

Death Sentences Under the Emergency Law

(A Legal Analytical Paper)

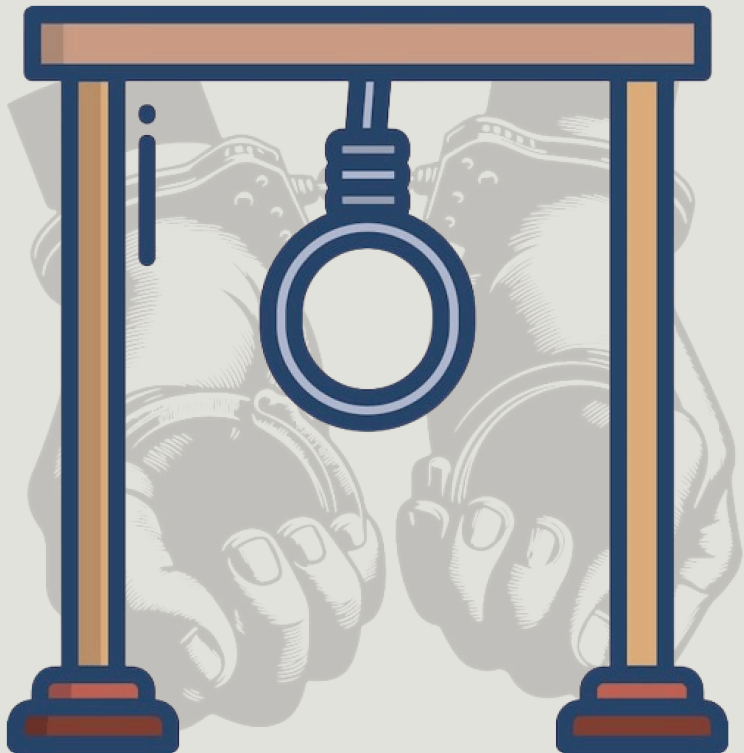




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Executive Summary

This paper addresses the phenomenon of the continued prosecution of criminal cases before the Supreme State Security Court, even after the official announcement of the lifting of the state of emergency in the country. The law permits the continuation of trials before this court, contrary to the general rule that such cases should be referred to the regular criminal court, which has the primary jurisdiction to hear such cases according to the law

The paper begins by outlining the general legal context of imposing a state of emergency, defining the state of emergency under national law and international conventions, and examining how it is applied through the constitutional and legal frameworks. This is followed by a brief overview of the legislative development of the emergency law in Egypt and the extent to which executive authorities have expanded their powers to enforce the exceptional state of emergency

The paper further provides a legal analysis of two cases tried before the State Security Court: the "2013 Rabaa Platform Incident" case, which was heard by the First Circuit for Terrorism at the Supreme State Security Court, resulting in the death penalty by hanging for 8 out of 79 defendants, most of whom were leaders of the Muslim Brotherhood; and the "2015 Police Bus Bombing in Beheira" case, tried before the Damanhur Supreme State Security Court, where 24 defendants were sentenced to death, including 16 present defendants, with 10 of them hailing from the same village

This analysis includes a recounting of the incidents, followed by the preliminary investigation phase, which covers the arrest of suspects, prosecution investigations, defendant interrogations, witness testimony, and security officials' accounts of the circumstances and evidence surrounding the crimes. The analysis proceeds to the trial phase, including procedural hearings, witness testimonies, evidence examination, and the reasoning behind the rulings, all within the framework of examining how each stage violated standards of a fair and just trial

Article 19 of the Law on the Imposition of a State of Emergency "At the end of a state of emergency, the State Security Courts shall remain competent to hear cases referred to them and shall pursue their examination in accordance with the procedures before them. Offences for which defendants have not been brought before the courts shall be referred to the competent ordinary courts and shall follow the procedures applicable before them

Article 20 of the same Act "The provision of the first paragraph of the preceding article applies to cases in which the President of the Republic decides to retrial under the provisions of this Act. The President of the Republic shall have all the powers established for him under the said Act in respect of judgements rendered by the State Security Courts prior to the abolition of the state of emergency and not ratified and judgements rendered by these Courts in accordance with the provisions of this Article and the preceding Article



