threat or intimidation at home or abroad, for the purpose of disturbing public order, endangering the safety, interests or security of society, harming individuals or instilling terror among them, endangering their lives, freedoms, public or private rights or security, or other freedoms and rights guaranteed by the Constitution and the law, harming national unity, social peace or national security, damaging the environment, natural resources, monuments, funds or other assets, buildings or public or private property, occupying or seizing them, or preventing or obstructing the application of any of the provisions of the Constitution, laws or regulations, or the interests of the government, local units, places of worship, hospitals, institutions and institutes of science, diplomatic and consular missions, or regional and international organizations and bodies in Egypt, from carrying out their work or exercising all or some of their activities, or resisting them, or disrupting the application of any of the provisions of the Constitution, laws or regulations. As well as any conduct committed with the intention of achieving one of the purposes set forth in the first paragraph of this article, or preparing for or instigating it, if it would harm communications, information systems, financial or banking systems, the national economy, energy stocks, security stocks of goods, foodstuffs, and water, their safety or medical services in disasters and crises. "

From these concepts, it is clear the extent of the definition of terrorist act and terrorist crime, and the equality of the law between crimes of assault on the environment, which can be by throwing garbage, for example, on the roads or any other daily behavior of citizens that does not involve a real criminal danger, and acts of violence and murder that actually represent the criminal danger that we can call the term terrorist crime or terrorist act.

The introduction of concepts such as "disturbing public order, harming social peace or national security, damaging the environment, natural resources, obstructing public authorities, or damaging communications, information systems, financial or banking systems, goods, foodstuffs and water", which can be brought down on hundreds of misdemeanors and violations that occur on a daily basis in Egyptian society and street, and the possibility of using these words as a pretext to retaliate against political opponents and lift the hand of justice from them, as well as to establish random arrest and give it criminal legitimacy, which should not be characterized by criminal and penal texts, which must be based on specific terms and clear and unambiguous terms, as the jurisprudence of the Supreme Constitutional Court ruled that:

"The legislator must always make a careful balance between the interest of society and the concern for its security and stability on the one hand, and the freedoms and rights of individuals on the

other. It was also decided that penal texts should be drafted in a clear and precise manner that does not obscure or confuse, so that these texts are not traps or snares set by the legislator seeking their breadth or concealment by those subject to them or by those who misinterpret their scope. These are the guarantees that ensure the addressees of the penal texts are fully aware of their true meaning, so that their behavior is not contrary to them, but rather consistent with them and in accordance with them."[78]

It also ruled that: -

" If the principle in penal texts is to be formulated within narrow limits to ensure that their application is tight, it has become inevitable that their dilution is prohibited, as the generality of their phrases and the breadth of their forms may divert them to purposes other than their intended purposes, and they always urge the obstruction of rights guaranteed by the Constitution, or take a pretext to violate them, foremost of which is freedom of expression, freedom of movement, and the right to personal integrity, and that everyone insures against unlawful arrest or detention.[79]"

In another ruling, the Supreme Constitutional Court stressed the need for criminal texts to have strict standards to prevent attacks on personal freedom. It ruled:

" Determining the legal nature of the contested text, and whether it falls within the scope of civil liability, or invoking a form of criminal liability, is necessary to determine its constitutionality in the light of the appeals against it. The constitutionality of criminal texts is governed by strict standards that relate to them alone, and sharp standards that meet their nature and do not compete in their application with other legal rules. The Constitution has elevated the value of personal freedom, considering it one of the natural rights inherent in the human soul, deep within it, and inseparable from it, thus granting it the fullest and most comprehensive care to affirm its value, without prejudice to the right to regulate it, and taking into account that criminal laws may impose on this freedom - directly or indirectly - the most serious restrictions and their impact. It was therefore necessary that the penal text should not be loaded with more than one meaning, burdened with the shackles of its multiplicity of interpretations, flexible and sprawling in the light of the formula in which it emptied - through the loosening of its phrases - rights established by the Constitution, invading its guarantees, storming them, preventing them from breathing unhindered. The

[78] Judgment of the Supreme Constitutional Court - Case No. 13 of 37 Judicial - Constitutional - dated 03-06-2017.
[79] Judgment of the Supreme Constitutional Court - Case No. 105 of 12 Judicial - Constitutional - dated 12-02-1994.

enforcement of restrictions on personal liberty imposed by criminal laws must therefore be subject to their constitutional legitimacy. This includes being certain and unambiguous. These laws call on their addressees to comply with them in order to defend their right to life, as well as their freedoms, from the dangers reflected in the punishment. Hence, it was decreed that the penal texts should be drafted in a manner that prevents their flow, the divergence of opinions about their purposes, or the establishment of criminal responsibility in other fields, in an attack on personal freedom guaranteed by the Constitution[80]."

Article 40 of the Anti-Terrorism Law violates international treaties and conventions.

There is no doubt that the arrest or detention - as called for in Article 40 of the Anti-Terrorism Law - of suspects of committing terrorist crimes without a reasoned judicial order violates the International Bill of Human Rights, which established a set of rights that the accused must have from the moment of his arrest and gave them pre-trial guarantees. It considers that arrest without a judicial warrant is not only an attack on freedom, but also an attack on the right to a fair trial while one's freedom is not restricted.

The Universal Declaration of Human Rights states in Article 3 that: -

" Everyone has the right to life, liberty, and security of person." Article 9 also stipulates that " No one shall be subjected to arbitrary arrest, detention or exile."

Article 9 of the International Covenant on Civil and Political Rights states that: -

" 1. Everyone has the right to liberty and security of person. No one may be arbitrarily arrested or detained. No one may be deprived of his liberty except on the grounds and in accordance with the procedure prescribed by law.

2. Any person who is arrested shall be informed of the reasons for such arrest at the time of its occurrence and shall be promptly informed of any charge against him.

3. Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. The detention of persons awaiting trial shall not be the general rule, but their release may be subject to guarantees to ensure their presence at trial at any other stage of the judicial proceedings and, where necessary, to ensure the execution of the sentence. "

Also, the African Charter on Human and Peoples' Rights stipulates in Article 6 that: -

[80] Judgment of the Supreme Constitutional Court No. 25 of 16 judicial year - dated 3/7/1995.

"Everyone has the right to liberty and security of person. No one may be deprived of his liberty except for motives and in cases specified in advance by law. In particular, no one may be arbitrarily arrested or detained."

The Arab Charter on Human Rights stipulates in Article 14 that: -

" 1. Everyone has the right to liberty and security of person and shall not be arbitrarily and unlawfully arrested, searched, or detained.

2. No person shall be deprived of his liberty except on such grounds and in such circumstances and in accordance with such procedures as are established by law.

3- Every person who is arrested must be informed in a language he understands of the reasons for that arrest at the time of its occurrence, and he must be notified immediately of the charge or charges against him, and he has the right to contact his family."

The European Convention on Human Rights stipulates that: -

" 1. Every human being has the right to liberty and security of person. It is not permitted to deprive any person of his liberty except in the following cases and in accordance with the procedures specified in the law:

(c) Arresting or detaining a person in accordance with the law with the aim of presenting him to the competent Sharia authority on the basis of a reasonable suspicion that he has committed a crime, or when his detention is deemed necessary to prevent him from committing the crime or fleeing after it has been committed.

2. Anyone who is arrested shall be notified immediately, in a language he understands, of the reasons for his arrest and the charges against him.

3. Any person who is arrested or detained in accordance with paragraph 1 (c) of this article shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be brought to trial within a reasonable time or shall be released and the trial shall continue. Release may be conditional on guarantees to attend the trial.

4. Any person deprived of his liberty by arrest or detention shall have the right to take measures by which the legality of his arrest or detention is quickly determined by a court and shall be released if his detention is not lawful. "

The Convention for the Protection of All Persons from Enforced Disappearance also stipulates in Article 17/2 that:

“Without prejudice to the State Party's other international obligations in the field of deprivation of liberty, each State Party shall, within the framework of its legislation:

(A) Specify the conditions under which orders of deprivation of liberty may be issued.

(B) The appointment of authorities qualified to issue orders of deprivation of liberty."

Article 41

> The judicial officer shall inform anyone who has custody of him in accordance with Article (40) of this law of the reasons for this, and he shall have the right to contact any of his relatives whom he deems appropriate and to seek the assistance of a lawyer, without prejudice to the interest of reasoning.

One of the most prominent rights that must be available to the accused immediately after his arrest is to inform him of the reasons for that arrest and the charges against him, and to allow him to inform his family or acquaintances of his whereabouts and what has become of him, as well as to seek the assistance of his lawyer to defend him and provide the necessary legal support. These rights are an essential guarantee of a fair trial that can in no way be overlooked or violated, otherwise the arrest and detention are considered illegal, and all trial procedures are nullified.

The last paragraph of Article 41 “without prejudice to the interest of reasoning” not only constitutes an outright attack on these rights guaranteed by the Constitution but opens the door to the legal legitimation of enforced disappearance.

Disappearance or enforced disappearance, as defined in the International Convention for the Protection of All Persons from Enforced Disappearance, means in the text of Article 2: -

“For the purposes of this Convention, 'enforced disappearance' means the arrest, detention, abduction or any other form of deprivation of liberty by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State, followed by a

refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which places such a person outside the protection of the law."

Therefore, not informing the person of the reasons for his arrest, not allowing him to inform his family or acquaintances, and preventing him from using his lawyer under the pretext of the interest of inference and giving the arresting officers a discretionary authority to give these rights cannot be imagined as practices that carry a meaning other than enforced disappearance, under any circumstances, even if the crime for which the accused is arrested is terrorist, and in the interest of inference, as the legislator explained, especially since the period following the arrest of the accused is one of the heaviest moments that a person can meet in his life, and there is weakness and lack of resourcefulness that requires the presence of someone next to him as a member of his family or his lawyer, especially since arrest in Egypt often entails a threat or torture, and therefore the use of his lawyer or his family does not only ensure the achievement of legal support, but can preserve his right to the safety of the body and life.

The rights and guarantees of the accused in a fair trial have been clearly and strictly stipulated in the Constitution, without exceptions, as Article 54 of the Constitution stipulates that: -

"Personal freedom is a natural right, and it is inviolable. Except in the case of flagrante delicto, no one may be arrested, searched, imprisoned, or restricted in any way except by a reasoned judicial order required by the investigation. Any person whose liberty is restricted shall be informed immediately of the reasons therefor, shall be informed of his rights in writing, shall have immediate access to his family and lawyer, and shall be brought before the investigating authority within twenty-four hours from the time of the restriction of his liberty. The investigation with him shall not commence except in the presence of his lawyer, and if he does not have a lawyer, he shall be assigned a lawyer, with the provision of the necessary assistance to persons with disabilities, in accordance with the procedures prescribed by law. Everyone whose freedom is restricted, and others, has the right to file a grievance before the judiciary against that procedure, and to decide on it within a week of that procedure, otherwise he must be released immediately. The law shall regulate the provisions of pretrial detention, its duration, its reasons, and the cases of entitlement to compensation that the state is obligated to pay for pretrial detention, or for the execution of a punishment for which a final judgment has been issued annulling the judgment that was executed pursuant to it. In all cases, the accused may not be tried for the crimes for which imprisonment is permitted except in the presence of a lawyer assigned or assigned. "

Similarly, Article 98 of the Constitution states that: -

"The right of defense in person or by proxy is guaranteed. The independence of lawyers and the protection of their rights are a guarantee of the right of defense. The law guarantees to those who are financially incapable the means to resort to the judiciary and defend their rights."

Thus, the Constitution affirms the right of the accused to defend himself through the assistance of his lawyer during the investigation, but it also corrects the situation in which the accused does not have a lawyer and stipulates the need to appoint a lawyer to provide him with the necessary legal assistance.

The Code of Criminal Procedure also stipulated the need for a lawyer during the interrogation phase and then the investigation in Article 124, which states that: -

"It is not permissible for the investigator in felonies and misdemeanors punishable by imprisonment to interrogate the accused or confront him with other defendants or witnesses except after inviting his lawyer to attend, except in case of flagrante delicto and in case of speeding due to fear of losing evidence as evidenced by the investigator in the minutes. The accused shall announce the name of his lawyer with a report to the clerk of the court or to the prison warden, or notify the investigator of it, and his lawyer may also take over this announcement or notification. If the accused does not have a lawyer, or his lawyer does not attend after his invitation, the investigator shall, on his own initiative, assign him a lawyer. The lawyer may record in the minutes whatever defenses, requests, or observations he may have. After the final disposition of the investigation, the investigator shall issue, at the request of the assigned lawyer, an order estimating his fees, guided by the schedule of fees estimation issued by a decision of the Minister of Justice after taking the opinion of the Board of the General Bar Association. These fees shall take the ruling of judicial fees.

Article 139 of the Code of Criminal Procedure also stipulates in its first paragraph that: -

"Anyone who is arrested or remanded in custody shall be informed immediately of the reasons for his arrest or detention, and he shall have the right to contact whomever he deems appropriate to inform him of what has happened and to seek the assistance of a lawyer. He must be promptly informed of the charges against him."

This is contrary to Article 125 which states that: -

"In all cases, it is not permissible to separate between the accused and his lawyer present with him during the investigation."

In addition to many of the jurisprudence of the Egyptian courts, which stressed the need for anyone who is arrested to be informed immediately of the reasons and charges against him and the need to contact his family to inform them, as well as the right of the accused to seek the assistance of a defender, one of the jurisprudences of the Administrative Court ruled that:

"It is taken advantage of the above that the right of the accused to seek the assistance of a defender and to communicate with his lawyer is one of the most important guarantees of investigation and trial and what is going on in them. The Egyptian Constitution has been keen to provide for this guarantee and the implementation of the provision of Article (71) thereof (mentioned above) requires that Article (139) of the Code of Criminal Procedure be amended by virtue of Law No. 37 of 1972 by stipulating that anyone who is arrested or remanded in custody shall be immediately informed of the reasons for his arrest or detention and shall have the right to contact whomever he deems appropriate to inform him of what happened and to seek the assistance of a lawyer, It is obvious that the accused has the right to seek the assistance of a defender from the stage of interrogation through all stages of investigation and trial, and this is recognized by the United Nations Commission on Human Rights, which has recommended - since the beginning of its work - that the defense is always necessary at every stage of criminal proceedings because it is a real means to show the right before justice, so the defense should be available from the beginning of the proceedings or else it will be nullified.

Whereas, if the Constitution - with the provisions that ensure the guarantee of the defense - is supposed to give every defender assigned in a case all the necessary means and absolute freedom to prepare a defense that conforms to the requirements of justice and to communicate with the accused freely and plead without any influence or hindrance, and lawyers are supposed not to perform an act on their part that violates the effective assistance that they must provide to their clients in order to preserve their rights, if this is the case, the intervention of the Public Prosecution or the executive authority that hinders the enforcement of the requirements of the defense - as mentioned above - is constitutionally prohibited. "[81]

Contrary to what the Court of Cassation has recognized through its judgments with many principles that urge respect for the Constitution and the guarantees of a fair and equitable trial, including the right of the accused to defend himself, which it considered a sacred right that transcends the rights of society, which is not harmed by the acquittal of a guilty person as much as it harms him and

[81] Judgement of the Administrative Court No. 9111 of the year 62 judicial on 16/12/2008.

harms justice. Together, the conviction of an innocent person, and that judgment against the accused while denying him the assistance of a lawyer, invalidates the trial procedures and requires the reversal of the contested judgment. [82]

The Constitution has immunized public rights and freedoms from attacking them and made this attack a crime that does not fall under the statute of limitations. Accordingly, Article 99 of the Constitution stipulates that: -

"Any attack on the personal freedom or the inviolability of the private life of citizens, and other public rights and freedoms guaranteed by the Constitution and the law, is a crime for which neither the criminal nor the civil lawsuit arising therefrom is statute-barred, and the aggrieved party may institute criminal proceedings directly."

Article 92 of the Constitution with regard to non-derogable rights inherent in the person of a citizen also provides that: -

"The rights and freedoms inherent in the person of a citizen are neither subject to derogation nor derogation, and no law regulating the exercise of rights and freedoms may restrict them in a manner that affects their origin and essence."

The aim of putting the rights and freedoms attached to the person of the citizen in the body of the provisions of the Constitution, and not to leave their organization to the laws, is that these texts are sacrosanct, especially and that the legislator puts them in mind while enacting legal rules, so that they are not subject to derogation or circumvention, in order to ensure that all citizens are attacked by the executive authority, which has the right to issue laws on an exceptional basis and in specific cases, as is the case with the Anti-Terrorism Law, which was issued by the President of the Republic, and that these rights and freedoms are a social agreement between different groups of the people, which must be respected and not subjected to them, whether by the legislator in positive laws or the executive authority, and they are in the process of issuing decisions and regulations, which all rank lower than the Constitution in accordance with the principle of hierarchy of legal rules and respect for the supreme law, and therefore the existence of these articles makes them contrary to the principle of constitutional legitimacy, and this has been confirmed by the jurisprudence of the Supreme Constitutional Court, which said in one of its provisions:

"Whereas it is established in the jurisprudence of this court that the peremptory nature of the rules of the Constitution, and their superiority over other legal rules, and their control of the values on

[82] Court of Cassation - Criminal - Appeal No. 20238 of 84 Judicial on 24-01-2015, as well as the judgment of the Court of Cassation - Criminal - Appeal No. 1752 of 38 Judicial on 28-10-1968.

which the group should be based, require that all legal rules - whatever the date of their entry into force - be subject to the provisions of the existing Constitution, to ensure their consistency with the concepts that it has introduced. These rules shall not be differentiated in their contents between different systems that contradict each other, in a way that prevents them from operating according to the same objective standards required by the existing Constitution as a condition for their constitutional legitimacy[83]."

It also ruled in another judgment: -

"Whereas judicial control over the constitutionality of laws and regulations, in terms of their conformity with the substantive rules guaranteed by the Constitution, is subject only to the provisions of the existing Constitution, as this control is originally aimed at preserving the existing Constitution and protecting it from derogation from its provisions, which always represent the rules and principles on which the system of government is based, and have a place at the forefront of the rules of public order that must be adhered to and observed and the discard of contrary legislation, as the highest jus cogens rules. Whenever this is the case, and Al-Mannai, who was considered by the trial court on the two referred texts, falls under the objective challenges that are based on the violation of a legislative text of a rule in the Constitution in terms of its substantive content, and the two referred texts - within the previously specified scope - are still standing and in force with its provisions, and therefore the decision of their constitutionality is made in the light of the provisions of the current Constitution issued in 2014[84].

Violation of Article 41 of international and regional conventions and covenants.

International law guarantees a set of rights, which are called pre-trial guarantees, such as the right of the person immediately after arrest to be informed of the reasons for this arrest, and to be informed of his legal rights guaranteed to him, such as his right to inform a third person of what has become of him and his right to use a lawyer to attend the investigation with him and prepare for the defense, as well as to challenge the legitimacy of the arrest or detention order. Therefore, we find that all international covenants respect these rights and consider them a guarantee that cannot be overlooked from the guarantees of a fair trial.

[83] Judgment of the Supreme Constitutional Court - Case No. 35 of 30 Judicial Year - Constitutional - dated 2014-06-01.

[84] Supreme Constitutional Court Judgment - Case No. 16 of 25 Judicial Year 2018-01-13.

This includes the Universal Declaration of Human Rights, which states in Article 9 that: -

"No one shall be arbitrarily arrested, detained, or exiled."

The International Covenant on Civil and Political Rights stipulates in Article 9/2 that: -

"Any person who is arrested shall be informed of the reasons for such arrest at the time of its occurrence and shall be promptly informed of any charge against him."

Other than what is stipulated in Article 14/3 that: -

"Every person charged with a criminal offense shall, during the hearing of his case, enjoy, in full equality, the following minimum guarantees:

(a) To be informed promptly and in detail, in a language he understands, of the nature of the charge against him and the reasons for it.

(b) To have adequate time and facilities for the preparation of his defense and to communicate with counsel of his own choosing. "

Also, the Arab Charter on Human Rights stipulates in Article 14/3 that: -

"Every person who is arrested shall be informed in a language he understands of the reasons for that arrest at the time of its occurrence and shall be promptly notified of the charge or charges against him and shall have the right to contact his family."