The researcher seeks to shed light on the provisions related to exceptional trials under Emergency Law No. 162 of 1958, particularly Articles 191 and 202, which raise numerous legal and constitutional dilemmas, especially in their contradiction with established judicial principles such as the "application of the law most favorable to the defendant." Some cases continue to be heard before the exceptional State Security Court even after the state of emergency has been lifted, depriving the defendant of their right to appear before their natural judge

This also includes the power of the President to ratify these rulings, grant pardons, or order retrials under the emergency law, all of which cause legal and constitutional distortions within the general criminal justice system and undermine the guarantees of fair and impartial trials. The broad legal and procedural powers granted to the President or his representative by Article 20 amount to supra-constitutional powers that infringe upon the judiciary, undermining the principle of the "separation of powers

Studying the application of these two articles during or even after the lifting of the state of emergency raises many research questions regarding their constitutionality and the legal issues, they pose for cases heard before the Supreme State Security Court, particularly in cases where the death penalty is imposed



Problem Statement

The paper discusses "the legal problem of continuing criminal trials before the Emergency State Security Court despite the official announcement of the end of the state of emergency." With the state of emergency over, the legal justification for exceptional trials should end as well, reverting to the general rules of the judicial system. However, the Emergency Law perpetuates the legal consequences for defendants tried in criminal cases before the Emergency State Security Court, including those subject to capital punishment. "This practice conflicts with the legal principle of "applying the law most favorable to the defendant

The issue arises from Articles 19 and 20 of the Emergency Law, which allow for the continuation of emergency law provisions even after the state of emergency has ended, particularly for defendants who were sentenced in absentia or whose cases were reopened by presidential order under these articles. This creates a legislative barrier to defendants' rights to appear before their natural judge as guaranteed by the constitution, especially in light of the official end of the state of emergency and, thus, the applicability of its provisions

Methodology

This paper adopts a descriptive analytical approach through a legal analysis of the case files of "The 2013 Rabaa Platform Incident" and "The 2015 Police Bus Bombing in Beheira," both of which were tried before the Emergency State Security Court. The analysis focuses on the characteristics of these cases from the investigation phase to the trial stage, assessing whether the standards of fair and impartial trials were upheld

The cases are notable for their widespread use of the death penalty, with 8 out of 79 defendants sentenced to death in the Rabaa case, and 24 defendants sentenced to death in the Beheira case, 16 of whom were present at trial, with 10 from the same village

The paper also analyzes the executive decisions taken under the state of emergency by the executive authority concerning these trials, in light of Articles 19 and 20 of the Emergency Law, and examines the legal and constitutional issues arising from these decisions and the exceptional trial procedures mandated by the Emergency Law, particularly their relationship with the standards of fair and just trials



Introduction

For many years, the Emergency Law has been notorious in Egypt, both legislatively and judicially, as well as in how political authorities have utilized the state of emergency and its impact on citizens' rights and the guarantees of fair trials that uphold the rule of law. The country has suffered politically and socially for a long period due to the continued imposition of the state of emergency. One of the main reasons for this suffering is the expanded powers granted to law enforcement authorities, which have affected citizens' basic rights, most notably the right to life

International law defines a state of emergency as an exceptional and urgent situation threatening a nation's life. The United Nations describes this threat as potentially arising from armed conflict, violent civil disturbances, terrorist emergencies, or severe natural disasters, such as floods or earthquakes³. Despite the exception to fundamental rights contained in Article 4 of the International Covenant on Civil and Political Rights (ICCPR), the United Nations has established several objective standards to implement such an exception

Principle 54 of the Siracusa Principles on the Limitation and Derogation Provisions in the ICCPR states that "the principle of strict necessity shall be applied objectively. Each measure must be directed at a genuine, clear, present, or imminent threat and cannot be imposed based on a mere potential threat." The United Nations also urged signatory states, including Egypt, to uphold constitutional principles and other international obligations when taking measures to restrict citizens' fundamental rights⁴ through the imposition of a state of emergency, to safeguard the principles of legitimacy and the rule of law