Article 16 further provides that: -

"Every accused person is innocent until proven guilty by a final judgment in accordance with the law, provided that he enjoys the following guarantees during the investigation and trial procedures:

1- Notify him immediately and in detail and in a language he understands of the charges against him.

2- Giving him sufficient time and facilities to prepare his defense and allowing him to contact his family.

3- His right to be tried in his presence before his natural judge and his right to defend himself in person or through a lawyer of his choice and to communicate with him freely and confidentially.

4- His right to free assistance of a lawyer to defend him if he is unable to do so himself or if the interest of justice so requires, and his right if he does not understand or speak the language of the court to seek the assistance of an interpreter free of charge."

In addition to the European Charter of Human Rights which states in Article 5/2 that: -

"Anyone who is arrested shall be notified immediately, in a language he understands, of the reasons for his arrest and the charges against him."

Article 6/3 also states that: -

" - Every person accused of a crime shall have the following rights as a minimum:

(A) Notifying him immediately, in a language he understands and in detail, of the nature and cause of the accusation against him.

(B) Granting him sufficient time and appropriate facilities to prepare his defense.

(C) Presenting his defense in person or with the assistance of a lawyer of his choice. If he does not have sufficient means to pay for this legal aid, it must be provided to him free of charge whenever justice so requires. "

Also, the African Charter on Human and Peoples' Rights stipulates in Article 6 that: -

"Everyone has the right to liberty and security of person. No one may be deprived of his liberty except for motives and in cases specified in advance by law. In particular, no one may be arbitrarily arrested or detained."

Article 7 further provides that: -

"The right of litigation is guaranteed to all, and this right includes:

C- The right of defense, including the right to choose a defender."

This is in addition to the Convention for the Protection of All Persons from Enforced Disappearance, which was adopted by the United Nations General Assembly on December 20, 2006, which stipulated in Article 18 that: -

"1. Subject to articles 19 and 20, each State Party shall ensure that any person found to have a legitimate interest in this information, such as relatives of the person deprived of liberty, their representatives or their counsel, has access to at least the following information:

(A) The authority that decided to deprive him of his liberty.

(B) The date, time, and place of deprivation of liberty and entry into the place of deprivation of liberty.

(C) The authority monitoring the deprivation of liberty.

(D) The whereabouts of the person deprived of liberty, including, in the case of transfer to another place of detention, the place to which the person was transferred and the authority responsible for the transfer.

(E) the date, time, and place of his release.

(F) Elements relevant to the state of health of the person deprived of liberty.

(G) In the event of death during the deprivation of liberty, the circumstances and causes of death and the destination of the remains of the deceased. "

Article 42: -

> The judicial officer shall, during the period of custody stipulated in Article (40) of this law, and before its expiry, write a record of the proceedings, hear the statements of the detainee, and present the record with him to the Public Prosecution or the competent investigation authority for interrogation within forty-eight hours of being presented to it, and order his provisional detention or release.

The interrogation of the accused immediately after his arrest is one of the guarantees of a fair trial, as the bailiff must inform the accused of the reasons for his arrest, the charges against him, and the evidence under which he was arrested, and then present the accused to the Public Prosecution, which must interrogate him and hear his statements in the presence of his lawyer within a period not exceeding twenty-four hours, which is guaranteed by Article 54 of the Constitution as well as Article 36 of the Code of Criminal Procedure.

Article 54 of the 2014 Constitution states in its second paragraph that: -

"Anyone whose freedom is restricted shall be informed immediately of the reasons for this, shall be informed of his rights in writing, shall be able to contact his family and lawyer immediately, and shall be submitted to the investigating authority within twenty-four hours from the time of restricting his freedom."

Article 36 of the Criminal Procedure Law No. 150 of 1950 also stipulates that: -

" The judicial officer must immediately hear the statements of the seized accused, and if he does not come up with what he exonerates, he shall send him within twenty-four hours to the competent public prosecution. The public prosecution must interrogate him within twenty-four hours, and then order his arrest or release."

Although the period of twenty-four hours specified by Articles 54 of the Constitution and 36 of the Code of Criminal Procedure is the maximum period that may not be exceeded in any case, according to the Constitution, the period shall be twenty-four hours, and according to the Code of Criminal Procedure, the period shall be forty-eight hours (24 hours the period prescribed for presentation to the prosecution and 24 others the period during which the accused must be interrogated), but Article 42 of the Anti-Terrorism Law has discarded all these periods, and stipulated that the accused shall be interrogated within a period of forty-eight hours from the date of presentation of the accused to it and before the expiry of the period prescribed in Article 40, that is, the possibility of the accused remaining without interrogation for more than fourteen days; - especially since Article 40 did not require the interrogation of the accused by the prosecution before his imprisonment for 14 days renewable - in a blast, discard and a clear violation of the provisions of the Constitution, which must not be contradicted by the minimum legislation according to the principle of the inclusion of legal rules that the Constitution comes at the top of its legislative pyramid.

In fact, the text of Article 42 is full of ambiguity that should not be available in legislative texts, especially procedural ones. When the second paragraph stipulated the period during which the accused must be presented by the arresting officer to the Public Prosecution, it said, "The judicial arresting officer during the period of custody stipulated in Article (40) of this law, and before its expiry," and therefore did not clarify the period during which the accused must be presented to the Public Prosecution specifically, is it the period stipulated in the first paragraph of the article and therefore twenty-four hours after his arrest, so the period of detention and the period prescribed for the Public Prosecution to conduct the interrogation shall be seventy-two hours, which is equivalent to three days.

Or did he mean the duration of the detention in the entire text of Article 40 and thus the possibility that the detainee would remain detained for a period of twenty-eight days without conducting the interrogation?

Irrespective of the intention of the legislator and whether Article 42 means the periods stipulated in the first paragraph of Article 40, or the total period stipulated in the article, it has violated the Constitution - within a period of twenty-four hours for submission to the Public Prosecution - whose provisions must be superior and constitute a restriction that may not be circumvented in any way, and under any circumstances, even if we are facing a threat of a terrorist crime, or under the shadow of a declaration of a state of emergency, the Constitution was clear in the text of Article 237, which stressed that the provisions of the Constitution may not be suspended, even if the State exercises its role in the face of terrorism, this role must be exercised while guaranteeing public rights and freedoms, as the article stipulates that:

" The state is committed to confronting terrorism, in all its forms and manifestations, and tracking the sources of its financing, according to a specific timetable, as a threat to the homeland and citizens, while guaranteeing public rights and freedoms. The law shall regulate the provisions and procedures of combating terrorism and fair compensation for the damages caused by it and because of it. "

In addition, the accused may not be arrested or detained except after being interrogated by the investigating authority. Article 34 of the Criminal Procedure Law, as amended by Law No. 145 of 2006, stipulates that:

"The investigating judge may, after interrogating the accused or in the event of his escape, if the incident is a felony or a misdemeanor punishable by imprisonment for a period of no less than one year, and the evidence on it is sufficient, order the provisional detention of the accused."

Thus, the detention of the accused for a period of more than 24 hours, even if by one hour without interrogation, makes this detention illegal and contrary to the Constitution and the general rules of the Code of Procedure. Therefore, it is necessary to expedite the investigation of the accused immediately after his arrest, and in cases where it is difficult to do so, the period of twenty-four hours has been given to the arresting officer as a maximum that must not be exceeded.

Articles 40, 41, and 42 are in their entirety a reproduction of an unconstitutional provision, the first clause of Article 3 of the Emergency Law, which legitimized arbitrary arrest, house searches, and

detentions without being bound by the provisions of the Code of Criminal Procedure. This clause was ruled unconstitutional by Constitutional Case No. 17 of the 15th Judicial Year, which issued its ruling in the course of 2013.

The State, represented by the President of the Republic, who issued this decree by law, wanted to restore the same mechanisms of arrest and detention without being bound by the Constitution and the provisions of the Code of Criminal Procedure.

The ruling of unconstitutionality of the first clause of Article 3 of the Emergency Law No. 162 of 1958 came with many reasons that support public freedoms, criminal justice as well as fair trial guarantees, as the Constitutional Court ruled that:

“Whereas the provisions of the Constitution do not contradict, collapse, or negate each other, but are instead integrated within the framework of an organic unity that organizes them through the harmonization of all their provisions, making them a coherent and harmonious fabric. The application of the Constitutional Document and the imposition of its provisions on its addressees presupposes the application of the entire document. Whereas the preamble of the Constitution stipulates that the state is subject to the law, which indicates that the rule of law state is one that adheres, in all aspects of its activities, and whatever the nature of its powers, to legal rules above it, and is itself the regulator of its actions and deeds in all their forms. Therefore, the principle of the state's submission to the law, coupled with the principle of the legitimacy of authority, has become the foundation upon which the rule of law state is based. In this context, Article (74) of the Constitution stipulates that: "The rule of law is the basis of government in the state," and Article (148) stipulates that: "The President of the Republic, after consulting the government, shall declare a state of emergency as regulated by law." and therefore the law regulating the state of emergency must comply with the controls prescribed for legislative work, the most important of which is not to violate other provisions of the Constitution, as the issuance of the emergency law based on a provision in the Constitution does not mean that this law is authorized to override the rest of its provisions, and Article (34) of the Constitution stipulates that: Personal freedom is a natural right "and is inviolable." Article (35) of the Constitution also stipulates that: "Except in cases of flagrante delicto, no one may be arrested, searched, imprisoned, prevented from movement, or his freedom restricted by any restriction except by a reasoned judicial order required by the investigation." Article (39) also stipulates that: "Homes are inviolable, and except in cases of danger and distress, they may not be entered, searched, or monitored except in the cases specified by law, and by a reasoned judicial order specifying the place, timing, and purpose.", and accordingly, the text in Clause (1) Article (3) of the Presidential Decree Law No. 162 of 1958 on licensing the arrest,

detention, and search of persons and places without a reasoned judicial warrant that has violated the personal freedoms of citizens and infringed on the freedom of their homes, which represents a violation of the principle of the rule of law, which is the basis of government in the state. [85]

The Court of Cassation also ruled with regard to the need to abide by the provisions of the Constitution and not to derogate from it in any way that:

" Since the Constitution is the supreme law with primacy over the legislation beneath it, it must be subject to its provisions. If these provisions conflict with others, the provisions of the Constitution must be adhered to, and the conflicting provisions must be discarded. This is equal to the contradiction before or after the implementation of the Constitution, because it is established that it is not permissible for a lower authority in the legislature to repeal, amend, or violate legislation issued by a higher authority. If the lower authority does so, the court must adhere to the application of the legislation with supremacy and primacy, which is the Constitution, and discard the other provisions that contradict or contravene it, as they are considered copied by the force of the Constitution itself.[86]"

Violation of Article 42 of the Terrorism Law to international and regional conventions and conventions:

Most international and regional conventions and covenants recognized the right of the accused to be brought before a judicial authority for investigation into the evidence of his accusation, to discuss and hear his statements, and to be detained only after conducting such an investigation.

Article 9.3 of the International Covenant on Civil and Political Rights states that: -

"Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. The detention of persons awaiting trial shall not be the general rule, but their release may be subject to guarantees to ensure their presence at trial at any other stage of the judicial proceedings and, where necessary, to ensure the execution of the sentence."

[85] Supreme Constitutional Court ruling No. 17 of 15 constitutional judicial year issued on
[86] Judgment of the Court of Cassation - Criminal - Appeal No. 29390 of the judicial year 59 dated 19-11-1997.

Article 5(3,4) of the European Convention provides that: -

"3. Any person who is arrested or detained in accordance with paragraph 1 (c) of this article shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be brought to trial within a reasonable time or shall be released and the trial shall continue. Release may be conditional on guarantees to attend the trial.

4. Any person deprived of his liberty by arrest or detention shall have the right to take measures by which the legality of his arrest or detention is quickly determined by a court and shall be released if his detention is not lawful. "

Likewise, the Arab Charter on Human Rights stipulates in Article 14/5 that "anyone arrested or detained on a criminal charge shall be brought before a judge or other officer authorized by law to exercise judicial functions and shall be tried within a reasonable time or released. His release could be if his arrest or detention is unlawful."

Article 43: -

> The Public Prosecution or the competent investigating authority, as the case may be, during the investigation of a terrorist crime, in addition to the competences prescribed for it by law, shall have the powers prescribed for the investigating judge, and those prescribed for the appellate misdemeanors court sitting in the consultation chamber, in accordance with the same competences, restrictions, and periods stipulated in Article (143) of the Criminal Procedure Law.

This article gives the Public Prosecution, with regard to the duration of pre-trial detention, the powers of both the investigating judge and the Court of Appeal of Misdemeanors sitting in the Chamber of Counsel, with the same competences and restrictions stipulated in 143 of the Code of Criminal Procedure.

Pre-trial detention is a procedure that causes "the deprivation of the freedom of the accused for a period of time determined by the requirements of the investigation and his interest, in accordance

with the controls established by law,"[87] as well as it is known as "a procedure of criminal investigation, issued by the legislator who granted him this right, and includes an order to the prison director to accept the accused and imprison him, and remains imprisoned for a period that may be prolonged or shortened according to the circumstances of each case, until it ends with either the release of the accused during the preliminary investigation or during the trial, or the issuance of a judgment in the case acquitting the accused of the penalty, and the start of its implementation against him."[88]

The origin is that when the Public Prosecution exercises the power of pre-trial detention of the accused, it exercises a greater role than its role, because pre-trial detention is one of the most dangerous investigation procedures. The Public Prosecution, even if it has the power of indictment and investigation, which is the subject of a previously clarified dispute, the legislator must not expand this power. Therefore, the expansion of this procedure, which gives the Public Prosecution the powers prescribed for the investigating judge and the Court of Appeal of Misdemeanors sitting in the Counseling Chamber, negatively affects the guarantees of a fair trial and the principle of separation of powers. Granting the Public Prosecution these powers mean monopolizing and monopolizing them over the authorities and their exclusivity, which distances the work it carries out from integrity and impartiality and thus hinders the achievement of justice.

Giving the Public Prosecution the right to continue to extend the pretrial detention of the accused without judicial review is an absolute authority of the Public Prosecution, and this combination of authorities in one hand is tantamount to giving it all support for the oppression of the accused, especially since the Public Prosecution as an accuser and prosecutor is on the same level as the opponent of the accused, as it possesses all the tools and mechanisms and is representative of the authority in confronting him and thus becomes an opponent and a judge at the investigation stage.

In order to determine what the amendment is, we must first address the powers of both the investigating judge and the appellate misdemeanor court sitting in the counseling room, to know the extent of the powers granted by the legislator to the Public Prosecution and the investigation authority in general.

The legislator has limited the bodies that can issue provisional detention orders. The law grants this authority to the Public Prosecution and the investigating judge at the investigation stage, and

[87] Prof. Dr. Najib Hosni " The Legal Status of the Accused in the Primary Investigation Stage – A Comparative Study of Islamic Criminal Thought 1989 " by Dr. Hilali Abdullah Ahmed, issued by Dar Al-Nahda Al-Arabiya, Cairo, p. 726.
[88] Prof.Dr. Hassan Sadiq Al-Marsafawi, op. Cit., P. 726.

the misdemeanors court is held in the counseling room and the trial court at the trial stage, as follows.

As for the Public Prosecution, as the body that undertakes the investigation, the legislator has assigned it to issue pretrial detention orders for a maximum of four days, according to the text of Article 201 of the Code of Criminal Procedure in its first paragraph, which stipulates that "the detention order shall be issued by the Public Prosecution from at least one prosecutor for a maximum period of four days following the arrest of the accused or his surrender to the Public Prosecution if he was previously arrested. This period can be extended if the investigation requires this after taking the partial judge's permission in accordance with the text of Article 202, which stipulates that " If the Public Prosecution deems it necessary to extend the pretrial detention, before the expiry of the four-day period, the papers must be presented to the partial judge to issue an order as he sees fit after hearing the statements of the Public Prosecution and the accused.

The Public Prosecution may always release the accused on bail or otherwise, as well as take any of the alternatives to pretrial detention, such as ordering the accused not to leave his home, obliging him to present himself to the police headquarters at specific times, or prohibiting access to specific places, in accordance with articles 201 and 204[89].

As for the powers of the investigating judge, the legislator gave him the power of pretrial detention after interrogating the accused according to the text of Article 143[90], for a period of fifteen days,

[89] Article 204 of the Code of Criminal Procedure states that **"the Public Prosecution may release the accused at any time on bail or without bail "**.

Article 201 also stipulates that "**the detention order shall be issued by the Public Prosecution at least by a prosecutor for a maximum period of four days following the arrest of the accused or his surrender to the Public Prosecution if he was previously arrested.**
The authority competent with pretrial detention may issue in its place an order for one of the following measures:
1- Obliging the accused not to leave his home or domicile.
2- Obliging the accused to present himself to the police headquarters at specific times.
3- Prohibiting the accused from going to specific places.
If the accused violates the obligations imposed by the measure, he may be remanded in custody.
The period of the measure, its extension, its maximum limit, and its appeal shall be subject to the same rules prescribed in relation to pretrial detention.
It is not permitted to execute seizure and habeas corpus orders and detention orders issued by the Public Prosecution after the lapse of six months from the date of their issuance, unless they are approved by the Public Prosecution for another period.

[90] Article 143 of the Criminal Procedure Law stipulates that "**if the investigation is not completed and the judge decides to extend the pretrial detention beyond what is prescribed in the previous article,**

and he can extend this period – before the expiry of the first period and after hearing the statements of the accused – for a similar period or periods, so that these periods in total do not exceed forty-five days, as stipulated in Article 142 [91]of the Code of Criminal Procedure. If the investigation does not end, the order must be submitted before the end of the previous periods to the Appellant Misdemeanors Court sitting in the Counseling Chamber to issue the order – after hearing the statements of the Public Prosecution and the accused – to extend the detention for successive periods, each of not more than forty-five days if the investigation department so requires, or order the release of the accused on bail or without it, or take any other alternatives to pretrial detention.

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before the expiry of the aforementioned period, the papers must be referred to the Appellate Misdemeanors Court sitting in the Counseling Chamber to issue its order after hearing the statements of the Public Prosecution and the accused to extend the detention for successive periods not exceeding forty-five days if the interest of the investigation so requires or release the accused on bail or without bail.
However, the matter must be presented to the Public Prosecutor if the accused has been detained for three months in pretrial detention in order to take the measures, he deems necessary to complete the investigation.
The period of preventive detention shall not exceed three months, unless the accused has been notified of his referral to the competent court before the end of this period. In this case, the Public Prosecution shall submit the detention order within five days at most from the date of the notification of the referral to the competent court in accordance with the provisions of the first paragraph of Article (151) of this Law to enforce the requirements of these provisions. Otherwise, the accused shall be released. If the charge against him is a felony, it is not permitted for the period of pretrial detention to exceed five months except after obtaining, before its expiry, an order from the competent court to extend the detention for a period not exceeding forty-five days, renewable for a similar period or periods. Otherwise, the accused must be released.
In all cases, it is not permitted for the period of pretrial detention at the stage of the preliminary investigation and the other stages of the criminal case to exceed one-third of the maximum penalty of deprivation of liberty, provided that it does not exceed six months in misdemeanors, eighteen months in felonies, and two years if the punishment prescribed for the crime is life imprisonment or death.
However, the Court of Cassation and the referral court may, if the judgment is issued with the death penalty or life imprisonment, order the provisional detention of the accused for a period of forty-five days, renewable without limiting the periods stipulated in the preceding paragraph.
[91] Article 242 of the Code of Criminal Procedure stipulates that "**Pre-trial detention shall end fifteen days after the detention of the accused. However, before the expiry of that period, and after hearing the statements of the Public Prosecution and the accused, the investigating judge may issue an order to extend the detention for similar periods so that the total period of detention does not exceed forty-five days.**
However, in misdemeanor matters, the arrested accused must inevitably be released after the lapse of eight days from the date of his interrogation if he has a known place of residence in Egypt, and the maximum penalty prescribed by law does not exceed one year, and he was not a recidivist and was previously sentenced to imprisonment for more than one year. "

As for the powers of the Appellate Misdemeanors Court sitting in the Consultation Chamber, it may, in accordance with the Procedural Law, consider renewing the detention order issued either by the Public Prosecution or by the investigating judge in the event that the investigation is not completed, and it may order the continuation of detention for successive periods not exceeding forty-five days each or order release.

Thus, the Public Prosecution, in accordance with Article 43 of the Anti-Terrorism Law, has the powers of the investigating judge and the Court of Appeal of Misdemeanors sitting in the counseling room with regard to the periods of pretrial detention, which represents a great danger to the accused, who was guaranteed by the general rules stipulated in the Procedures Law to consider his pretrial detention before the investigating judge and the Court of Appeal of Misdemeanors sitting in the counseling room, which means hearing his defense by other judicial bodies that only consider the detention order and are therefore closer to impartiality than the Public Prosecution, which faces fears of impartiality as it is, from the first moment of the investigation, a litigant in the case, and therefore the defendant's order is in its hand and thus becomes a litigant and a judge, which contradicts the principle of separation of powers.

It is worth mentioning that this text is not strange or new in the Egyptian legislative environment. The same text was previously found in Law No. 113 of 1957, which introduced the text of Article 208 bis[92] in the Code of Criminal Procedure and granted the Public Prosecution the powers of the investigating judge and the indictment chamber. This law was then repealed by Law No. 107 of 1962 after the provision of the article was transferred to the Emergency Law No. 162 of 1958.

Likewise, the text of Article 206 bis of the Code of Criminal Procedure, which was added by Law 95 of 2003 and amended by Law 145 of 2006, amending some provisions of the Code of Criminal

[92] Before its repeal, Article 208 bis of the Code of Criminal Procedure stipulated that "**the Public Prosecution shall have in the investigation of the crimes stipulated in Parts I, II, II bis, III and IV of Book II of the Penal Code, in addition to the powers vested in it by the investigating judge and the indictment chamber, and shall not comply with the restrictions set forth in Articles 51, 52, 53, 54, 55, 57, 82, 84, 91, 92, 97, 142 and 143.**
However, the accused may file a grievance against his detention order to the president of the criminal court or to the judge of the competent misdemeanor court, as the case may be, if thirty days have elapsed from the day of his arrest without submitting him to the court.
In the absence of the session of the criminal court, the grievance in the felony articles shall be to the president of the competent court of first instance or his representative.
The consideration and adjudication of the grievance shall be in the manner set forth in Article 144 and following.
The right of the accused to file a grievance shall be renewed when thirty days have elapsed from the date of the last decision issued in this regard. The competent court may, during the hearing of the case, issue an order for the provisional release of the accused.

Procedure to stipulate that "members of the Public Prosecution shall have at least the rank of chief prosecutor - in addition to the competencies prescribed for the Public Prosecution - the powers of the investigating judge in the investigation of the felonies stipulated in Parts I, II, II bis and IV of Book II of the Penal Code. In addition, they shall have the authority of the Court of Appeal of Misdemeanors sitting in the Chamber of Counsel set forth in Article (143) of this Law to investigate the crimes stipulated in Section I of Title II referred to, provided that the period of imprisonment shall not exceed fifteen days each time. These members of that class shall have the powers of the investigating judge except for the periods of pretrial detention stipulated in Article (142) of this Law, in the investigation of the felonies stipulated in Title III of Book II of the Penal Code. "

The previous article was challenged, and the Supreme Constitutional Court said in justifying the granting of the Public Prosecution by at least one chief prosecutor the powers vested in the investigating judge and the Court of Appeal of Misdemeanors, sitting briefly in the counseling room, that the Public Prosecution, with its impartiality as an independent judicial body, has no harm in granting these powers, in Constitutional Case No. 207 of the 32nd Judicial Year - Constitutional - filed before it to challenge the unconstitutionality of several articles, including the aforementioned Article 206 bis, in which it ruled to reject the case and confiscate the bail, and it said in the reasons for its ruling issued on 1/12/2018: -

" Whereas it is established - in accordance with the jurisprudence of this court - that the availability of judicial guarantees, the most important of which is impartiality and independence, is necessary in every judicial or arbitral dispute, and they are two concurrent and equal guarantees in the field of the administration of justice and the achievement of its effectiveness, and each of them has the same constitutional value, one of them does not outweigh or outweigh the other, but they are complementary and equal in some measure, and these two guarantees are undoubtedly available in the members of the Public Prosecution as a judicial body, surrounded by the legislator with a fence of guarantees and immunities as stipulated in the Judicial Authority Law issued by a decision The President of the Republic by Law No. 46 of 1972, in a way that cuts off the guarantees of independence and impartiality for them, in addition to the fact that the member of the Public Prosecution exercises the work of investigation and disposes of it after that, and has replaced the investigating judge for considerations determined by the legislator, including the decision of Article (206 bis) of the Code of Criminal Procedure to grant the members of the Public Prosecution at least the level of chief prosecutor the powers of the investigating judge, in the investigation of the felonies stipulated in Chapter Three of Book Three of the Penal Code related to bribery crimes, including the authority prescribed for the investigating judge under the text of Article (95) from the Criminal Procedure Law regarding the issuance of the control and registration order, and

determining their duration within the framework specified by the law, and within these limits, the member of the Public Prosecution derives his right not from the Public Prosecutor in his capacity as the accusatory authority, but from the law itself, which is required by the investigation procedures as they are purely judicial acts, and the judicial decisions and orders issued by the member of the Public Prosecution in this field, are issued from him, characterized by the impartiality and neutrality of the judge, independent in making his decision from the authority of the presidency of a president or the control of a sergeant, and for this reason, the current Constitution is keen to stipulate in Article (189) stipulates that the Public Prosecution is an integral part of the judiciary, so that its members enjoy the same guarantees as judges, especially independence, irremovability, and no authority over them in their work except for the law, which is confirmed by the Constitution in Article (186) thereof, which makes the order issued by the members of the Public Prosecution at least of the rank of chief prosecutor to monitor, register, determine and renew its duration, prescribed for them under the text of the second paragraph of Article (95), and the second paragraph of Article (206 bis) of the Code of Criminal Procedure, fall within the scope of the reasoned judicial order that Article (57) of the Constitution stipulated it to impose such censorship "

It is no secret that pretrial detention for these periods granted to the Public Prosecution violates the Constitution and the rules of international law.

Article 62 of the Constitution states that: -

"Freedom of movement, residence, and immigration is guaranteed. No citizen may be expelled from the territory of the State, nor shall he be prevented from returning to it. Nor shall he be prevented from leaving the territory of the State, or forced to reside on him, or prohibited from residing in a specific destination on him, except by a reasoned judicial order and for a specific period, and in the cases specified by law."

Article 96 also stipulates that: -

"The accused is innocent until proven guilty in a fair legal trial, in which he is guaranteed the guarantees of self-defense. The law shall regulate the appeal of judgments rendered in felonies.

The State shall provide protection to victims, witnesses, defendants and whistleblowers when necessary, in accordance with the law. "

Likewise, preventive detention as a penalty decided by the Public Prosecution against the accused, especially in cases of a political nature, violates the provisions of Article 95, which stipulates that: -

"The punishment is personal, and there is no crime or punishment except on the basis of a law, and no punishment shall be imposed except by a judicial ruling, and no punishment except for acts subsequent to the date of entry into force of the law."

As well as the text of Article 59, which states that: -

"A safe life is a right for every human being, and the state is committed to providing security and tranquillity for its citizens, and for every resident on its territory."

Of course, Article 54 states that: -

"Personal freedom is a natural right, and it is inviolable. Except in the case of flagrante delicto, no one may be arrested, searched, imprisoned, or restricted in any way except by a reasoned judicial order required by the investigation.

Anyone whose freedom is restricted shall be informed immediately of the reasons for this, shall be informed of his rights in writing, shall be able to contact his family and lawyer immediately, and shall be submitted to the investigating authority within twenty-four hours from the time of restricting his freedom.

The investigation with him shall not commence except in the presence of his lawyer, and if he does not have a lawyer, he shall be assigned a lawyer, with the provision of the necessary assistance to persons with disabilities, in accordance with the procedures prescribed by law.

Everyone whose freedom is restricted, and others, has the right to file a grievance before the judiciary against that procedure, and to decide on it within a week of that procedure, otherwise he must be released immediately.

The law shall regulate the provisions of pretrial detention, its duration, the reasons for it, and the cases of entitlement to compensation that the state is obligated to pay for pretrial detention, or for the execution of a punishment for which a final judgment has been issued annulling the judgment executed pursuant to it.

In all cases, the accused may not be tried for the crimes for which imprisonment is permitted except in the presence of a lawyer assigned or assigned. "

The Constitution considered that any attack on personal freedom constitutes a crime that is not subject to a statute of limitations, in the text of Article 99, which stipulates that: -

" Any attack on the personal freedom or the inviolability of the private life of citizens, and other public rights and freedoms guaranteed by the Constitution and the law, is a crime for which neither the criminal nor the civil lawsuit arising therefrom is statute-barred, and the aggrieved party may institute criminal proceedings directly.

The state shall guarantee fair compensation to the victim of the attack. The National Council for Human Rights may inform the Public Prosecution of any violation of these rights, and it may intervene in the civil lawsuit, joining the injured party at his request, all in the manner specified by law.

The Supreme Constitutional Court has many rulings that establish the principle of the presumption of innocence, and sanctify personal freedom, which is blatantly violated by pretrial detention without a final and final judicial ruling, which the legislator must stop based on the Constitution and the principles of the Supreme Constitutional Court.

It is no secret that the Anti-Terrorism Law faces a threat of unconstitutionality, due to the challenge to some of its provisions before the Supreme Constitutional Court, especially as it is a law that was issued under the exceptional legislative authority of the President of the Republic, as the Egyptian Initiative for Personal Rights has filed Constitutional Law No. 31 of 40 Judicial, the reasons for which revolve around two main axes. The first is the violation of the constitutional conditions necessary at the time of discussing that decision by law in the House of Representatives, as those discussions were not of the seriousness necessary to achieve the constitutional condition stipulated in Article 156 of the Egyptian Constitution of 2014, as well as to violate the rules of publishing the laws stipulated in Article 225 of the same Constitution, as the approval of the House of Representatives on that decision by law has not yet been published in the Official Gazette. The second axis revolves around substantive violations of the constitutional rules on how to criminalize and punish, and the proportionality between crime and punishment, as well as for violating the principles of human rights, especially with regard to freedom of opinion and expression, and the rule of law.[93]

[93] To view the constitutional lawsuit filed by the Egyptian Initiative for Personal Rights before the Supreme Constitutional Court to challenge the Anti-Terrorism Law No. 94 of 2015 on unconstitutionality, please click on the link https://eipr.org/sites/default/files/reports/pdf/ltn_bdm_dstwry_qnwn_lrhb.pdf.

The Supreme Constitutional Court has numerous precedents relating to the extraordinary legislative power vested in the President of the Republic by specific rules and conditions: -

" Whereas the enactment of laws is the prerogative of the legislature, which it exercises in accordance with the Constitution within the framework of its original function. While the principle is that the legislative authority itself assumes this function established by the Constitution, all Egyptian constitutions have had to balance the requirements of the separation between the legislative and executive authorities from the assumption of their respective functions in the field originally specified for them, the need to preserve the entity of the state and the approval of the regime in its territory in the face of the dangers that it may face - between the roles of the legislative authority or in its absence - from the looming dangers or the diagnosis of the damages that accompany it. It is equal that these risks are of a material nature, or that their establishment is based on the need for the state to intervene with a legislative organization that is necessary to meet its international obligations. The approach adhered to by these various constitutions, in light of the requirements of this budget, was to give the executive authority the competence to take the urgent measures necessary to confront exceptional situations, whether in view of their nature or extent. This is the state of necessity that the Constitution considers as one of the conditions it requires to exercise this exceptional jurisdiction. The competence vested in the executive in this sphere is no more than an exception to the fact that the legislature is based on its original task in the legislative sphere. If this is the case, and the urgent measures taken by the executive authority to confront the state of necessity stem from its requirements, then its disengagement from it imposes on the government of the constitutional violation - as the availability of the state of necessity - with its objective controls that do not depend on the executive authority at its discretion - is the reason for its competence to confront the emergency and pressing situations with those urgent measures, but it is the subject of its exercise of this competence, and to it extends the constitutional control exercised by the Supreme Constitutional Court to verify its existence within the limits set by the Constitution, and to ensure that this legislative license - which is of an exceptional nature - does not turn into a full and absolute legislative authority that is not restricted, nor immune from its ambition and deviation. "[94]

[94] Judgment of the Supreme Constitutional Court No. 25 of 16 judicial year - dated 3/7/1995.

Section II/ Penalties prescribed in the Anti-Terrorism Law No. 94 of 2015, and their impact on fair trial guarantees.

The penalties imposed by the Anti-Terrorism Law on those who violate its provisions were harsh, and in most of the law's articles, they were not commensurate with the crime committed, especially since the Anti-Terrorism Law contains broad terms that can be applied arbitrarily to crimes that do not represent a real danger to national security. Of course, one of the guarantees of a fair trial is that the penalties imposed on the accused should be proportionate to the crime he committed. Below, we have commented on the penal provisions in the Anti-Terrorism Law and their conflict with the penal provisions in the Penal Code.

Article 5: -

Attempting to commit any terrorist crime shall be punished with the same punishment prescribed for the completed crime.

This article punishes the attempt to commit the crime with the same penalty prescribed for the complete crime, which is contrary to the Egyptian criminal policy and the principle of proportionality between the crime and punishment. Article 45 of the Penal Code No. 58 of 1937 defines the attempt as "the commencement of the execution of an act with the intention of committing a felony or misdemeanor if its effect is suspended or frustrated for reasons that have nothing to do with the will of the perpetrator. Attempts to commit a felony or misdemeanor are not considered mere intent to commit it, nor are preparatory acts for that."

Article 46 of the Penal Code also sets the penalties for the crime of attempt according to the original penalty for the crime so that it is always mitigated from the original crime. We find that the death penalty, for example, in cases of premeditated murder, is replaced by life imprisonment in the case of an attempt. The penalties that are punishable by life imprisonment are replaced by aggravated imprisonment in the case of attempt and so on in all felonies and misdemeanors. Article 46 of the Penal Code No. 58 of 1937 stipulates that: -

"An attempt to commit a felony shall be punished by the following penalties, unless otherwise provided by law:
life imprisonment if the punishment for the felony is the death penalty.
aggravated imprisonment if the penalty for the felony is life imprisonment.
Aggravated imprisonment for a period not exceeding half of the maximum prescribed by law, or imprisonment if the penalty for the felony is aggravated imprisonment.
Imprisonment for a period not exceeding half of the maximum prescribed by law or imprisonment if the penalty for the felony is imprisonment. "

Thus, the Anti-Terrorism Law, when it equated the penalty for committing and initiating a crime, came up with an approach that is inconsistent with Egyptian criminal policy. Although there is no specific provision in the Egyptian Constitution that stipulates the need for the legislator to respect the principle of proportionality between the crime and the punishment, the rulings of the Supreme Constitutional Court referred to it in many of its rulings and considered that the disproportionation exceeds the discretionary power vested in the judiciary and is considered interference by the legislator in the work of the judiciary, as it clarified in one of its rulings that:

"The state may not, in exercising its power to impose punishment in order to preserve its social order, undermine the minimum level of those rights without which the accused cannot be assured of a fair trial. The purpose of this trial is the effective administration of criminal justice in accordance with the requirements set forth in Article 67 of the Constitution. It has been decided that the "nature of the punishment" and "its proportionality to the crime in question" are linked to "who is legally responsible for committing it" in light of their role in it, their intentions, and the damage resulting from it, so that the punishment corresponds to their choices regarding it. Whenever this is done, and all these elements are taken into account within the framework of the essential characteristics of the judicial function, as one of its components, then depriving those who exercise it of their authority in the field of individualizing punishment in a way that harmonizes "between the formula it was emptied of and the requirements for its application in a specific case" necessarily means that penal texts lose their connection to reality, so that they no longer resonate with life, and their enforcement becomes "an abstract act that isolates them from their environment," as a sign of their cruelty or exceeding the limit of moderation, rigid and crude, contrary to the values of truth and justice. Resulting from it, so that the penalty for it is in accordance with his choices in regard to it. Whenever this is done, and the appreciation of all these elements is included, within the framework of the essential characteristics of the judicial function, as one of its components, then depriving those who exercise it of their authority in the field of

individualization of punishment in a way that harmonizes " between the formula in which it was emptied and the requirements for its application in a specific case" necessarily means that the penal texts lose their connection with their reality, so that they do not vibrate with life, and their enforcement "is only an abstract act that isolates them from their environment " as an indication of their cruelty or exceeding the limit of moderation, rigid and crude contrary to the values of truth and justice. "[95]

As for what is considered interference by the legislator in the judiciary, the same ruling expressed it by saying: -

"Criminal texts are governed by strict standards that relate to them alone, and sharp standards that meet their nature, and do not compete in their application with other legal rules, and the Constitution guarantees the rights stipulated therein, protection from their practical aspects, not from their theoretical data, and the constitutionally established jurisdiction of the legislative authority in the field of approving laws, and the related establishment of crimes and deciding their punishment, does not entitle it to interfere in the work assigned by the Constitution to the judicial authority and its jurisdiction. Otherwise, it is fraught with its jurisdiction and the jurisdiction of the judicial authority to adjudicate in the disputes submitted to it requires it to exercise in its regard all the rights that can be intellectually linked to the judicial function, and it is inseparable from it as one of its intrudes, whenever this is, the disruption of the legislative authority of this function - even in some aspects - is considered a distortion of it, and an intrusion contrary to the Constitution, to the limits by which separated it from the judicial authority."

The Supreme Constitutional Court also stressed the need for proportionality between the crime and the punishment prescribed for it, and that this punishment should be consistent with the seriousness of the crime, otherwise the text loses its justification for its existence and becomes arbitrary in restricting personal freedom, as it ruled that: -

"This court has ruled that the legality of the penalty - whether criminal, civil or disciplinary - is required to be commensurate with the acts completed by the legislator, their prohibition or restriction of their exercise. The origin of the penalty is its reasonableness. Whenever the criminal penalty is abhorrent, excessive or related to acts that do not justify criminalization or manifestly deviate from the limits with which it is commensurate with the seriousness of the acts completed

[95] Judgment of the Supreme Constitutional Court Case No. 37 of 15 Judicial - Constitutional - dated 03/08/1996.

by the legislator, it loses its raison d 'être and its restriction of personal freedom becomes arbitrary."[96]

Article 6: -

> Incitement to commit any terrorist crime shall be punished with the same penalty prescribed for the complete crime, whether this incitement is directed at a specific person or a specific group, or whether it is public or non-public incitement, and whatever the means used in it, even if this incitement has no effect.
> Whoever agrees to or in any way assists in the commission of the crimes referred to in the first paragraph of this article, even if the crime is not committed on the basis of that agreement or assistance, shall also be punished by the same punishment prescribed for the completed crime.

This article made the incitement or agreement to commit a terrorist crime punishable by the full penalty of the crime, even if the incitement or agreement did not have an effect on the crime, and it violates the general rules of both incitement and criminal agreement in the Penal Code, as Article 171 of the Penal Code stipulates that the instigator of the crime shall be punished with the same punishment as the perpetrator of the crime, but if it does not occur, he shall be punished with the provisions prescribed for incitement in accordance with the Penal Code.

The last sentence of both the first and second paragraphs is considered to be flawed by unconstitutionality, as the article makes incitement to commit the crime or agreement to commit the crime punishable by the full penalty of the crime, even if the incitement or agreement does not have an impact on the crime and violates the general rules of both incitement and criminal agreement in the Penal Code.

Regarding incitement, the Penal Code in the second book titled "Felonies and Misdemeanors Harmful to the Public Interest and the Statement of Their Penalties" in Article 171 stipulates that the punishment for incitement shall be the same as that for the full crime, provided that such incitement results in the actual commission of that felony or misdemeanor, as it further stipulates the following:

[96] Supreme Constitutional Court - Case No. 114 of 21 Judicial - Constitutional - dated 2001-06-02.