Egypt's Emergency Law was born out of a colonial legacy, influenced by martial law provisions imposed by the British occupiers to consolidate their grip on all aspects of life. Since 1914, after Britain declared Egypt a protectorate and severed it from the Ottoman Empire, martial law was imposed across the country as the First World War erupted. Martial law continued to be applied on several occasions over the next 100 years, with minimal legislative intervention by the Egyptian Parliament during this period. For instance, in 1949, the House of Representatives intervened to restrict the powers and measures allowed under the martial law decrees, issuing Law No. 59 of 1949 to prohibit the authorities from implementing certain measures stipulated in Law No. 15 of 1923, including monitoring newspapers and bulletins, regulating the opening and closing times of public establishments, prohibiting public meetings and forcibly dispersing them, and imposing curfews. Amendments were also introduced to provide some legal safeguards for the arrest of suspects, including the requirement that their cases be reviewed by a judicial committee within 15 days of their arrest, or else the arrest decision would be nullified, and the detention would be deemed illegal⁵



Chapter One: The General Legal Context for Declaring a State of Emergency

a) The Constitutional and Legal Aspect

The 2014 Constitution stipulates that the President of the Republic is the one who declares a state of emergency in the country—this provision is similar to previous constitutions—and the article refers to the law for the procedures of such declarations. The article also requires that the emergency declaration be presented to the House of Representatives⁶ and limits the duration of the state of emergency to three months, with extensions allowed only upon the approval of two-thirds of the House. The Supreme Constitutional Court has established several rules for interpreting the exceptional necessity that allows for the declaration of a state of emergency by the competent authority—the President of the Republic in this case—and these rules must not be violated when the executive exercises this authority. These rules include

The legal justification for declaring a state of emergency must arise from the need to address coercive or urgent situations that arise outside the ordinary legislative session or in the absence of the legislative body, which is the authority originally tasked with addressing legal changes that may compromise justice

The executive may exercise legislative authority in exceptional cases, deviating from the general principle of the separation of powers, but only when strictly necessary, and must not exceed the bounds of necessity

Declaring a state of emergency is a constitutional procedure, governed by specific rules, and its scope is defined by the constitution. The executive must adhere to the constitutional framework as a unified entity, without overstepping the limits of necessity as determined by judicial and constitutional review.⁷

These principles indicate that the executive branch is not free to unilaterally impose legal provisions to address states of emergency but must restrict any changes to the core legal provisions that constitute the general legal framework applicable in normal circumstances, and these changes must comply with constitutional boundaries. Thus, judicial and legislative oversight must ensure that the objectives for which the emergency measures were instituted are achieved.⁸

Article 154 - Constitution of 2014 "The President of the Republic, after taking the opinion of the Council of Ministers, declared the state of emergency, as regulated by law, and this declaration must be submitted to the House of Representatives within the following seven days to decide what he deems to be the case

.If the declaration takes place other than in the ordinary session, the Council must be convened immediately to present it

In any event, a majority of the Council's members must agree to declare a state of emergency, declare it for a fixed period not exceeding three months, and extend it only for a similar period, after the approval of two-thirds of the Council's membership. If the Council does not exist, the order shall be submitted to the Council of Ministers for approval, to be submitted to the new House of Representatives at its first meeting

" .The Chamber of Deputies may not be dissolved during the state of emergency



This is how the constitutional framework in Egyptian law and the interpretations of the Supreme Constitutional Court govern the general context of procedures for declaring a state of emergency and the rules that must be observed when facing exceptional situations in times of necessity

Regarding the law, Article 2 of Emergency Law No. 162 of 1958 stipulates that the declaration and termination of a state of emergency shall be made by presidential decree. Article 3 grants the President 24 specific emergency powers to maintain public security during the emergency, including the power to restrict personal freedoms, detain individuals, authorize searches of places and persons, monitor correspondence, newspapers, bulletins, and publications, evacuate or isolate areas, control transportation, suspend studies, and suspend work, among other powers