"Any person who incites one or more of them to commit a felony or a misdemeanor by saying or shouting publicly or by an act or gesture publicly issued by him or in writing, drawings, pictures, solar images, symbols or any other way of representation made public or by any other means of publicity shall be considered an accomplice in its act and shall be punished with the punishment prescribed for it if such incitement results in the occurrence of such felony or misdemeanor.

However, if incitement results in the mere attempt of the crime, the judge shall apply the legal provisions in punishment for the attempt."

As for incitement, if it does not result in any result, the penalty shall be imprisonment, as stipulated in Article 172 of the Penal Code, which stipulates that: -

"Any person who directly incites to commit crimes of murder, looting or burning by one of the methods stipulated in the previous article and whose incitement does not result in any result shall be punished by imprisonment."

Thus, punishing the instigator with the same punishment as the original perpetrator of the crime even if his incitement did not produce a direct effect of the crime is a violation of the principle of disproportion between the crime and the punishment, and an unjustified excessiveness and breadth of punishment even if they are terrorist crimes, the general rules stipulated in the Penal Code are sufficient to achieve general deterrence.

This article also lacks clarity as the legislator did not specify what is meant by the phrase "no effect". Is it intended even if the crime did not occur or only if there is no causal relationship between the criminal act and the result, which is tainted by the defect of unconstitutionality and violates the principle of the personality and uniqueness of the penalty guaranteed by Article 95 [97]of the Constitution, as the article discards the material element of the crime – in the absence of it - or the causal relationship – in the event that the agreement does not produce any effect - which is one of the basic elements constituting it.

It is worth mentioning that the Penal Code has already singled out a provision punishing the criminal agreement in Article 48 of the Penal Code before the Supreme Constitutional Court ruled it unconstitutional, as it stipulated that: -

[97] Article 95 of the Egyptian Constitution stipulates that "**Punishment is personal, and there shall be no crime or punishment except on the basis of a law, and no punishment shall be imposed except by a judicial ruling, and no punishment except for acts subsequent to the date of entry into force of the law**."

"There is a criminal agreement whenever two or more persons unite to commit a felony or misdemeanor or to acts prepared or facilitated to commit it. The agreement is considered criminal, whether its purpose is permissible or not, if the commission of felonies or misdemeanors is one of the means observed in reaching it.

Whoever participates in a criminal agreement, whether its purpose is to commit felonies or to use it as a means to reach its intended purpose, shall be punished by imprisonment on the sole ground of his participation. If the purpose of the agreement is to commit misdemeanors or to take them as a means to reach the intended purpose, the participant shall be punished by imprisonment.

Whoever incites such a criminal agreement or interferes in the management of his movement shall be punished by temporary hard labor in the first case provided for in the preceding paragraph and by imprisonment in the second case.

However, if the purpose of the agreement is only to commit a specific felony or misdemeanor whose punishment is lighter than that stipulated in the preceding paragraphs, no punishment more severe than that stipulated by law shall be imposed for that felony or misdemeanor.

Whoever of the perpetrators informs the government of the existence of a criminal agreement and of those who participated in it before the occurrence of any felony or misdemeanor and before the government searches and searches for those perpetrators shall be exempted from the penalties prescribed in this article. If the news occurs after the search and inspection, the news must reach the arrest of the other perpetrators."

It is noteworthy that the political circumstances of Article 48 of the Penal Code are similar to those in which the Anti-Terrorism Law was issued, as Article 48 was added to the Penal Code after the assassination of the Speaker of the House of Representatives in 1910, which led the legislator at the time to issue such an article – despite the objection of the Consultative Council of Laws at the time - which was punished for the criminal agreement as an independent crime in itself and not as a means of criminal contribution, which the legislator revived in Article 6 of the Anti-Terrorism Law in the phrase "even if the crime did not occur on the basis of that agreement or that assistance" as well as for the incitement to the crime "even if this incitement did not have an effect". Therefore, the absence of a causal relationship between the elements of the material act of the crime and its occurrence should not be punished with the full penalty of the crime, as this could encourage the perpetrator to persist and resolve to complete his crime, especially if the full penalty will still apply to him even if his incitement or criminal agreement does not have any actual impact on the crime. In this case, there is no way to mitigate the punishment.

The Supreme Constitutional Court ruled the unconstitutionality of Article 48 of the Penal Code in Case No. 114 of 21 Judicial of the Supreme Constitutional Court. The reasons for its ruling regarding the first paragraph of the article, which punished the criminal agreement, even if the agreed crime was not of a degree of seriousness or the subject of the agreement did not have a clear criminal connotation, as it ruled: -[98]

"It is clear from the extrapolation of the text of the first paragraph of Article 48 of the Penal Code that it defined the criminal agreement as the union of two or more persons to commit a felony or a misdemeanor or to acts prepared or facilitated to be committed. The text did not require more than two for the commission of the crime. It also did not require that the agreement continue for a certain period or to be organized. The subject of the agreement may be several felonies, several misdemeanors or a group of mixed crimes of both types. The agreement may only be contained in a single felony or misdemeanor. The text did not require that the crime or crimes agreed upon be of a degree of gravity. The subject of the agreement may be the commission of any misdemeanor, no matter of little importance in its criminal connotation. It is not necessary for the felony or misdemeanor subject to the agreement to be specified, as if the use of violence – to any degree – was agreed upon to achieve the purpose of the agreement, whether this purpose is legitimate or illegal. Therefore, the scope of criminalization is broad and does not require a justified social necessity."

As for the second paragraph, which stipulated the penalty of imprisonment for agreeing to commit a felony and imprisonment if the criminal agreement is for a crime that falls under misdemeanors, it was commented on by the ruling of the Supreme Constitutional Court, which ruled that: -

"Whereas the second paragraph of Article 48 of the Penal Code determines the penalty of imprisonment for the criminal agreement to commit a felony, and the penalty of imprisonment is to place the convict in a public prison and operate him inside or outside the prison in the work designated by the government for the period of the sentenced person, and it may not be less than three years or more than fifteen years except in the cases of privacy provided for by law, while there are many felonies in which the legislator specified the penalty of imprisonment for a period of less than fifteen years. The paragraph also states that the penalty of the criminal agreement for the commission of misdemeanors is imprisonment, that is, placing the convict in a central or public

[98] To view the full ruling No. 114 of 21 constitutional judicial year of unconstitutionality of the text of Article 47 of the Penal Code, click on the link https://cutt.us/Ui5DK.

prison for the minimum period of twenty-four hours and not more than three years except in the cases of privacy provided for by law, while there are multiple misdemeanors in which the legislator specified the penalty of imprisonment for a period of less than three years, which reveals the disproportion of the penalties mentioned in the second paragraph of the contested text with the sinful act. There is no argument in this regard that the fourth paragraph of Article 48 referred to That if the subject of the agreement is a specific felony or misdemeanor whose punishment is lighter than that stipulated in the previous paragraph, no punishment more severe than that stipulated by the law shall be imposed for that felony or misdemeanor, but the subject of the agreement - as already mentioned - may be the commission of a felony or misdemeanor not specified in itself, and then the penalties mentioned in the second paragraph of the article alone shall be imposed up to fifteen years imprisonment or imprisonment for three years - as the case may be - and there is no doubt that they are excessive penalties that reveal the legislator's exaggeration of punishment in a manner that is not commensurate with the sinful act."

The court also denounced the allocation of a penalty to the criminal agreement even if the crime was not committed. The court considered that the allocation of the same penalty for the complete crime of incitement and criminal agreement if it does not have an effect is an encouragement to the perpetrator and pushing him to design to complete his crime, which does not achieve public or private deterrence. It also stated that the acts for which a clear and unambiguous punishment is imposed should not infringe on the rights and freedoms of citizens and thus violate the fundamental controls on which a fair trial is based.

Violation of international law by the article: -

Articles 5 and 6 of the Anti-Terrorism Law contravene the International Bill of Human Rights with regard to the right to equality before the law, since those tried in accordance with the Anti-Terrorism Law will be subject to penalties and legal principles that violate the criminal policy of the Egyptian Penal Code.

Article 26 of the International Covenant on Civil and Political Rights states: “All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this regard, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”

Principle VII of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, adopted in 1988, also provides: 1. States should prohibit by law any act contrary

to the rights and duties set forth in these Principles, subject the commission of any such act to appropriate sanctions, and conduct impartial investigations when complaints are received. "

Not only articles 5 and 6 of the Anti-Terrorism Law, which are harsh and excessive in singling out harsh penalties, but all the penal articles in the law prescribe severe penalties that are not commensurate with the crime for which the penalty is prescribed, but also all the case law that we have mentioned regarding the restriction of personal freedom and the need for the penalties to be reasonable and proportionate to the seriousness of the crimes, such as, but not limited to, article 16, which states that: -

"Whoever seizes, attacks, or enters by force, violence, threat, or intimidation one of the presidential headquarters, the headquarters of parliamentary councils, the Council of Ministers, ministries, governorates, armed forces, courts, prosecution offices, security directorates, police stations and centers, prisons, security or supervisory bodies or agencies, archaeological sites, public facilities, places of worship, education, hospitals, or any of the public buildings or facilities with the intention of committing a terrorist crime shall be punished by life imprisonment or rigorous imprisonment of less than ten years.

The provisions of the first paragraph of this article apply to anyone who places devices or materials in any of the previous headquarters, whenever this would destroy or damage them, or any of the persons present or frequenting them, or threatens to commit any of these acts.

The punishment shall be life imprisonment if the act is committed using weapons, by more than one person, if the perpetrator destroys or destroys the headquarters, or if he forcibly resists the public authorities while performing their duty to restore the headquarters. If the commission of any of the foregoing acts results in the death of a person, the punishment shall be death. "

It is an article that can be applied to any person in any of the institutions and establishments included in the article, especially as they are public places to which citizens have the right to go, whether to achieve their interests or even to file a complaint or grievance. If this does not involve a terrorist act, the article has expanded its scope of application, which violates the rights and freedoms guaranteed by the Constitution.

As well as Article 18, which is the most strange and deplorable and sets the penalty of life imprisonment and rigorous, which is not less than ten years on the charge of overthrowing the government, which is a crime that can be attributed to any citizen or group of citizens who have decided to criticize the public policy of the state, as such crimes are set by dictatorial regimes to

deliberately intimidate citizens and prevent them from their legitimate rights to express an opinion, as it states that: -

"Whoever attempts by force, violence, threat, intimidation, or other means to overthrow the system of government or change the constitution of the state, its republican system, or the form of government shall be punished by life imprisonment or rigorous imprisonment for a period of no less than ten years."

Article 36: -

It is prohibited to film, record, broadcast, or display any of the proceedings of the trial sessions in terrorist crimes except with the permission of the president of the competent court.
Whoever violates this prohibition shall be punished by a fine no less than one hundred thousand pounds and not exceeding three hundred thousand pounds.
In addition, it shall be ruled to confiscate the devices or others that may have been used in the crime, or what resulted from it, or to erase their content, or to execute them, as the case may be.

This text was amended by Law No. 149 of 2021 amending some laws, including the Anti-Terrorism Law.

The original text of the article stipulated that:

"It is prohibited to film, record, broadcast or display any of the proceedings of the trial in terrorist crimes except with the permission of the president of the competent court. Whoever violates this prohibition shall be punished by a fine of no less than twenty thousand pounds and no more than one hundred thousand pounds. "

Therefore, the amendment of the article came by increasing the fine from twenty thousand pounds and not exceeding one hundred thousand pounds to one hundred thousand pounds and not exceeding three hundred thousand pounds, as well as the addition of the last paragraph, which is also punishable by confiscating the devices used in filming or recording the sessions and erasing their content.

These are heavy penalties that are in no way commensurate with the crime committed, in particular, and represent a restriction on the right to know and threaten the freedom of the press and publication. Like most of the laws issued in this era, the authority has deliberately restricted the right to know and increased the penalties, an attempt to completely obfuscate trials, especially those related to political opponents and opponents of the public policies of the ruling authority. Many sentences have been issued with harsh penalties that have reached severe prison sentences and the death penalty. Of course, these trials lacked the minimum standards of a fair trial, and such laws have achieved their goal of spreading fear, intimidating citizens, and restricting freedoms.[99]

International law has tended to consider the right to public consideration of cases a fundamental guarantee of the impartiality, independence, and fairness of litigation, and the need to inspire public confidence in the judicial system. Not only has the concept of the principle of publicity been limited to the presence of the parties to the proceedings, but the trial must be open to the general public and the media as well. In addition to safeguarding the rights of the accused, this principle embodies the general right to know and monitor how justice is administered and protected, and the judgments issued by the judiciary.[100]

The Egyptian Penal Code has set the penalty of imprisonment and a fine for anyone who violates the decisions issued for the confidentiality of the hearings in Article 189, as it stipulates that: -

"A penalty of imprisonment for a period not exceeding one year and a fine of no less than five thousand pounds and no more than ten thousand pounds or one of these two penalties shall be imposed on anyone who publishes in one of the aforementioned ways what happened in civil or criminal cases that the courts decided to hear in a secret session. There shall be no punishment for merely publishing the subject of the complaint or for simply publishing the judgment. However, in cases in which it is not permissible to establish evidence of the alleged matters, the announcement of the complaint or the publication of the judgment shall be punished by the

[99] Human rights watch an article titled"**A Wave of Unfair Emergency Trials** "to see it please click on https://2u.pw/3L1QtvN.
She also published an article entitled **"The Frenzy of Executions in Egypt Must Stop**" to view https://2u.pw/mR3MAyg.
It also published a report entitled "**Increasing Death Sentences: Summary of the Death Penalty Situation in Egypt during 2021**" to see https://2u.pw/cYembM1.

[100] "Fair Trial Guide" report issued by Amnesty International – Second Edition – p. 121.

penalties stipulated in the first paragraph of this article, unless the publication of the judgment or the complaint was at the request of the complainant or with his permission."

Article 190 also stipulates that: -

" In cases other than those falling within the provisions of the preceding article, the courts may, due to the type of facts of the case, prohibit, in order to preserve public order or morals, the publication of judicial proceedings or judgments in whole or in part in one of the ways set forth in Article 171. Whoever violates this shall be punished by imprisonment for a period not exceeding one year and a fine of no less than five thousand pounds and no more than ten thousand pounds, or one of these two penalties."

Article 191 stipulates that: -

" Whoever publishes in one of the aforementioned ways what happened in the secret deliberations in the courts or publishes dishonestly and maliciously what happened in the public hearings in the courts shall be punished with the same penalties."

In justifying such stricter provisions of the Penal Code, the Supreme Constitutional Court has ruled that preserving national unity and safeguarding state secrets is the duty of every citizen in order to preserve the security and integrity of the state at home and abroad. [101]

It is worth mentioning that despite the adequacy of the penal provisions regarding the penalties prescribed to derogate from the decision on the confidentiality of the sessions, on 21/6/2021, Law No. 71 of 2021 was issued, regarding the addition of the text of Article 186 bis to the Penal Code, which stipulates that: -

"Without prejudice to any more severe penalty, a fine of no less than one hundred thousand pounds and no more than three hundred thousand pounds shall be imposed on anyone who photographs, records of words or clips, broadcasts, publishes or displays by any means of publicity the proceedings of a trial session devoted to the consideration of a criminal case without permission from the president of the competent court after taking the opinion of the Public Prosecution. In addition, the confiscation of devices or others that may have been used in the crime, or what resulted from it, or the erasure of its content, or its execution, as the case may be, shall be ruled. The fine shall be doubled in case of recidivism. "

[101] Verdict of the Supreme Constitutional Court Case No. 3 of 4 Judicial Year 1974-04-13.

Under this article and article 36 of the Anti-Terrorism Law, it is clear that the intention of the legislator is to restrict the right to know as well as to restrict publication, especially since the article did not place restrictions on the court in refusing to authorize publication or exhibition, whatever the method of publicity. It also did not determine specific cases for some topics of a nature that require this confidentiality in the trial, which constitutes an attack on the right to provide information, especially since many criminal cases concern public opinion, which has the right to monitor the conduct of judges and the conduct of trials in order to ensure the impartiality and independence of the judiciary.

(Part Three)

Violations of fair trial guarantees in exceptional laws.

Good laws lead to better laws, and bad laws lead to worse laws.

Jean-Jacques Rousseau

The purpose of the law is not to prevent or restrict freedom, but to preserve and expand it.

John Locke

Law No. 162 of 1958, on the State of Emergency.

The emergency law – notorious – has always raised doubts about its constitutionality due to its legal provisions, as it is always characterized by a departure from the principles of rights, freedoms, and fair trial guarantees guaranteed by the state's Constitution. It is an exceptional law whose rules are applied only when a state of emergency is declared, imposing restrictions on the freedom of movement and assembly of individuals, and allowing for the arrest of suspects. The declaration of a state of emergency means that the state adopts a set of exceptional measures that represent a departure from general rules and includes broad powers for the President of the Republic, making him dominant over all the executive, legislative, and judicial powers of the state. This law is declared whenever security or public order is threatened in the territory of the state or in part of it, whether due to the occurrence of a war or a situation that threatens to occur, or the outbreak of internal disturbances such as armed insurrection, public disasters, or the spread of epidemics.

Although the state of emergency law is an exceptional law, successive authorities in Egypt have always used the declaration of a state of emergency as a pretext to restrict public freedoms, suppress citizens, and try them before the Supreme State Security Courts. President Abdel

Fattah El-Sisi resorted to this measure, and the declaration of the state of emergency remained in place as a permanent status in Egypt from August 2017 to October 2021, lasting for more than four years. Therefore, the provisions of the exceptional emergency law were in force for four years, as well as the jurisdiction of the Supreme State Security Courts, which adjudicate crimes that violate the provisions of the emergency law, despite these courts being exceptional and haunted by doubts about their constitutionality.

The state of emergency continued throughout these years, although Article [102]154 of the Constitution sets a maximum of six months for the imposition of a state of emergency, divided into two periods of three months each, through a decision issued by the President of the Republic to declare a state of emergency. However, this period was circumvented by leaving a short interval between the end of the state of emergency and the issuance of a new decision to declare it, as the difference is about one or two days at the most, and therefore a presidential decision is issued to declare a state of emergency and renew it every three months for four years, which is contrary to the Constitution, which was explicit and clear when it set a maximum limit for the continuation of the state of emergency, especially since the state of emergency was the dominant feature of President Mubarak's regime before the 25th of January revolution, which always expressed the tyranny of the regime and its dictatorship, so the Constitution came after the revolution to put a maximum so that the regimes do not follow this obsolete approach.

Although the state of emergency was officially lifted in October 2021, along with the termination of the Emergency Law and the Supreme State Security Courts, this is undeniably a positive step. However, the underlying restrictions on freedoms and constitutional violations that characterized the state of emergency continue to pose a threat to citizens' safety. The laws enacted since then contain provisions similar to those of the Emergency Law, making the end of the state of emergency appear more like a symbolic gesture to improve Egypt's image internationally. This move coincided with the launch of the National Strategy for Human Rights and the declaration of

[102] Article 154 of the Constitution stipulates that "**The President of the Republic, after consulting the Council of Ministers, shall declare a state of emergency, as regulated by law, and this declaration must be submitted to the Chamber of Deputies within the following seven days to decide what he thinks about it. If the announcement takes place outside the ordinary session, the board must be invited to convene immediately to be presented to it. In all cases, the majority of the members of the board must approve the declaration of the state of emergency, and its declaration shall be for a specified period not exceeding three months, and it shall not be extended except for another similar period, after the approval of two-thirds of the members of the board. If the House does not exist, the matter shall be submitted to the Council of Ministers for approval, provided that it is submitted to the new House of Representatives at its first meeting. The Chamber of Deputies may not be dissolved while the state of emergency is in force.**"

2021 as the "Year of Human Rights" in Egypt. These events served as a cover for ongoing repressive practices, the suppression of public discourse, and numerous violations of human rights and constitutional rights, which persist under these new laws. As a result, the essence of the state of emergency endures, even if it is no longer officially declared.

The laws that have been issued include, but are not limited to, texts whose content is similar to the provisions of the Unconstitutional Emergency Law, the Anti-Terrorism Law, as well as successive amendments to the Military Justice Law and the Law on the Insurance and Protection of Public Facilities and Facilities.

The Anti-Terrorism Law promulgated by Law No. 94 of 2015 allows the President of the Republic, whenever there is a threat of terrorist crimes, to take appropriate measures to confront them, such as evacuating some areas, curfewing or isolating them for a period of six months, which may be extended for indefinite periods, without explicitly providing in Article 53 for the declaration of a state of emergency, which gives the President of the Republic the same powers granted to him in the Emergency Law, without declaring a state of emergency, as Article 53 stipulates that:

"The President of the Republic, whenever there is a danger of terrorist crimes or environmental disasters, may issue a decision to take appropriate measures to maintain security and public order, including the evacuation, isolation or curfew of some areas, provided that the decision includes the determination of the area applicable to it for a period not exceeding six months. This decision must be presented to the House of Representatives within the next seven days to decide what he deems appropriate. If the House is not in the regular session, it must be called to convene immediately. If the House does not exist, the approval of the Council of Ministers must be taken, provided that it is presented to the new House of Representatives at its first meeting. The decision is issued with the approval of the majority of the number of members of the House. If the decision is not presented within the aforementioned date, or presented and not approved by the House, the decision shall be considered as if not otherwise. The President of the Republic may extend the period of the measure referred to in the first paragraph of this article after the approval of the majority of the members of the House of Representatives. In urgent cases in which the measures referred to in this article are taken under oral orders, they shall be reinforced in writing within eight days."

Unlike the rest of the provisions of the Anti-Terrorism Law, such as Article 41, which allows arbitrary arrest, the detention of suspects of terrorist crimes without informing their families or allowing them to seek the assistance of a lawyer in the interest of the investigation, and even the lack of criminal accountability for arresting officers in the event of the killing of suspects and

accused in terrorist cases outside the framework of the law under Article 8, and Article 46, which allows monitoring and recording conversations and messages that respond to telecommunications and other modern means of communication, and recording and filming what is happening in private places, and other articles that reproduce some unconstitutional texts that the Supreme Constitutional Court has previously ruled unconstitutional in the Emergency Law and the Penal Code.

The following is a look at the procedural articles that most plague fair trial guarantees in the Emergency Law, especially the texts that have been amended in the last ten years and violate the Constitution and the principles of the International Bill of Human Rights, as well as the jurisprudence of the rulings of the Egyptian Supreme Courts.

First/ Amendment of the Emergency Law by Law No. 12 of 2017: -

Law No. 12 of 2017 was issued on 27/4/2017 and included an amendment by adding both texts 3 bis B and 3 bis C to the provisions of the State of Emergency Law.
Article 3 bis:

> Judicial officers may, when a state of emergency is declared, seize anyone with evidence of a felony or misdemeanor, what he may possess himself or in his residence, and all places where he is suspected of hiding any dangerous or explosive materials, weapons, ammunition, or any other evidence of the commission of the crime, as an exception to the provisions of other laws, provided that the Public Prosecution is notified within 24 hours of the seizure.
> After obtaining the permission of the Public Prosecution, he may be detained for a period not exceeding seven days to complete the collection of evidence, provided that the investigation begins with him during this period.

As we are analyzing the procedural provisions of the Anti-Terrorism Law to identify potential violations of the fair trial guarantees outlined in its articles, we have already emphasized that one of the most fundamental rights afforded to the accused during the trial stage is the right to

liberty. This right is considered one of the most sacred personal rights, which cannot be waived or tarnished. Therefore, arresting the accused should only occur based on a judicial order required for the investigation, except in the case of flagrante delicto, which permits immediate arrest, in accordance with Article 54 of the Constitution and Article 35 of the Code of Criminal Procedure.

However, according to the Emergency Law, the article enables the bailiff to arrest and detain the suspect, without a reasoned judicial order, and without requiring an investigation. It is sufficient for there to be evidence that the accused committed a felony or a misdemeanor – as soon as the state of emergency is declared - to arrest and then detain him in a place of detention.
The article also allows the arrested person to remain for a period of up to seven days without presenting to the Public Prosecution to conduct the necessary investigation and take a decision to detain the accused on remand or release him, as it states in the article "It is permissible, after obtaining the permission of the Public Prosecution, to detain him for a period not exceeding seven days to complete the collection of evidence, provided that the investigation begins with him during this period," in a flagrant violation of the Constitution, which set a maximum of twenty-four hours to present the accused to the investigating authority for interrogation and take the necessary measures in his regard, which makes the accused throughout the period of detention without presenting to the Public Prosecution as an enforced disappearance, as sections and places of detention often refuse to provide information about those arrested, especially in cases of a political nature, which encourages enforced disappearance[103].

Article 54 of the Constitution stipulates in its first and second paragraphs that: -

"Personal freedom is a natural right, and it is inviolable. Except in the case of flagrante delicto, no one may be arrested, searched, imprisoned, or restricted in any way except by a reasoned judicial order required by the investigation.

Anyone whose freedom is restricted must be informed immediately of the reasons for this, be informed of his rights in writing, be able to contact his family and lawyer immediately, and be

[103] In the definition of enforced disappearance, Article 2 of the Convention for the Protection of All Persons from Enforced Disappearance states that "**For the purposes of this Convention, 'enforced disappearance ' means the arrest, detention, abduction or any other form of deprivation of liberty by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which places such a person outside the protection of the law**."

submitted to the investigating authority within twenty-four hours from the time of restricting his freedom. "

Article 35 of the Code of Criminal Procedure, in its second paragraph, stipulates that: -

" Or in cases other than those indicated in the previous article, if there is sufficient evidence that a person has been accused of committing a felony or a misdemeanor of theft, fraud, or severe assault and resistance to the men of public authority by force and violence, the judicial officer may take appropriate precautionary measures and immediately request the Public Prosecution to issue an arrest warrant against him."

Also, Article 36 states that: -

"The judicial officer shall immediately hear the statements of the seized accused, and if he does not come up with his acquittal, he shall send it within twenty-four hours to the competent public prosecution. The Public Prosecution must interrogate him within twenty-four hours, and then order his arrest or release. "

Likewise, Article 131 stipulates that: -

"The investigating judge shall immediately interrogate the arrested accused. If this is not possible, he shall be placed in the correction and rehabilitation center until he is interrogated. The period of his detention shall not exceed twenty-four hours. If this period lapses, the director of the correction and rehabilitation center shall hand him over to the Public Prosecution. It shall immediately request the examining magistrate to interrogate him, and when necessary, it shall request the magistrate, the president of the court, or any other judge appointed by the president of the court, otherwise it shall order his release. "

Therefore, Article 3 bis clearly contravenes the provisions of these articles and undermines the guarantees of a fair trial. Interrogation is a crucial step in confronting the accused with the evidence against them and thoroughly examining it, allowing the investigating authority to challenge or dismiss the evidence if the accused denies or admits the charges. This makes interrogation an integral part of the investigative process. It differs from the questioning conducted by the bailiff, which is merely a procedural step for collecting evidence, involving the hearing of the accused's statements without engaging in a detailed discussion, charging them, or presenting the evidence supporting the accusation.

Interrogation is also of the utmost importance at the investigation stage, as it entails the release or pre-trial detention of the accused, and therefore the accused may not be held in pre-trial detention until after interrogation. Here lies the problem of Article 3B bis, which allows depriving the freedom of the accused and detaining him for seven days without an investigation by the Public Prosecution under the pretext of collecting evidence, which exceeds the maximum limit set by the Constitution by twenty-four hours. The accused should not be detained more than that without presenting him to the investigation authority in respect of the principle of personal freedom, which must be a sword on the necks of the officers and the investigation authority.

The article violates the principles required for a fair trial, foremost of which is the principle of presumption of innocence and the principle of prosecuting the accused as released. The constitution must not be violated, so the citizen is threatened with laws that violate his rights under the pretext of the state of emergency, which lasted for four years from August 2017 to October 2021, in violation of the constitution, which sets a maximum of six months divided into two terms.

We find that Article 131 of the Procedures Law in order to preserve the maximum stipulated in it, which must not exceed forty-eight hours without being presented to the investigation authority. When necessary, the Public Prosecution must request the investigation from the partial judge, the president of the court, or any other judge appointed by the president of the court. Otherwise, it must order the release of the accused.

However, despite the strictness and clarity of the articles that oblige the accused to be presented to the investigating authority within twenty-four hours, the legislator did not put nullity as a penalty for this violation, but many of the judgments of the Court of Cassation decided that the laxity of the arresting officer in presenting the accused to the Public Prosecution is useless in the case as long as this procedure does not affect the evidence produced in it, and in that case law of the Court of Cassation ruled: -

" Whereas there is no point in what the appellant raises by not presenting him to the Public Prosecution within twenty-four hours of his arrest - by imposing his health - as long as he does not claim that this procedure has resulted in productive evidence of the case, and therefore what he claims in this regard is not acceptable[104]."

[104] Judgments of the Court of Cassation - Criminal - (Appeal No. 10560 of 61 Judicial on 21-02-1993/ Appeal No. 11796 of 76 Judicial on 04-05-2013/ Appeal No. 7961 of 78 Judicial on 14-05-2009. See also the judgment of the Court of Cassation - Criminal - Appeal No. 36048 of the judicial year 74 dated 27/11/2012.

However, the Supreme Constitutional Court has elevated the value of personal freedom and that the attack on it is a violation of fair trial guarantees, especially in the criminal case, which exposes the accused to the most serious restrictions on his freedom and the most threatening to his right to life, as it ruled in one of its jurisprudences that:

"The Constitution guarantees the rights that it stipulates at the heart of protection from their practical aspects, not from their theoretical data, and the court's assurance of observance of fair rules when adjudicating criminal charges and its dominance over criminal proceedings in order to achieve the concepts of justice even in the most serious crimes. It is only a preliminary guarantee that personal freedom - guaranteed by the Constitution to every citizen - will not be violated without legal means that no one is authorized to abide by. The presumption of innocence of the accused was a fixed asset related to the criminal charge in terms of proving it, and not to the type of punishment prescribed for it, and it is withdrawn to the criminal lawsuit at all stages, and throughout its procedures, it has become inevitable that the constitution, on the assumption of innocence, will make it impossible to overturn it without the conclusive evidence that the court concludes, and it consists of its collective belief[105]. "

Violation of Article 3 bis (b) of the State of Emergency Law to international and regional treaties and conventions.

Most international agreements and covenants required that the arrested accused be brought promptly before a judge or other judicial official who would guarantee the rights prescribed for him, to interrogate him and discuss the reasons for his accusation, and consider the legality of his detention, and whether he would be detained as a precaution or tried and released, which is the original.

Article 9.3 of the International Covenant on Civil and Political Rights states that:

"Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. The detention of persons awaiting trial shall not be the general rule, but their release may be subject to guarantees to ensure their presence at trial at any other stage of the judicial proceedings and, where necessary, to ensure the execution of the sentence. "

[105]The judgment of the Supreme Constitutional Court - Case No. 25 of 16 Judicial - Constitutional - dated 03-07-1995, See also the judgment of the Supreme Constitutional Court Case No. 13 of 12 Judicial - Constitutional - dated 02-02-1992.

Article 5(3,4) of the European Convention provides that: -

"3. Any person who is arrested or detained in accordance with paragraph 1 (c) of this article shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be brought to trial within a reasonable time or shall be released and the trial shall continue. Release may be conditional on guarantees to attend the trial.

4. Any person deprived of his liberty by arrest or detention shall have the right to take measures by which the legality of his arrest or detention is quickly determined by a court and shall be released if his detention is not lawful. "

Likewise, the Arab Charter on Human Rights stipulates in Article 14/5 that: -

" A person arrested or detained on a criminal charge shall be brought before a judge or other officer authorized by law to exercise judicial power and shall be tried within a reasonable time or released. His release could be if his arrest or detention is unlawful."

Article 3bis C of the Emergency Law: -

The Emergency Summary State Security Courts may, at the request of the Public Prosecution, detain whoever has evidence that he is dangerous to public security for a renewable period of one month.

If the previous article – 3 bis b – violates the principle of personal freedom and constitutional provisions by exceeding the legal timeframe for presenting an arrested individual to the investigation authority, this article goes further by undermining the legal foundation for arrest and detention. It permits the restriction of a person's freedom without any crime being committed. It is enough for the individual to be under suspicion by the Public Prosecution and considered a threat to public security, after which a decision by the State Security District Court can lead to imprisonment for a renewable period of one month. This can occur without any crime being committed, and the article does not require that the person be presented to the investigation authority for questioning about their alleged threat to public security in the presence of their lawyer. Moreover, it does not set a maximum duration for the renewal of detention periods. This results in imprisonment that lacks all essential guarantees and conditions for lawful deprivation

of liberty. Additionally, the article does not specify any procedures for appealing or challenging this detention, resembling an arbitrary detention system issued by the President of the Republic, which disregards the provisions of the Procedures Law and was ruled unconstitutional by the Supreme Constitutional Court.

Until we stand on the violations in the article and violate the fair trial guarantees, we will refute all the rights of the accused from the moment of his arrest in accordance with the constitutional and legal rules and monitor all the blatant violations that make the article tainted by suspicion of unconstitutionality.

Article 54 of the Constitution clearly clarifies the legal conditions for arresting and detaining persons. Except in flagrante delicto, a suspect or accused person may not be arrested and detained except on the basis of a prior judicial order required by the investigation. The arrested person must also be immediately informed of the reasons for that arrest and know his rights through the arresting officer, and be able to inform his family and lawyer, and be submitted to the competent authority within twenty-four hours for interrogation. Therefore, it is possible to file a grievance against the decision to detain him by the judiciary, which must be adjudicated within seven days of detention, otherwise he must be released immediately. Therefore, the article ravages all these rights under the pretext that there are signs that this person is dangerous to public security. Therefore, from the viewpoint of the legislator, this is a sufficient reason to discard all the constitutional rights of the accused and punish him for committing an unreliable crime if he actually committed it.

It is noteworthy that the legislator did not clarify what is the danger to public security that calls for such an arbitrary measure, and did not specify, for example, cases exclusively so that the article is applied in the narrowest terms. This broad sentence may apply to anyone whose behavior does not satisfy the security, and therefore is subject to the variable and varying discretion of the members of the Public Prosecution.

This contrasts with the broad and general meaning of the danger to public security, and the rulings of the Egyptian courts have already developed a concept of danger to public security, as they said: -

"The imminent danger to public security is the danger to security in its broad sense, which does not stop at the security of the protection of land and other property, the life of the individual, his offer, his money and freedoms, his public and private rights, his stability and confidence in his

society - public security goes beyond that to include protection from an unlawful attack on everything related to economic and social life[106]."

Suspicion is also a permanent condition. Once a person commits a crime or a certain criminal behavior, that behavior will accompany him throughout his life. The Court of Cassation said: -
" Suspicion is not subject to fall by the passage of any period, but rather it attaches to the person the quality of his readiness to commit a crime and being a threat to public security a sticker that cannot be erased by the time, so that if it occurs in one of the reasons for the application of surveillance, at any time after this warning, it must be considered and applied[107]."
Thus, the suspect becomes dangerous to public security under the Emergency Law and then becomes subject to detention for a period of time that is prolonged or shortened - as the article does not set a maximum limit for detention - without a trial in which he has fair and just guarantees, without committing a real crime, and therefore his legal status becomes worse than who commits the crime, who has fair trial guarantees and can appeal his detention order as well as appoint a lawyer to defend him, and the possibility of appealing against the judgment issued against him and all the guarantees regulated by the Constitution and the law for the accused during the trial. This is rationally incompatible with the logic of the legal rule, which punishes only material acts that constitute an integral crime that achieves its criminal result, or even attempts to commit a crime. However, punishing a person for being a threat to public security only violates the principle that the same act may not be punished twice, in the event that this person has previously committed a crime for which he has been punished, which is rejected by the Constitution as well as international law, as Article 14/7 of the International Covenant on Civil and Political Rights - which is considered within the Egyptian legislative fabric since Egypt has ratified it - provided that: -
"No one shall be liable to be tried or punished again for an offense for which he has already been convicted or acquitted by a judicial decision in accordance with the criminal law and procedure of each country."
Article 454 of the Code of Criminal Procedure stipulates that:
" The criminal case for the defendant and the facts attributed to him shall be terminated by the issuance of a final judgment of acquittal or conviction."

Only the case law of the Court of Cassation has ruled that: -

[106] Judgement of the Supreme Administrative Court - Appeal No. 847 of the 33rd Judicial Year on 11-05-1991.
[107] Judgment of the Court of Cassation - Criminal - Appeal No. 665 of 3 judicial years dated 1932-12-19.

" Whereas, Article 454 of the Criminal Procedure Law stipulates that " the criminal case for the accused and the facts assigned to it shall be terminated by the issuance of a final judgment of acquittal or conviction, and if a judgment is issued on the subject of the criminal case, it may not be reconsidered except by challenging this judgment in the ways prescribed in the law, and Article 455 of the same law stipulates that "It is not permissible to refer to the criminal case after the final judgment based on the emergence of new evidence or new circumstances, or based on changing the legal description of the crime," to this effect and based on what has been done by the Court of Cassation that it is prohibited to try the person for the same act twice, and it was also decided that if the lawsuit is filed for a specific incident with a specific description and a judgment of acquittal, that lawsuittal may not be filed for that same incident with a new description.[108] "

It also ruled that: -

" When the accused stands trial for a particular act and is either acquitted or convicted, they cannot be retried for any previous act intended to achieve the same purpose as the original trial, even if that act was not specifically listed in the charges. This principle prohibits subjecting a person to multiple trials for the same incident, which is against the fundamental rules of criminal justice. Therefore, if the lawsuit in question is based on the same facts that led to an acquittal, determined by the finding that no punishable crime occurred, then bringing the case against the accused after their previous acquittal is invalid. If the court is presented with this argument, it must examine its validity. If the argument is upheld, the court should rule for the accused's acquittal before proceeding with the case. After the accused has been tried and either convicted or acquitted, they cannot be retried for the same act or for any act aimed at achieving the same purpose, even if that act was not explicitly stated in the original charge[109].

Although the article does not punish the previous crime of a person who represents a danger to public security in the literal sense of the trial proceedings, this danger has been based on a criminal precedent for this person that caused him to be suspected of dangerousness, which is implicitly considered a punishment for the same act twice.

It is worth mentioning that this article is very similar to the first article of Law No. 74 of 1970 regarding the placement of some suspects under police surveillance, which was previously ruled unconstitutional by the Supreme Constitutional Court in Constitutional Case No. 39 of the third judicial year, in which the judgment was issued on 15-05-1982. The reasons for the ruling stated:

[108] Judgment of the Court of Cassation Appeal No. 4135 of 80 Judicial Year - Misdemeanors of Cassation - dated 17/11/2011.

[109] Judgment of the Court of Cassation - Criminal - Appeal No. 262 of 13 judicial year on 08-02-1943.

" Whereas Article 1 of Law No. 74 of 1970 regarding placing some suspects under police surveillance stipulates that every person in whom the state of suspicion stipulated in Article 5 of Decree-Law No. 98 of 1945 regarding vagrants and suspects has been met shall be placed under police surveillance for a period of two years, and an arrest warrant has been issued for reasons related to public security, and the provision of Article 9 of the aforementioned Decree-Law - which is related to determining the destination and place of surveillance - shall be applied in this regard. The period of surveillance shall start from the date of entry into force of this Law or from the date of arrest, as the case may be. Whereas, the person must be placed under police surveillance for a period of two years pursuant to the provisions of Article 1 of Law No. 74 of 1970- in accordance with the binding interpretation issued by the Supreme Court on April 5, 1975 in the request for interpretation No. 5 of judicial year 4 - the availability of the case of suspicion against him must be established by a judicial ruling and prior to the issuance of the arrest warrant. This means that this article has criminalized a new case subsequent to the case of suspicion that this person was previously tried for if he was arrested after that for reasons related to public security, and then an original penalty was imposed for it, which is the penalty of police surveillance for a period of two years. Whereas, what was stipulated in the last paragraph of Article 1 - contested as unconstitutional - that the period of monitoring starts from the date of entry into force of this law or from the date of the end of detention, as the case may be, conclusively indicates that the police is the competent authority for the work of this text, by an action taken on its own initiative and without a judicial ruling, which is what the Supreme Court concluded in its aforementioned interpretation. Whereas Article 66 of the Constitution states that “the penalty shall be personal. There shall be no crime or punishment except on the basis of a law and no punishment shall be imposed except by a judicial ruling. "The punishment of being placed under police surveillance for a period of two years imposed by the legislator as an original punishment in accordance with Article 1 of Law No. 74 of 1970 shall be imposed without a judicial ruling on the aforementioned, as this article has violated the Constitution, which means that it must be ruled unconstitutional."