Despite the broad powers afforded to the President or his delegate, the Supreme Constitutional Court has imposed restrictions on the exercise of these powers, stating that "the Emergency Law addresses exceptional circumstances related to facing serious threats to national interests that may destabilize the state or endanger its security and safety. The duration and nature of the threats associated with a state of emergency may require measures not suitable for normal circumstances. However, the Emergency Law cannot be used as a pretext for violating or disregarding the Constitution. The Emergency Law remains a legislative act that must comply with all constitutional provisions, particularly those safeguarding the rights and freedoms of citizens."¹⁰

In light of this interpretation, all executive actions and powers under the Emergency Law are constitutionally and legally illegitimate unless they are strictly governed by constitutional constraints and oversight, and all emergency measures must align with the legal procedures and hierarchical legal structures that govern them outside of the state of emergency, remaining subject to constitutional judicial oversight to ensure their legality

In this sense, see Supreme Constitutional Court ruling No. 13 of 11 of the Constitutional Court hearing 18-4-1992, as well as Judgement No. 15 of 8 of the Constitutional Court hearing 7-12-1991

Ahmad Saif al-Islam, Legal Memorandum, Case No. 40 of 2005, Security of the State of Emergency Nupeh 8

9Article 2. Emergency Act No. 162 of 1958: "A state of emergency shall be declared and terminated by a decision of the President of the Republic. The decision to declare a state of emergency shall include the following: (i) the statement of the case for which it was declared.(ii) Identification of the area covered. (iii) The date and duration of its entry into force. The decision to declare a state of emergency must be submitted to the People's Assembly within the next 15 days to decide what it deems to be about it. If the People's Assembly is dissolved, it will be submitted to the new Council at its first meeting. If the resolution is not submitted to the People's Assembly on the date indicated or is not approved by the Council, the state of emergency shall be deemed terminated. The period established by the decision to declare a state of emergency may be extended only with the consent of the People's Assembly. A state of emergency shall be deemed to be terminated on its own initiative if such consent does not take place before the end of the period

Supreme Constitutional Court, Case No. 17 of 15, Judicial, Constitutional, 2-6-2013 10



b) Procedural Context in the Texts of the Emergency Law

:The Emergency Law established two courts to hear cases involving violations of its provisions

The first is the State Security Misdemeanor Court, whose chambers are located in each district court. Its judges are appointed by the district court, and it has jurisdiction over crimes punishable by imprisonment and/or fines

The second is the Supreme State Security Court, whose chambers are located in the Court of Appeals. This court is composed of three judges from the Court of Appeals and has jurisdiction over felonies or crimes designated by the President of the Republic or his delegate, regardless of the prescribed punishment

Thus, the Supreme State Security Court serves as the primary exceptional court established upon the declaration of a state of emergency across the country. The law also grants the President discretionary authority to reconstitute these courts to include military officers, with judges being selected after consulting the Ministers of Justice and Defense

Articles 4 to 16 of the Emergency Law outline the procedures for trials before State Security Courts. These procedures include

First: Investigations

The law does not specify a particular body to conduct investigations in crimes defined by the presidential emergency decree. According to Article 4, military or public prosecutors are responsible for the preliminary investigation of these crimes, with the military prosecutor taking charge if the crime was discovered by military officers, or if the President or his delegate assigns the investigation to them. The article also ambiguously stipulates that the public prosecutor has exclusive authority over the final disposition of investigations, without prejudice to the military prosecutor's jurisdiction. The President may also order the dismissal of a case before it reaches trial and is vested with the authority to order the temporary release of detainees before the case is referred to court