The role of the judiciary of the State Security District Court in accordance with the article is limited to rejecting or accepting the request of the prosecution to detain the suspect who is dangerous to public security, without the article stating the role and function of the judge and the criterion on the basis of which he will order the detention of the person for a renewable month, especially since the article was clear that the judiciary of the State Security District Court will not present the accused to discuss what is attributed to him, but will only issue a detention decision, which tints this decision on administrative work and not judicial, as the judicial work requires that there be a

decision in a dispute by the court and the court has the authority to hear the statements of the accused and his defense and the statements of the prosecution, but in this case he can only approve or reject the prosecution's request, so it is closer to administrative detention, which was previously ruled unconstitutional.

The Supreme Constitutional Court has ruled on the characteristics of judicial acts and distinguishing them from other acts: -

"The jurisdiction of this court has been based on the distinction between judicial acts and other acts that it is ambiguous about, but it is based on a set of elements that may not determine the controls of this distinction in a definitive manner, but it helps to highlight the main characteristics of judicial work and what is considered the judicial body, including that conferring the judicial capacity on the acts of any party entrusted by the legislator to adjudicate in a particular dispute is supposed to be determined by law and not by a lower legislative instrument, and that its formation is dominated by the judicial element, which must have in its members the guarantees of sufficiency, impartiality and independence , and that the legislator is entrusted with the authority to adjudicate in a dispute by decisive decisions that are not subject to review by any non-judicatory authority, without prejudice to the main judicial guarantees that may not be waived , which are based in essence on providing equal opportunities to achieve the defense of its parties , and scrutiny of their claims in the light of a rule stipulated by the legislator in advance , so that the decision issued in the dispute confirms the legal truth crystallized for its content in the field of the rights claimed or disputed.[110]"

Article 3 bis (c) also prohibits a suspect who is dangerous to public security from being detained on the basis of a fair and integrated trial in which he has the guarantees of self-defense, which violates the text of Article 97 of the Constitution, which stipulates that:

"Litigation is an inviolable right guaranteed to all. The state is committed to bringing the litigation authorities closer together and working to expedite the adjudication of cases. It is prohibited to immunize any work or administrative decision from judicial control. No person may be tried except before his natural judge. Extraordinary courts are prohibited. "

It also violates the text of Article 98, which guarantees the right of defense and considers it a guarantee of a fair trial, as it states that: -

[110] Judgment of the Supreme Constitutional Court - Case No. 137 of 20 Judicial - Constitutional - dated 04/03/2000.

"The right of defense in person or by proxy is guaranteed. The independence of lawyers and the protection of their rights are a guarantee of the right of defense. The law shall guarantee to those who are financially incapable of the means of resorting to the judiciary and defending their rights."

It also contradicts the text of Article 95 in its third paragraph, which states that: -
" No penalty shall be imposed except by a judicial ruling, and no punishment shall be imposed except for acts subsequent to the effective date of the law."
Article 96 states that "the accused is innocent until proven guilty in a fair legal trial, in which he is guaranteed the guarantees of self-defense."

The Supreme Constitutional Court has ruled regarding the right to litigation and the right of the accused to appear before his natural judge, as well as all principles related to a fair trial, many judgments, including but not limited to the following:
"The Constitution guarantees to all people – in the text of Article 97 – their right to resort to their natural judge, they do not differentiate in that among themselves, so that they do not advance each other in the field of access to it, and does not regress from a group of them, whether through denial or through procedural or financial obstacles that are surrounded by it, to be a burden on them, preventing them from requiring the rights they claim, and they assess the judicial litigation for their request, as they are similar in invoking the substantive grounds that the legislator has organized those rights to ensure their effectiveness. The Constitution guarantees to each of them – whether a natural or legal person – the right to sue, to be an expression of the rule of law, and a pattern of the state's submission to legal restrictions that transcend it, and be in itself immune from its unbridledness and uncontrollability from its inhibitions, and to ensure its response to its consequences if it exceeds them, to show judicial litigation as the protection guaranteed by the law of rights of all its diversity, regardless of those who dispute it, and without regard for their orientations, so that it is not defended or abused, so it is not necessary to comply with the legal rules that regulate it. Second: Judicial litigation is not intended for its own sake, but its aim is to reap a benefit approved by the law, which in itself reflects the dimensions of judicial satisfaction requested by the collaborators, and they seek to obtain it in order to secure their rights. Thus, they do not defend sterile theoretical interests, nor abstract doctrines that they believe in, nor do they express in a vacuum the values they put forward, but rather assert through judicial litigation those rights that they have been harmed by violating. [111]"

[111] Judgment of the Supreme Constitutional Court - Case No. 131 of the 37th Judicial Year - Constitutional Judiciary - dated 2019-12-07.

It also ruled on the importance of preserving the right of defense as a basic pillar in the trial:

"The right to defense has become embedded in the conscience of human beings, linked to the values that civilized nations believe in, stressing the principle of submission to the law, not to mention domination and prejudice, resulting in the will to choose, crystallizing the social role of the judiciary in the field of securing rights of all kinds, located within the framework of the essential foundations of organized freedom, far from being a sterile luxury or an excess of pleasure, existing as a necessity that imposes itself to invalidate every legislative organization to the contrary, so that acceptance of it is not symbolic, but rather effective and influential, in order to overcome its objective facts over its formal goals, in order to enforce its content, and in compliance with its objectives, so that no one disputes its establishment or obscures it[112]."

From these legal principles stipulated by the jurisprudence of the Egyptian higher courts, it is clear that the fundamental difference between pretrial detention and detention is the danger to public security, as pretrial detention is not imagined except on the basis of a felony or misdemeanor punishable by imprisonment for a period of more than three months. The accused may not be remanded in custody except after interrogation by the investigating authority. The pretrial detainee can also file a grievance or appeal against his pretrial detention order and be remanded in custody until a judicial sentence is issued against him through a trial that has all the formal and objective elements. However, arbitrary arrest or what the law calls detention for danger, so there is no need to be a crime. It is sufficient to question the security of a person until an order is issued to detain him. Therefore, pretrial detention is a judicial measure contrary to danger, as it is a security measure taken by the security authorities in exceptional circumstances without being bound by specific guarantees or extensions to detention.

Violation of Article 3 bis C of the Emergency Law of international and regional treaties and conventions.

We have already talked in depth about the most important principles and guarantees governing a fair and equitable trial in the International Bill of Human Rights. We are dealing with texts that lack these guarantees in the body of this study. However, the present article violates all the guarantees and fair trial principles that must be available to the accused during a criminal trial. However, the situation of detention for the danger to public security is considered closer to arbitrary detention,

[112] Judgment of the Supreme Constitutional Court - Case No. 185 of 32 Judicial - Constitutional - dated 2019-05-04.

which is denounced by all international covenants and treaties. Although States are guaranteed the right to take an aggravated approach in exceptional cases and circumstances and not to abide by some principles, they stressed that the provisions related to fair trial guarantees are not considered among these texts.

The following is indicated by the International Bill of Human Rights with regard to the rights and guarantees that States must abide by in trials, especially criminal ones: -

Article 3 of the Universal Declaration of Human Rights states that: -

"Everyone has the right to life, liberty, and security of person."

It also stipulates in Article 8 that: -

"Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted to him by the Constitution or by law."

It stipulated in Article 9 that: -

"No one shall be arbitrarily arrested, detained, or exiled."

Article 10 also stipulates that: -

"Everyone is entitled, in full equality with others, to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him."

The International Covenant on Civil and Political Rights stipulates in Article 2 that: -

" 2. Where not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such legislative or other measures as may be necessary to give effect to the rights recognized in the present Covenant.

3. Each State Party to the present Covenant undertakes:

(A) ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity. "

Article 9 also stipulates that: -

"1. Everyone has the right to liberty and security of person. No one may be arbitrarily arrested or detained. No one may be deprived of his liberty except on the grounds and in accordance with the procedure prescribed by law.

2. Any person who is arrested shall be informed of the reasons for such arrest at the time of its occurrence and shall be promptly informed of any charge against him.

3. Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. The detention of persons awaiting trial shall not be the general rule, but their release may be subject to guarantees to ensure their presence at trial at any other stage of the judicial proceedings and, where necessary, to ensure the execution of the sentence.

4. Everyone who is deprived of his liberty by arrest or detention shall have the right to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.

5. Every person who has been the victim of unlawful arrest or detention shall have the right to compensation."

Article 14 states that:

" 1. All people are equal before the judiciary. In the determination of any criminal charge against him or of his rights and obligations in any civil action, everyone shall be entitled to a fair and public hearing by a competent, independent, and impartial tribunal established by law.

2. Every person accused of committing a crime has the right to be considered innocent until proven guilty by law.

3. Every person charged with a criminal offense shall, during the hearing of his case, enjoy, in full equality, the following minimum guarantees:

(A) To be informed promptly and in detail, in a language he understands, of the nature of the charge against him and the reasons for it.

(B) To have adequate time and facilities for the preparation of his defense and to communicate with counsel of his own choosing.

(C) to be tried without undue delay.

(D) To be tried in his presence, to defend himself in person or through a lawyer of his choice, to be notified of his right to the presence of a defender if he has no one to defend him, and to be provided by a court, whenever the interest of justice so requires, with a lawyer to defend him, without charging him a fee if he does not have sufficient means to pay this fee.

(E) To examine, in person or by third parties, the witnesses against him and to obtain the attendance of witnesses on his behalf under the same conditions as witnesses against him.

(F) provide free of charge an interpreter if he does not understand or speak the language used in court,

(G) Not to be compelled to testify against himself or to confess guilt.

4. In the case of juveniles, the procedures shall be made appropriate to their age and shall be conducive to the need to work on their rehabilitation.

5. Everyone convicted of a crime shall have the right to have his conviction and sentence reviewed by a higher tribunal according to law.

6. Where a person has received a final judgment convicting him of a crime, and this judgment has been overturned or a special pardon has been issued on the basis of a new or newly discovered incident that bears conclusive evidence of the occurrence of a judicial error, the person who has been punished as a result of that conviction shall be compensated in accordance with the law, unless it is proven that he bears, in whole or in part, responsibility for the non-disclosure of the unknown incident in a timely manner.

7. No one may be subject to retrial or punishment for a crime for which he has already been convicted or acquitted by a final judgment in accordance with the law and criminal procedures in each country."

These are the same rights included in the European Convention on Human Rights in Articles 5 and 6, as well as the Arab Charter on Human Rights in Articles 4, 13, 14, 16 and 19, and the African Charter on Human Rights in Articles 6 and 7.

Second/ Amendment of the Emergency Law by Law No. 22 of 2020:

Following the crisis of the spread of the Covid-19 virus in 2020, an amendment was made to the State of Emergency Law, according to what was said at the time the law allows the emergency authority to take some measures to confront the Corona virus, and the amendment came by adding eighteen items to Article 3 of the Emergency Law from Item 7 to Item 24, which gave the President of the Republic some measures, including partially or completely suspending schooling in schools, universities, institutes, and other educational institutions, and partially or completely suspending work for a specified period in ministries and their interests, government agencies, and others. In addition to postponing the payment of electricity, gas, and water services, in part or in full, or as installments, and allocating the headquarters of some schools, youth centers, and state-owned companies to equip them as temporary field hospitals and other measures that mitigate the repercussions of the coronavirus pandemic crisis. However, the ruling regime has exploited this crisis to expand the powers of the President of the Republic as well as to expand the trial of civilians before the military judiciary by amending Article 4, which established the involvement of the armed forces in the civilian life of citizens, granting officers of the armed forces judicial control, and giving the military prosecution the authority to investigate crimes committed in violation of Article 4. The provisions of the Emergency Law.

Article 4 of the State of Emergency Law: -

> The security forces or the armed forces shall carry out the orders issued by the President of the Republic or his substitute. If the armed forces carry out these orders, their officers and non-commissioned officers shall have the competences of judicial officers.
>
> The Military Prosecution is competent to investigate the facts and crimes that are seized by the armed forces.
>
> The President of the Republic or his substitute may assign competence for the preliminary investigation of crimes committed in violation of the provisions of this law to the Military Prosecution.
>
> Without prejudice to the competences of the Military Prosecution, the Public Prosecution shall have exclusive jurisdiction in all cases over the final disposition of the investigation.

Every public official or employee shall assist them in the department of his job or work to do so and shall work with the minutes organized in proving violations of this law until proven otherwise.

Prior to this amendment, the article stipulated that "The security forces or the armed forces shall carry out the orders issued by the President of the Republic or his representative. If the armed forces assume this enforcement, their officers and non-commissioned officers, starting with the rank appointed by the Minister of War, shall have the authority to organize the minutes of the violations that occur to those orders.

Every public official or employee shall assist them in the department of his job or work to do so and shall work with the minutes organized in proving violations of this law until proven otherwise. "

Although the article before the amendment allows the armed forces or security forces to enforce the law in accordance with the orders issued by the President of the Republic or his substitute, the Public Prosecution was competent to investigate crimes that occur in violation of the provisions of the Emergency Law, but after the amendment, the Military Prosecution became competent to investigate, as well as granting members of the armed forces judicial seizures and then the jurisdiction of the Military Prosecution in crimes that are seized by officers of the armed forces, and even the President of the Republic under the third paragraph of the article to give jurisdiction for the preliminary investigation of crimes that occur in violation of the provisions of this law to the Military Prosecution even in crimes that are seized by the security forces and thus the appearance of civilians before the military judiciary. Finally, the authority of the Public Prosecution in all cases – that is, even if the Military Prosecution has the competence to investigate - failed to act in cases after investigation and refer them to the judiciary.

The article expanded the powers granted to the President of the Republic as well as the expansion of the trial of civilians before the military judiciary, especially since the Emergency Law in Article 7 exceptionally allowed the formation of partial and higher state security courts to include judges from the armed forces, as Article 7 stipulates that: -

"Crimes committed in violation of the provisions of the orders issued by the President of the Republic or his substitute shall be adjudicated by the subordinate (primary) and higher state security courts. Each of the sub-district state security departments of the court of first instance

shall be composed of one of the judges of the court and shall be competent to adjudicate in crimes that are punishable by imprisonment and/or a fine. The Supreme State Security Department of the Court of Appeal is composed of three advisers and is competent to adjudicate in crimes punishable by the punishment of the felony and in crimes designated by the President of the Republic or his substitute, whatever the punishment prescribed for them. A member of the Public Prosecution shall initiate proceedings before the State Security Courts.

As an exception, the President of the Republic may order the formation of the Partial State Security Service from a judge and two officers of the armed forces of the rank of captain or at least the equivalent, and the formation of the Supreme State Security Service from three advisers and two commanding officers. The President of the Republic shall appoint the members of the State Security Courts after consulting the Minister of Justice regarding judges and advisers, and the Minister of War regarding officers.

Thus, by amending the text of Article 4, what is exceptionally in force has become a permanent situation and thus incursion into dissuading the ordinary judiciary from considering cases, which is the original jurisdiction in them, and thus depriving the accused of basic guarantees of a fair trial, especially since the Emergency Law imposes restrictions on the freedom of movement and assembly on citizens and allows arrest and imprisonment without being limited to the periods stipulated in the Code of Criminal Procedure. Rather, it represents many violations of the Constitution and, of course, the International Bill of Human Rights.

It is unfortunate that the constitutional amendments signed on the 2014 Constitution in 2019 have granted constitutional legitimacy to this expansion in the trial of civilians before the military judiciary, through the amendments signed on Article 204 of the Constitution, which granted the military judiciary jurisdiction over crimes that occur indirectly on military installations – after the military judiciary was required to directly attack them – as well as giving the armed forces the task of securing public installations and facilities, so that any infringement on public and military installations and facilities, directly or indirectly, is subject to the jurisdiction of the military judiciary, which includes violations of the fair trial guarantees guaranteed under the International Bill of Human Rights, foremost of which is the right to appear before the natural judiciary, as well as equality before the law and the judiciary.

After the constitutional amendments in 2019, Article 204 of the Constitution stipulates that: -

"The military judiciary is an independent judicial body, which is exclusively competent to adjudicate all crimes related to the armed forces, their officers, members and the like, and crimes committed by members of the General Intelligence during and because of service.

It is not permitted to try a civilian before the military judiciary, except in crimes that represent an attack on military installations, camps of the armed forces or the like, the installations they protect, the military or border areas also established, or their equipment, vehicles, weapons, ammunition, documents, military secrets, or public property. Military factories, crimes related to recruitment, or crimes that represent a direct assault on their officers or members because of the performance of their duties.

The law shall determine these crimes and shall specify the other competences of the military judiciary.

The members of the military judiciary shall be independent and irremovable. They shall have all the guarantees, rights, and duties prescribed for members of the judiciary. " [113]

Thus, the constitutional amendment gave a green light by issuing laws that violate the right to appear before the natural judge and expanding the trial of civilians before the military judiciary, which lacks and discards many fair trial guarantees. One of the most prominent of these guarantees is to appear before an impartial, fair and impartial court, which are guarantees that are not characteristic of the military judiciary under the executive authority. The procedures before it are very difficult in practice, such as the difficulty of accessing case papers and the difficulty of accessing military courts, in addition to the authority of the President of the Republic to ratify judgments issued by the military judiciary because they are considered final, which is a form of interference in the work of the judiciary prohibited by the Constitution, which violates the principle of the independence of the judiciary.

[113] Prior to the constitutional amendments signed on the 2014 Constitution in 2019, Article 204 of the Constitution stipulated that "the military judiciary is an independent judicial body, which is exclusively competent to adjudicate all crimes related to the armed forces, their officers, members and the like, and crimes committed by members of the General Intelligence during and because of service.
It is not permitted to try a civilian before the military judiciary, except in crimes that represent a direct attack on military installations, camps of the armed forces or the like, the military or border areas also established, their equipment, vehicles, weapons, ammunition, documents, military secrets, public funds, war factories, crimes related to recruitment, or crimes that represent a direct attack on their officers or members because of performing their duties. The law shall determine these crimes and shall specify the other competences of the military judiciary.
The members of the military judiciary shall be independent and irremovable, and shall have all the guarantees, rights, and duties prescribed for members of the judiciary. "

The military judiciary is also an exceptional special judiciary due to its establishment mainly to try military personnel. The Constitution prohibits the establishment of special courts under Article 96, which stipulates that: -

"Litigation is an inviolable right guaranteed to all. The state is committed to bringing the litigation authorities closer together and working to expedite the adjudication of cases. It is prohibited to immunize any work or administrative decision from judicial control. No person may be tried except before his natural judge. Extraordinary courts are prohibited. "

The appearance of civilians before the military judiciary is contrary to Article 14 of the International Covenant on Civil and Political Rights - which is part of Egyptian national legislation in accordance with Article 93 of the Constitution, considering that Egypt ratified it in 1982- which states that:

"All people are equal before the courts. In the determination of any criminal charge against him or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent, and impartial tribunal established by law. "

Article 26 also stipulates that: -

"All people are equal before the law and are entitled without any discrimination to the equal protection of the law. In this regard, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground, such as race, color, sex, language, religion, political or other opinions, national or social origin, property, birth or other status."

Contrary to Article 7 of the African Charter on Human and Peoples' Rights, which states that:

"The right of litigation is guaranteed to all, and this right includes:

(A) The right to resort to the competent national courts to consider an act that constitutes a violation of the fundamental rights recognized to him, which are contained in conventions, laws, regulations, and prevailing custom. "

Article 5 of the Guidelines on the Independence of the Judiciary states that:

(B) "Everyone has the right to be tried by ordinary courts or tribunals using established legal procedures. Tribunals, which do not apply the duly established legal procedures for judicial measures, may not be established to take away the jurisdiction of the ordinary courts or tribunals. "

The Justice Conference held in April 1986 indicated in its recommendations that:

"Any law that deprives a citizen of the right to resort to their natural judge by establishing an exceptional judiciary to replace – for them – the natural judiciary is necessarily unconstitutional."

"How innocent we are when we think that the law is a vessel for justice and truth. The law here is a vessel for the ruler's will, or a suit tailored to his measure."

Mahmoud Darwish

In this comment on the texts that have been amended to the State of Emergency Law, it is not possible to neglect to address Article 12 of the State of Emergency Law with comment and analysis, which is considered one of the most prominent texts that violate many of the fair trial guarantees in the Emergency Law, which requires the legislator to amend it because it violates the fundamental rights of the accused, such as the right to litigation in two degrees, as well as it violates the independence of the judiciary.

Article 12 of the Emergency Situation Law: -

Judgments issued by the State Security Courts may not be appealed in any way, and these judgments shall not be final until they have been ratified by the President of the Republic.

Once a state of emergency has been declared, the Supreme State Security Courts shall have jurisdiction over the cases.

In accordance with the provisions of Article 7 of the Emergency Law, the law gives the President of the Republic the authority [114]to refer some crimes that are subject to the jurisdiction of the

[114] Article 7 of the Emergency Law No. 162 of 1985 stipulates that **"the partial (primary) and higher state security courts shall adjudicate in crimes that occur in violation of the provisions of the orders issued by the President of the Republic or his representative.**
Each of the sub-district state security departments of the court of first instance shall be composed of one of the judges of the court and shall be competent to adjudicate in crimes that are punishable by imprisonment and/or a fine. The Supreme State Security Department of the Court of Appeal is composed of three advisers and is competent to adjudicate in crimes punishable by the punishment of the felony and in crimes designated by the President of the Republic or his substitute, whatever the punishment prescribed for them.

ordinary judiciary to the Supreme State Security Court whenever a state of emergency is declared under Article 9 [115]of the Law. Although this judiciary is exceptional and its jurisdiction must not be expanded, most cases of a political nature are considered before it in violation of the provisions of Article 97 of the Constitution, which explicitly prohibits the establishment of exceptional courts.

By virtue of Resolution No. 187 of [116]2021 issued by the Prime Minister on the basis of Presidential Decree No. 19 of 2021, the Public Prosecution referred to the Supreme State Security Prosecution cases of bullying, crowds, demonstrations, disruption of transportation, intimidation, intimidation, fraud and fraud, crimes of supply, forced pricing and profit determination, crimes of weapons and ammunition, crimes of attacking the agricultural area, attacking the sanctity of places of worship, crimes of constructing and raising buildings, fraud in building materials, terrorism crimes, and other crimes that came under the resolution. Therefore, we find that the courts that were formed to specialize exceptionally and for exceptional periods in some crimes have become competent for most of the cases that the ordinary judiciary has original jurisdiction over, despite the Constitution prohibiting the establishment of exceptional courts.

Article 12 of the Emergency Law haunts the suspicion of unconstitutionality from two main angles:

Firstly: The first paragraph stipulates that the judgments issued by the Supreme State Security Courts are not subject to appeal in any way, which violates the principle of litigation at two levels, as well as the rules of criminal justice and fair and equitable trial guarantees, which grant the convicted person the right to appeal the judgment against him before a higher court.

Secondly: The second paragraph of the article stipulates that the judgments issued by the Supreme State Security Courts shall not be final until they have been ratified by the President of the Republic, which is considered interference in the work of the judiciary, violates the principle of separation of powers, and undermines the independence of the judiciary.

A member of the Public Prosecution shall initiate proceedings before the State Security Courts.
As an exception, the President of the Republic may order the formation of the Partial State Security Service from a judge and two officers of the armed forces of the rank of captain or at least the equivalent, and the formation of the Supreme State Security Service from three advisers and two commanding officers.
The President of the Republic shall appoint the members of the State Security Courts after consulting the Minister of Justice regarding judges and advisers, and the Minister of War regarding officers.

[115] Article 9 of the Emergency Law stipulates that "**the President of the Republic or his representative may refer to the State Security Courts the crimes punishable by public law**."

[116] To view the Prime Minister's Decision No. 187 of 2021, please click on the link https://cutt.us/N7sx2.

We will explain the seriousness of these two paragraphs of the article in two sections. In each section, we will address the constitutional and legal violations that relate to them, as well as their violation of Egyptian jurisprudence and the texts of the International Bill of Human Rights.

The first topic

The inability to challenge the rulings issued by the Supreme State Security Courts in any way:
This issue is one of the most prominent features of the judiciary in the Supreme State Security Courts, as their emergency nature and constitutionality are questioned. The protection of judgments from being challenged represents a flagrant violation of the guarantees of a fair and equitable trial and infringes upon the rights of the accused. It also allows the authoritarian regime to exploit these courts against its political opponents. The main reason behind this is the practice of referring most politically charged cases from the jurisdiction of the ordinary judiciary, whose rulings are subject to appeal, to this exceptional judiciary. The Egyptian Constitution guarantees the right to litigation, and the right to be presumed innocent until a final judgment is issued against the accused in a fair trial in which all guarantees and rights are proven to him without restriction or deficiency, and in which he is guaranteed his right to appeal against judgments in order to enforce the principle of litigation in two degrees, as Article 97 of the Constitution stipulates that:

" Litigation is an inviolable right guaranteed to all. The state is committed to bringing the litigation authorities closer together and working to expedite the adjudication of cases. It is prohibited to immunize any work or administrative decision from judicial control. No person may be tried except before his natural judge. Extraordinary courts are prohibited. "

Article 96 further states that:

" The accused is innocent until proven guilty in a fair legal trial, in which he is guaranteed the guarantees of self-defense. The law shall regulate the appeal of judgments rendered in felonies."

Thus, the Egyptian Constitution guarantees the right to appeal judgments issued in felony cases. However, for decades, the Code of Criminal Procedure did not specify the possibility of appealing its rulings. The Criminal Court itself was a court of appeal, and therefore its judgments could only be appealed before the Court of Cassation. This changed indirectly with the issuance of Law No. 1 of 2024 in January 2024. The Code of Criminal Procedure was amended to allow appeals against judgments issued by criminal courts before appellate criminal courts, in accordance with the principle of two-tier litigation, after practical experiences showed the need for the Egyptian

judicial system to adopt two-tier litigation in felony cases, similar to the system applied in misdemeanors.

Although the Egyptian judicial system was criticized for not allowing - until January 2024 - appeals, despite the right to appeal by cassation against the judgments issued by the criminal courts, and considering that this was a violation of the rights of the accused to a fair trial, not allowing appeals in any way in accordance with the text of Article 12 of the Law The emergency on the judgments of the Supreme State Security Courts is a catastrophic matter that does not only violate the guarantees of a fair trial, but also storms it and empties it of its content and destroys all constitutional and legal principles and the minimum that must be available to the accused, especially with the type of cases considered by the Supreme State Security Court, which is predominantly political in nature, which makes the state in all its institutions a party to the lawsuit and an opponent of the accused. It was more appropriate for the legislator to provide more guarantees to the accused than the guarantees found in general laws, especially since the Supreme State Security Court is an exceptional court that came in accordance with an exceptional law, so it must put in place guarantees that prevent the tyranny of the authority, and the accused is immune from being abused and his rights and not losing an important guarantee of guarantees To defend himself by appealing to a higher court than the one that issued the judgment against him, which will deprive him of his freedom as sanctified by the Constitution, and even his entire life if the prescribed punishment is the death penalty.

The Supreme Constitutional Court has a lot of case law that establishes the need to challenge judgments, including:

" Whereas it is also established that the methods of appeal against judgments are not merely procedural means established by the legislator to provide means of correcting their distortion, but are in fact more closely related to the rights they deal with, whether in the field of proof or denial, so that their fate is originally due to the closure or openness of these methods, as well as to discrimination between citizens whose legal positions are similar in the field of access to their opportunities. Whereas the procedural means possessed by the indictment authority in the field of proving the crime are supported by huge resources that the accused falls short of and are only balanced by the presumption of innocence coupled with a competent defense to ensure that he is not convicted of the crime unless the evidence is clear of every suspicion that has its basis. Thus, it is not permissible to confer constitutional legitimacy on punitive texts that are not equivalent to the means of defense that it provided to both the charging authority and its accused. Their weapons

are not equal in proving and denying them, and since the Constitution, as stipulated in Article 68, guarantees the right of defense - whether through the originals in it, or through their clients - it is assumed that the role of lawyers is not formal or symbolic, but rather effective and not hindered, especially through legal texts that the legislator intervenes to discard at a certain stage of litigation[117].

In another judgment, it ruled that:

" The conviction of the accused of the crime exposes him to the most serious restrictions on his personal freedom and the most threatening to his right to life , which are risks that can only be prevented in the light of effective guarantees that balance the right of the individual to freedom on the one hand , and the right of the group to defend its basic interests on the other hand, and this is achieved whenever the criminal accusation is known as a charge , indicating its nature , detailing its evidence and all the elements associated with it , taking into account that the decision on this accusation is made by an independent and impartial court established by law , and that the trial is held publicly , Within a reasonable time, and that the court bases its decision to convict - if it concludes it - on the objectivity of the investigation it conducts, on an impartial presentation of the facts , and on a reasonable appreciation of the conflicting interests, all of which are essential guarantees without which a fair trial does not take place, and then guaranteed by the Constitution in Article 67 of it , and coupled with two guarantees that are considered among its components and fall under its concept , namely the presumption of innocence on the one hand , and the right of defense to refute a criminal charge on the other , which is a right reinforced by Article 69 of the Constitution and This is done by stipulating that the right of defense, whether in person or by proxy, is guaranteed[118]."

Violation of the prohibition of appealing against judgments issued by the Supreme State Security Courts for international treaties and conventions.

Article 14/5 of the International Covenant on Civil and Political Rights, which Egypt signed on January 14, 1982, and published in the Official Gazette on April 14, 1982, stipulates that: -

[117] Judgment of the Supreme Constitutional Court No. 64 of 17 Constitutional Judicial Year – dated 7/2/1998.

[118]The ruling of the Supreme Constitutional Court - Case No. 13 of the 12th Judicial Year - Constitutional - dated 2-2-1992, see also the ruling of the Supreme Constitutional Court - Case No. 34 of the 16th Judicial Year - Constitutional - dated 15-06-1996.

" Everyone convicted of a crime shall have the right to have his conviction and sentence reviewed by a higher tribunal according to law."

The Arab Charter on Human Rights in Article 16(7) provides that: -

" Every accused person is innocent until proven guilty by a final judgment in accordance with the law, provided that during the investigation and trial procedures he enjoys the following guarantees: 7- His right, if convicted of a crime, to appeal in accordance with the law before a higher judicial level."

As well as the African Charter in Article 7 states that: -

"1. The right of litigation is guaranteed to all, and this right includes:

A- The right to resort to the competent national courts to consider an act that constitutes a violation of the fundamental rights recognized to him, which are contained in conventions, laws, regulations, and prevailing custom. "

The second topic

The judgments issued by the Supreme State Security Courts shall not become final, except after their ratification by the President of the Republic:

The Emergency Law grants the President of the Republic judicial powers, which include, in addition to ratifying the judgments issued by the Supreme State Security Courts as final rulings, other powers such as the possibility of ordering the temporary release of detained defendants before referring the case to the State Security Court, as well as the possibility of filing the case before presenting it to the court, under the provisions of Article 13 of the Emergency Law, which states that:

"The President of the Republic may dismiss the case before it is submitted to the court. He may also order the provisional release of arrested defendants before referring the case to the State Security Court."

Thus, the Emergency Law contained in both provisions 12 and 13 represents a violation of the principle of separation of powers, which requires that the executive authority does not interfere in the work of the judiciary, and that the President of the Republic does not have these broad powers, which interfere with the powers entrusted to the judiciary, but rather exceeds them and undermines their value and status in undermining the principle of the independence of the judiciary.

The Egyptian Constitution recognized the principle of separation of powers when it stipulated in Article 5 that: -

" The political system shall be based on political and party pluralism, the peaceful transfer of power, the separation and balance of powers, the concomitance of responsibility with power, and respect for human rights and freedoms, as set forth in the Constitution."

It also recognized the need for the independence and immunity of the judiciary and made it an essential guarantee for the preservation of rights and freedoms. Article 94 stipulates that: -

"The rule of law is the basis of government in the state. The state is subject to the law, and the independence, immunity, and impartiality of the judiciary are fundamental guarantees for the protection of rights and freedoms."

Otherwise, Article 184 stipulates that:

"The judicial authority is independent, and it is assumed by courts of all kinds and degrees, and it issues its judgments in accordance with the law, and the law determines its powers, and interfering in the affairs of justice or cases is a crime that is not subject to the statute of limitations."

Similarly, Article 100 of the Constitution states that:

"Judgments shall be rendered and enforced in the name of the people, and the State shall ensure the resources for their enforcement as prescribed by law. Any failure to implement the judgment or any obstruction by authorized public officials is a criminal offense, punishable by law. In such instances, the convicted individual has the right to directly file a criminal case with the relevant court. At the convicted person's request, the Public Prosecution is obligated to initiate legal proceedings against the official who refuses to enforce the judgment or who obstructs its execution."

Thus, in a strange paradox, the legislator has shielded the judgments of the Supreme State Security Courts from being challenged by any means of appeal, while at the same time placing the implementation of these judgments in the hands of the President of the Republic, who has the absolute authority to order the annulment of the sentence, its reduction, a retrial before another panel, or the suspension of its execution, according to the text of Article 14[119].

This suggests that the Supreme State Security Court has been formed specifically so that it is a tool in the hands of the President of the Republic - regardless of the ordinary judiciary and its jus cogens rules - to comply with his orders and abide by his intentions, which poses a great danger not only to opponents of the ruling regime, but to all communities of the people, as the monopoly of power without a commentator or deterrent is one of the pillars of oppression, tyranny and abuse of any political faction or group in society led by its misfortune to be in a dispute with the executive authority or rather the President of the Republic, which enables the latter to abuse them and retaliate against them through flimsy cases considered before a judiciary that has authority over

[119] Article 14 of the Emergency Law stipulates that **"the President of the Republic may, when presenting the sentence to him, commute the sentence imposed, substitute a lesser penalty, cancel all or some of the penalties of any kind, whether original, supplementary or consequential, or suspend the execution of all or some of the penalties. He may also cancel the sentence while dismissing the case or ordering a retrial before another circuit. In the latter case, the decision must be reasoned.**
If the judgment is issued after a retrial as a judge of acquittal, it must be ratified in all cases, and if the conviction is convicted, the President of the Republic may commute the sentence, suspend its execution, or revoke it in accordance with what is indicated in the first paragraph, or revoke the judgment while keeping the lawsuit.

him and over his judgments, which offends the Egyptian judiciary as a whole and does not inspire confidence in the judgments issued by these exceptional courts, but rather causes a general feeling of fear and insecurity that individuals will find themselves overnight under the scope of this law that allows people to be detained for danger to public security without a maximum limit, prevents from appealing judgments, and even making the implementation of these judgments in the hands of the President of the Republic.

Many of the jurisprudence of the Egyptian courts, especially the Supreme Constitutional Court, has ruled on the need for the independence of the judiciary and non-interference in their work by the executive authority or others, as one of these jurisprudences ruled that:

"The Constitution stipulates in Article 166 that judges are independent and have no authority over them in their judiciary other than the law. It is not permissible to interfere in cases or the affairs of justice. This independence is intended to be immune from interference in the affairs of the judicial authority, influencing its course, distorting it, or violating its components, as the final decision regarding the rights, duties, and freedoms of individuals whose members appear to repel aggression and provide those who resort to judicial satisfaction guaranteed by the Constitution or the law, or both, is not discouraged from doing so by anyone and is not in any way that distracts it from its tasks or disrupts it[120]."

It also ruled that:

"The executive authority, in particular, shall not perform any act or refrain from aborting a judicial decision before its issuance or after it comes into effect, nor prevent its full implementation. No legislative act may overturn a judicial decision, alter the effects it has produced, or modify the composition of a judicial body in a way that affects its rulings. This independence is reinforced by the fact that judges have the right to collectively defend its content through the opinions they express, within the framework of their right to assemble." [121]

In another judgment, it ruled:

" When the obligation placed on the state in accordance with the text of Article 68 of the Constitution requires it to enable each litigant to have easy access to the judiciary that is not burdened by financial burdens, and is not prevented by procedural obstacles, and this access - which means the right of everyone to resort to the judiciary, and that its various doors are not closed in the face

[120] Judgment of the Supreme Constitutional Court - Case No. 34 of 16 Judicial - Constitutional - dated 15-06-1996.
[121] Ibid.

of those who have access to it, and that the road to it is legally paved - is no more than a link in the right of litigation complemented by two other episodes without which this right is not valid, and its existence is not complete in the absence of one of them."[122]

Violation of the fact that the judgments issued by the Supreme State Security Courts do not become final, except after their ratification by the President of the Republic of international and regional treaties and charters.

The International Bill of Human Rights affirmed that all courts in all their jurisdictions adhere to fair trial standards, including special or specialized courts. Many of the texts that we have already discussed in the text of the study, which urge the need to adhere to the principles of fair trial, but some international charters have stressed the need for private courts to adhere to the standards adhered to by the ordinary judiciary. These charters include the set of basic principles on the independence of the judiciary adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders held in Milan on December 6, 1985.

It states in Article 2 that:

"The judicial authority shall be impartial in the matters before it, on the basis of the facts and in accordance with the law, and without any restrictions, improper influences, inducements, pressures, threats or interference, direct or indirect, from any party or for any reason."

Article 4 also stipulates that:

"No improper or unwarranted interference with judicial proceedings shall take place and court judgments shall not be subject to review. This principle is without prejudice to judicial review or to the reduction or modification by the competent authorities, in accordance with the law, of sentences handed down by the judicial authority. "

Article 5 also stipulates that:

" Everyone has the right to be tried by ordinary courts or tribunals using established legal procedures. Judicial bodies shall not be established, which shall not apply the duly established legal procedures for judicial measures, in order to take away the jurisdiction of the ordinary courts or judicial bodies. "

[122] Judgment of the Supreme Constitutional Court - Case No. 15 of 14 Judicial - Constitutional - dated 15-05-1993."

The Arab Charter on Human Rights stipulates in Article 12 that:

"All persons are equal before the courts and tribunals. States Parties shall guarantee the independence of the judiciary and the protection of judges against any interference, pressure or threats, as well as the right to litigate at all levels for everyone within their jurisdiction."

The State of Emergency Law is a violation of the principle of equality before the law and the judiciary.

It is worth mentioning that the Emergency Law itself violates the principle of equality before the law, which requires that all people be equal before the judiciary, regardless of when the crime occurred. The Emergency Law makes defendants in the same legal position unequal before the judiciary or in the judgments issued against them, as some of them are subjected to different standards of fair trial guarantees when a crime is considered before the ordinary judiciary. A moment later, a state of emergency was declared, and the same crime was committed by another defendant. It falls within the jurisdiction of the State Security Courts with its legal provisions contrary to the Constitution. Here, we cannot talk about the principle of equality before the law, which makes two defendants with the same legal status to be tried before two different courts, ranging from the standards of justice and fair trial, the most serious of which is the inadmissibility of appealing against the judgments issued by the State Security Courts. Not only that, but that the defendant against a judgment will remain suspended until the President of the Republic ratifies his judgment, orders a retrial, or even reduces this judgment, which violates all Fair trial guarantees and standards, as the minimum rules of justice and equality before the law for individuals with the same legal status are not available.

In the principle of equality before the law, Article 53 of the Constitution stipulates that: -

"Citizens are equal before the law in public rights, freedoms and duties, without discrimination on the grounds of religion, creed, sex, origin, race, color, language, disability, social level, political or geographical affiliation, or any other reason."