Second: Referrals

Article 7 of the Emergency Law grants the public prosecutor the power to prosecute cases before the Supreme State Security Courts. As such, the public prosecutor has the authority to refer defendants to court following the completion of investigations. In cases where the court is composed of military officers in special judicial zones or in certain cases defined by a presidential decree, a military officer or a public prosecutor assumes the role of prosecution before the court. Article 9 stipulates that the President or his delegate has the authority to refer crimes punishable under public law to the Supreme State Security Courts. Apart from these exceptional circumstances or special orders issued by the President or his delegate during the state of emergency, the public prosecutor retains all the powers conferred upon them and



Third: Trials

Civil claims are not admissible before the Supreme State Security Courts, meaning that civil plaintiffs cannot be represented, nor can they claim compensation for damages. Moreover, no appeal can be made against rulings issued by the State Security Courts. These rulings become final only after ratification by the President or his delegate. The President may also commute the imposed sentence upon review or substitute it with a lesser penalty. The law further grants the President the authority to cancel all or part of the penalties or suspend their enforcement. Additionally, under the emergency law, the President has the power to annul the judgment in the case and order its dismissal or to order a retrial before another chamber, provided that the order is justified

However, it should be noted that Article 15 revokes all these presidential powers if the crime in question is premeditated murder or participation therein, thereby limiting any guarantees that may exist when applying such a severe penalty as the death sentence

c) Legal Commentary on the Procedural Context

According to the Emergency Law, as previously mentioned, the President—who heads the executive branch—appoints the judges of the State Security Courts, including military officers, after consulting the Ministers of Justice and Defense, both of whom are also members of the executive branch

This procedure violates two important principles: the independence of the judiciary and the right to be tried before a natural judge. The first principle is violated when judges are appointed by the President without any involvement of the General Assembly of Criminal Courts, which is governed by the Judicial Authority Law in the distribution of chambers, organization of their formation, and determination of the conditions and procedures for appointing their members and transferring them between chambers. This process undermines the trust between the defendant and the judges who hold their fate, liberty, and even life in their hands when the punishment in question is the death penalty. It raises doubts about the impartiality of this court and questions its susceptibility to the influence of the executive authority that appointed it

The second principle is violated by the lack of legislative criteria governing the selection of military officers to serve as judges in the State Security Courts. The practical nature of military officers makes them subject to following orders from their superiors, having sworn an oath of allegiance upon graduating from military academies. They are also subject to dismissal by their superiors, depriving them of any independence from the executive authority, which compromises their neutrality. This lack of neutrality fails to provide the necessary guarantees required by the principle of the rule of law

The President, as previously mentioned, has the authority to define the crimes of misdemeanors and felonies, or any crime punishable under public law, that may be referred to the State Security Court. This power undermines the constitutional principle of equality before the law, as enshrined in Article 53 of the Constitution. Consequently, there emerge two classes of defendants and accusations: one is tried before an exceptional court that lacks safeguards for the protection of defendants' rights, based on the decision of the President or his delegate, while the other is tried before regular criminal courts that enjoy independence in decision-making, judicial immunity for their members, and the possibility of appealing their rulings



The third and most critical violation of guarantees under the Emergency Law is the prohibition of any appeal against rulings issued by the State Security Courts, as stipulated in Article 12 of the law. This article violates several principles, including the presumption of innocence, the right to defense, and the right to appeal before a higher court. The right to appeal constitutes a safeguard for defendants' liberties and preserves their constitutional rights. The article also contradicts Article 14 of the ICCPR, which guarantees the right of defendants to appeal to a higher court to review the facts and circumstances of the case and determine whether the initial judgment met all legal requirements. The higher court has the authority to affirm the ruling or rectify any legal errors or evidentiary misjudgments, thus safeguarding the right to justice and fairness in preserving the presumption of innocence

Chapter Two: Judicial Applications

A) The Case of the Platform Incident

Case No. 72 of 2021, Emergency State Security Criminal Court, Second Nasr City,) registered under No. 9 of 2021, New Cairo General Court, and registered under No. (21 of 2021, Supreme State Security Criminal Court