Moreover, the jurisprudence of the Egyptian Supreme Courts has ruled that:

"Whereas the jurisprudence of this court has been that people do not differentiate among themselves in the field of their right to access to their natural judge, nor within the scope of the procedural and substantive rules governing the same judicial litigation, nor in the effectiveness of the defense guarantee guaranteed by the Constitution or the legislator for the rights they claim, nor in requiring them according to uniform standards when the conditions of their request are met,

nor in the methods of appeal that regulate them, but the same rights must have uniform rules, whether in the field of litigation, defense, performance, or appeal against the judgments that relate to them." Case No. 64 of the 17th Judicial Year of the Supreme Constitutional Court, February 7, 1998[123]. "

The Supreme Constitutional Court also ruled that:

"The Constitution, by stipulating in Article 68 that every citizen has the right to resort to their natural judge, has shown that this right is fundamental to its law. It is a right for all people, with no distinction among them in terms of resorting to it; their legal positions are equal in their efforts to respond to violations of their rights in defense of their self-interests. The Constitution has been keen to ensure the implementation of this right in its constitutionally established form, so that it is not permissible to limit its exercise to one category and not another, or to authorize it in a particular case, or to impose obstacles contrary to its nature. It ensures that access to this right is available to everyone who seeks it, unrestricted except by the limitations required by its regulation, which may not, under any circumstances, reach the point of confiscating it. Thus, the Constitution has guaranteed the right to sue every citizen and strengthened this right with safeguards that prevent it from being undermined. It originally established this right to defend their self-interests and protect them from aggression, ensuring that citizens are treated equally in relying on it. It is essential that its doors are not closed to any individual, but rather any barriers preventing access are removed, and violations of the rights it protects are perpetuated. These are rights motivated by individuals' direct personal interests, and the request for these rights does not conflict with the nature of constitutional lawsuits, which are fundamentally based on challenging legislative provisions in light of the Constitution in order to preserve their alignment with constitutional legitimacy. This is because this property - according to the practice of this court - does not necessarily benefit from the requirement of the direct personal interest, or that this condition is considered unrelated to it. Likewise, the right of every citizen to defend his own rights is not affected by the decision that each union established in accordance with the law - and as a legal person - has the right to establish independent of its members the lawsuits related to defending their interests as a whole. This is because the collective interests protected by the union are not considered to be directed to a specific member of the union, or related to a group of members only, but rather to preserve the purposes on which the union is based and protect its objectives. Hence,

[123] Judgment of the Court of Cassation for Appeal No. 15329 of the judicial year 79 - 28/10/2017 session.

these collective interests shall not prejudice the individual interests of each of its members, nor shall they prevent him from defending his own legal status or his own rights, which have been directly affected by the contested legislative text[124]. "

This is contrary to the principles affirmed in the International Bill of Human Rights, as Article 26 of the International Covenant on Civil and Political Rights stipulates that:

"All people are equal before the law and are entitled without any discrimination to the equal protection of the law. In this regard, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status."

Article 3 of the African Charter on Human and Peoples' Rights states that: -

" 1. People are equal before the law.

2. Everyone has the right to equal protection before the law."

Article 11 of the Arab Charter also stipulates that: -
"All persons are equal before the law and are entitled to its protection without discrimination."

This is, of course, unlike the current Constitution, which does not contain any articles that allow the suspension of some of its provisions during exceptional circumstances, but article 237 of the Constitution states that:

"The state is committed to confronting terrorism, in all its forms and manifestations, and tracking the sources of its financing, according to a specific timetable, as a threat to the homeland and citizens, while guaranteeing public rights and freedoms."

[124] Judgment of the Supreme Constitutional Court - Case No. 15 of 14 Judicial - Constitutional - dated 15-05-1993.

Constitutional Case No. 17 of 15 Judicial - Constitutional - in which the ruling was issued on 2/6/2013 on the unconstitutionality of what was included in Clause (1) of Article (3) of the Presidential Decree Law No. 162 of 1958 on the State of Emergency Law.

Since about thirty years, specifically during the year 1992, the lawsuit was filed for 17 to 15 judicial years before the Supreme Constitutional Court, and the plaintiff requested to challenge the first item of Article 3 of the Emergency Law No. 162 of 1958, specifically the provisions of the article allowing the President of the Republic to take measures, including arrest and detention, in order to preserve public security without being bound by the provisions of the Code of Criminal Procedure, and no judgment was issued in this case until twenty years after the filing of this lawsuit before the Supreme Constitutional Court, that is, on 2/6/2013.

The facts of the case are that the Public Prosecution has charged the plaintiff and others with

First: Others deliberately set a fire in the shops owned by the victims whose names are shown in the papers.

Second: Other adults deliberately set fire to the building of Mary Gerges Church.

Third: Adults vandalized buildings intended for the holding of religious rites at Mary Guirguis Church.

The papers were registered under No. 12441 of 1991, Al-Raml Felonies - Alexandria, and due to the fact that the plaintiff is a juvenile, he was referred to the Alexandria Juvenile Court for Felony No. 350 of 1992.

At the hearing of 29/11/1992, the Plaintiff's Attorney pleaded the unconstitutionality of Clause (1) of Article (3) of the Presidential Decree Law No. 162 of 1958 on Emergency, and the Court, having assessed the seriousness of the plea, authorized the filing of the constitutional lawsuit, and then filed the lawsuit on 20/4/1993 before the Supreme Constitutional Court and requested the ruling of unconstitutionality of the text of Clause (1) of Article (3) of the Presidential Decree Law No. 162 of 1958.

During the deliberation of the lawsuit in the hearings, the State Lawsuits Authority submitted two memoranda in which it requested, first, the inadmissibility of the lawsuit due to the absence of the plaintiff's direct personal interest, and second, alternatively, the dismissal of the lawsuit.

The College of Commissioners also submitted a report with its opinion, and on 2/6/2013, after nearly twenty years, the Supreme Constitutional Court ruled the provisions of Clause (1) of Article (3) of Presidential Decree Law No. 162 of 1958 unconstitutional. This clause had authorized the President of the Republic to approve arrests and detentions, as well as the search of persons and places without being bound by the provisions of the Criminal Procedure Law. The court also ordered the government to pay expenses and an amount of two hundred pounds for attorney fees.

In fact, the merits of the ruling were consistent with the optimal principles that we are accustomed to from the judges of the Supreme Constitutional Court in the past, as they elevated the value of personal freedom and other rights guaranteed to citizens under the Constitution. The following are some of these merits that we see consistent with our vision in this study, and fair trial standards, especially the current state of emergency law, where the legislator circumvented the Constitution and constitutional principles and reproduced the content of Clause (1) of Article (3) - which was ruled unconstitutional - in the amendment of the Emergency Law promulgated by Law No. 12 of 2017 issued on 27/4/2017, where it added to the Emergency Law Articles "3 bis (b) and 3 bis (c)".

The Supreme Constitutional Court held that:

"Whereas the successive Egyptian constitutions, since the constitution of 1923, have all been keen to determine the rights and public freedoms at their core, with the intention of the constitutional legislator, provided that they are stipulated in the constitution as a restriction on the ordinary legislator in the rules and provisions he enacts, and within the limits of what the constitution wanted for each of them in terms of launching them or the permissibility of their legislative regulation. If a legislation violates this constitutional guarantee, that the restriction of freedom or right contained in the constitution is absolute, discarded, or derogated from either of them under the guise of constitutionally permissible regulation, this legislation has been tainted with the defect of violating the constitution.

Whereas the judiciary of this court has determined that the Emergency Law is purely an exceptional system intended to support the executive authority and provide it with certain tools that limit public rights and freedoms, with the aim of confronting emergency circumstances that threaten public safety or the national security of the country, and accordingly, its application may not be expanded, and a narrow interpretation of its provisions must be adhered to. The authority specified by the Emergency Law - represented by the President of the Republic or his representative - must abide by the specific purpose of the Emergency Law and in a manner that does not depart from the means consistent with the provisions of the Constitution, when taking any

of the measures stipulated in Article (3) of Decree-Law No. 162 of 1958, otherwise what it has taken occurs in a government that violates the Constitution.

It is established that the provisions of the Constitution do not contradict, collapse, or repel each other; rather, they are integrated within the framework of the organic unity that regulates them through the harmonization of all their provisions, making them a coherent, harmonious fabric. The enforcement of the Constitutional Document and the imposition of its provisions on its addressees presupposes its implementation in its entirety. Whereas the preamble of the Constitution stipulates that the state is subject to the law, this indicates that the legal state is one that abides by legal rules in all aspects of its activities, regardless of the nature of its powers, and that these rules govern its actions and conduct in all forms. Therefore, the principle of the state's submission to the law, coupled with the principle of the legitimacy of authority, has become the foundation upon which the legal state is built. Whenever this is the case, and the Constitution stipulates in Article (74) that: "The rule of law is the basis of government in the state," and Article (148) stipulates that: "The President of the Republic, after consulting with the government, shall declare a state of emergency as regulated by law," it follows that the law regulating the state of emergency must comply with the controls prescribed for legislative work, the most important of which is not to violate other provisions of the Constitution. The issuance of the emergency law, based on a provision in the Constitution, does not mean that this law is authorized to override the rest of its provisions. Article (34) of the Constitution stipulates that: "Personal freedom is a natural right and is inviolable." Article (35) also stipulates that: "Except in cases of flagrante delicto, no one may be arrested, searched, imprisoned, prevented from movement, or have their freedom restricted in any way except by a reasoned judicial order required by the investigation." Article (39) further stipulates that: "Homes are inviolable, and except in cases of danger or distress, they may not be entered, searched, or monitored except in the cases specified by law, and by a reasoned judicial order specifying the place, time, and purpose." Accordingly, the text in Clause (1) of Article (3) of Presidential Decree Law No. 162 of 1958, which permits the arrest, detention, and search of persons and places without a reasoned judicial order, violates the personal freedoms of citizens and infringes upon the sanctity of their homes, representing a violation of the principle of the rule of law, which is the basis of government in the state.

However, the above does not affect the statement that the emergency law addresses exceptional situations related to confronting serious threats that endanger national interests, which may affect the stability of the state or expose its security and safety to imminent risks. The state of emergency, given its duration and the nature of the associated risks, is sometimes not suitable for the measures typically taken by the state in ordinary situations. Nevertheless, the emergency law,

regardless of its justifications, remains, by nature, a legislative act that must comply with all the provisions of the constitution, foremost of which is the safeguarding of citizens' rights and freedoms.

Conclusion

Through what we have observed in this study, it is clear to the reader the extent to which the legislator and the ruling authority violate the provisions of the Constitution within the framework of amending existing legislation or issuing new laws, as well as violating the governing rules stipulated in the International Bill of Human Rights, and many of the principles established by the Egyptian Supreme Courts regarding fair trial guarantees, which are the basic pillar for the achievement of criminal justice.

Despite the high hopes for achieving fair trial guarantees and the inclusion of many of these guarantees in Egyptian laws, especially after the ruling of the Supreme Constitutional Court in 2013 on the unconstitutionality of the first clause of Article 3 of the Emergency Law, which allowed for the arbitrary administrative detention of persons without adhering to the provisions of the Criminal Procedure Law, and the expectation of a legislative revolution based on it with respect for human rights, the legislation enacted afterward was disappointing. It aimed at reproducing such constitutional violations within the Egyptian legislative environment and undermining fair trial guarantees under the pretext of exceptional circumstances and the fight against terrorism.

In the process of eliminating terrorism, the state should never launch counterterrorism against its citizens by enacting laws that do not respect human rights in general and in particular by depriving them of the right to personal freedom and security for themselves and their families, and wasting this by appearing before exceptional courts whose establishment is prohibited by the provisions of the Constitution, arresting and then detaining for years by circumventing the maximum limit of pretrial detention, and the possibility of arresting on suspicion of danger to public security without a crime committed, in a complete blow to the minimum principles governing criminal trials and fair trial guarantees in general, by which the authority means silencing mouths and bombing pens opposing them, and launching offensive campaigns against anyone who tries to talk about the policies of the current authority, which leads to the destruction of criminal justice principles, and leads towards a state of lawlessness.

There is no doubt that bad preliminaries must lead to worse ends. The more the state increases violence against citizens, even if they are outlawed in terrorist cases, the more counter-violence before the state increases. The more the regime insists on enacting laws that undermine the dignity and minimum rights of the citizen, the more this is an insult to its prestige and contempt for its decisions. It is not possible to talk about any political or economic prosperity without the public sense of justice and freedom of citizens, in a climate that raises the value of the citizen urging the

elevation of his rights and requirements. Democratic systems are never built by violating the law and the inability of the justice service to achieve the minimum values of justice and fairness.

Recommendations

This study aimed to comment on the procedural texts that undermine fair trial guarantees and to assess the extent of the legislator's behavior and bias through the laws that have been amended or issued, which have affected the criminal justice climate. Therefore, our recommendations in their entirety are directed to the legislative authority in Egypt, hoping to amend these laws that violate the provisions of the Constitution and the International Bill of Human Rights, in line with achieving justice, reforming the legislative climate, and subsequently the judiciary in general. Our recommendations are summarized as follows:

Recommendations for the Criminal Procedure Law:

1/ Addition of a text to the Code of Criminal Procedure (all rules governing pretrial detention shall be considered part of public order, and their violation shall result in the invalidity stipulated in Articles 331 of the Procedures and thereafter).

2/ Adding a text to the Code of Criminal Procedure that obligates the Public Prosecution to complete the investigation within a specific period, with the obligation to release the accused at the end of the prescribed period. (It was suggested that this period be three months for misdemeanors and six months for felonies). Additionally, a text obligating the trial court to complete the trial and issue a judgment within a specified period.

3/ The decision issued to remand in custody must be reasoned and detailed to include the reasons that hinder the protection of the interest of the investigation. Additionally, any procedure that results in the issuance of a remand in custody decision must apply Article 136 of the Procedures Law, which requires stating the reasons for the decision.

4/ Canceling the last paragraph of Article 143 of the Procedures Law and adding their degrees after the other stages of the criminal case, (cancelling the authority of the Court of Appeal and Cassation to extend pretrial detention without being bound by time limits).

/5 Cancel the amendments to texts No. 277 and 289, which were amended based on Law No. 11 of 2017, as they included the discretionary authority granted by the amendment to judges to hear witnesses.

6/The repeal of Article 419 bis 2, which was added to the Code of Criminal Procedure by virtue of Law No. 1 of 2024, regarding the possibility of the Public Prosecution to appeal convictions issued in absentia, or to restrict the authority of the Public Prosecution and allow it to appeal only acquittals issued in absentia.

7/ Amendment by substitution in Article 419 bis 8 to oblige the Public Prosecution to appeal - instead of cassation - the death sentences that the convict has not appealed, in order to remedy that the convict of the death penalty is deprived of a degree of litigation, which is the appeal, as the article in its current status misses a degree of litigation on the convict of the death penalty in the event that he does not appeal the death sentence issued against him.

8/ Issuing a law on the protection of whistleblowers and witnesses, which is the constitutional entitlement stipulated in Article 96 of the Constitution.

Recommendations of the Law of Cases and Procedures of Appeal in Cassation No. 57 of 1959:

1/ Increasing the number of judges in the Appealed Criminal Chambers, which play the role of the Court of Cassation according to Article 36 bis, to consider appeals against judgments issued by the Appealed Misdemeanor Courts to 5 judges or having a Cassation judge preside over the 3-judge panel.

2/ Amendment by deletion and addition in the penultimate paragraph of the second clause of Article 36 bis by giving the right to both the Attorney General and the concerned parties to request from the Court of Cassation - in the event that the judgment was issued by the circuits formed under the article to consider the appeals issued by the appellate misdemeanor courts contrary to a legal principle of the established principles decided by the Court of Cassation - to present this judgment to the General Authority for Criminal Matters for consideration.

3/ Amending Article 37 and obliging the Court of Cassation to hear the litigants before the judgment, fearing that the Court of Cassation will rule without hearing the appellant's defense and wasting a guarantee of a fair trial, which is the right to defense.

Recommendations of Law No. 162 of 1958, on the State of Emergency:

1/ Amending the State of Emergency Law and all its provisions that violate the principles of rights, freedoms, and fair trial guarantees as guaranteed under the provisions of the Constitution and the International Bill of Human Rights.

2/The repeal of Article 3 bis (b), which legitimizes enforced disappearance, and enables the judicial officer to arrest suspects, without a reasoned judicial order, and without requiring that investigation. It is sufficient for there to be evidence that the suspect has committed a felony or a misdemeanor – as soon as a state of emergency is declared - to arrest him and then detain him in a place of detention. It is also permissible to keep the arrested person for a period of up to 7 days without presenting him to the Public Prosecution.

3/ The repeal of Article 3 bis C, which allows the Emergency Summary State Security Courts, at the request of the Public Prosecution, to detain individuals who are deemed a danger to public security for a renewable period of one month, in violation of the maximum limit of pretrial detention stipulated in the Code of Criminal Procedure.

4/ The repeal of Article 12, which makes judgments issued by the Supreme State Security Courts unappealable by any means of appeal, violating the principle of litigation at two levels as well as the rules of criminal justice and fair and equitable trial guarantees. It also acknowledges that the judgments issued by these courts are not final until ratified by the President of the Republic, which is considered interference in the work of the judiciary, violates the principle of separation of powers, and undermines the independence of the judiciary.

5/Referring all cases that are still pending before the Supreme State Security Courts on an emergency basis to the ordinary judiciary.

6/ Amending Article 4, which granted broad powers to the President of the Republic after the amendment to Article 22 of 2020 to confront the coronavirus, and granting the judicial police of the armed forces, followed by the jurisdiction of the Military Prosecution, to investigate facts and crimes seized by the armed forces. In addition, it grants the President of the Republic the authority to transfer jurisdiction to the Military Prosecution in investigating crimes that occur in violation of the law, thus expanding the trial of civilians before the military judiciary.

Recommendations for the Counter-Terrorism Law No. 94 of 2015:

1/ Abolishing the Anti-Terrorism Law in its entirety because all its provisions are contrary to the Constitution and the International Covenant on Civil and Political Rights, which Egypt ratified in

1982, and therefore has become bound by its provisions in accordance with the text of Article 93 of the Constitution, which includes many unconstitutional texts, including:

- Articles 40, 41, and 42, which pose a threat to constitutional rights such as the right not to be arrested or detained without a reasoned judicial order, except in cases of flagrante delicto, as well as legalizing enforced disappearance by providing for the suspension of the arrested person's right to inform their family or seek legal assistance if this does not prejudice the interests of the investigation.
- Article 43. With regard to pretrial detention, the Public Prosecution has been granted the powers of both the investigating judge and the Court of Appeal of Misdemeanors sitting in the counseling chamber, which are broad powers related to the periods of pretrial detention, constituting a violation of what is in force in the Code of Criminal Procedure. The Public Prosecution has been given the authority to issue pretrial detention decisions against the accused for a period of 45 days, renewable.
- Article 8, which entrenches the impunity of judicial officers in the case of the use of force against citizens, defendants and prisoners, when it stipulates that those responsible for implementing the Anti-Terrorism Law shall not be held criminally accountable.
- The penalties set by the Anti-Terrorism Law for anyone who violates its provisions were excessive, as well as disproportionate between the crime and the prescribed punishment, especially since the Anti-Terrorism Law contains broad terms that can be applied arbitrarily in crimes that do not represent a real danger to national security. Articles 16 and 36 of the Anti-Terrorism Law, as well as Article 18, which sets the penalty of life imprisonment and aggravated imprisonment of no less than ten years for the charge of overthrowing the government.
- Article 5 punishes the attempt to commit the crime with the same penalty prescribed for the completed crime, which is contrary to Egyptian criminal policy and the principle of proportionality between the crime and the punishment, as well as Article 46 of the Penal Code.
- Article 6 made incitement or agreement to commit a terrorist crime punishable by the full penalty of the crime, even if the incitement or agreement does not have an effect on the crime, which violates the general rules of both incitement and criminal conspiracy stipulated in Articles 171 and 172 of the Penal Code, as well as the International Bill of Human Rights.