Summary of Facts -

In May 2012, Dr. Mohamed Morsi, the candidate of the Freedom and Justice Party, the political arm of the Muslim Brotherhood, won the presidential elections. From that date until June of the following year, Egypt, under his presidency, witnessed significant events, severe political and social unrest, and multiple confrontations between Morsi's supporters—comprising members of the Freedom and Justice Party and the Muslim Brotherhood—and members of the civil movement, other political parties, and broad sectors of the public. This situation raised the risk of a potential civil war in the country

The civil movement and political parties called for several demonstrations and popular marches to protest Morsi's administration of the country and demand early presidential elections, setting June 30, 2013, as the final deadline for these demands. Due to political polarization, Islamist groups supporting Morsi's completion of his presidential term began a sit-in at Rabaa Al-Adawiya Square in Nasr City, East Cairo, on June 21, 2013, denouncing the opposition's political demands as a coup against the president's constitutional legitimacy

Article 53. Constitution of 2014: "Citizens are equal before the law, without distinction as to religion, creed, sex, origin, race, colour, language, disability, social-11
".....level, political or geographical affiliation, or for any other reason

Article 12 of the Emergency Act "Judgements handed down by State security courts shall not be appealed in any way and shall not be final until ratified by the-12
."President of the Republic



On July 2, 2013, the Grand Imam of Al-Azhar issued a statement urging all political parties to take responsibility for the nation and take serious, effective steps to resolve the crisis. The next day, July 3, 2013, then-Minister of Defense, Field Marshal Abdel Fattah El-Sisi, announced the removal of President Mohamed Morsi from office, the suspension of the constitution, the declaration of a state of emergency, and a roadmap for new presidential elections and drafting a new constitution. It was also announced that the President of the Supreme Constitutional Court, Counselor Adly Mansour, would assume the presidency

The Rabaa Al-Adawiya sit-in deeply troubled the Egyptian authorities, who repeatedly sought to end it. Disagreement arose within the government regarding how to disperse the sit-in, whether through political means or through military and police force. Ultimately, the Egyptian government, under the leadership of Prime Minister Dr. Hazem El-Beblawi at the time, decided to disperse the sit-in by force

During these events, and while the sit-in continued for more than a month, the Second Nasr City Police Department—responsible for the area where the sit-in occurred—received reports of a gathering of protesters, led by senior members of the Freedom and Justice Party and the Muslim Brotherhood, in front of the platform area on Al-Nasr Road, heading towards the entrance to the October 6 Bridge. These protesters were confronted by police forces (Central Security), who were tasked with securing the area and maintaining traffic flow. The confrontation escalated into stone-throwing, Molotov cocktails, birdshot, and live ammunition. Additionally, civilians and thugs joined the clashes, resulting in the death of National Security officer Sherif Al-Sebaai Abdel-Sadeq, along with several civilians. Damage was also inflicted on the roads, utilities, and public buildings

A large group of protesters and demonstrators (73 individuals) were arrested during these events by the police. The list of the accused starts with the name Hussein Abdel Radi Mohamed and ends with Mohamed Ahmed Abdel Hamid, including several leaders of the Muslim Brotherhood. They were referred to the Criminal Court in January 2021, and the case was heard before the Supreme State Security Court, with the court issuing its verdict in March 2024, sentencing several defendants to death by hanging

Investigation Procedures -

The Public Prosecution listened to the testimony of Major Amr Ahmed Nassef Abdel-Moneim, who conducted the National Security investigations. In his testimony, he stated that several Muslim Brotherhood leaders, including Mohamed Badie, Mahmoud Ezzat, Essam El-Erian, Safwat Hegazy, Amr Zaki, and Osama Yassin, held closed organizational meetings. During these meetings, they agreed to instruct



Brotherhood members to join a march from the Rabaa Al-Adawiya sit-in towards the October 6 Bridge on Al-Nasr Road, with the objective of causing unrest, sabotage, and the destruction of public and private property, using the march as a cover for their actions. They also incited participants in the march to commit the aforementioned acts to carry out a broader plan of escalation, creating chaos and disorder across the country, and engaging with police forces and opposition civilians if .necessary

For this purpose, they used firearms and bladed weapons. However, his investigations did not reveal the specific types of weapons used, nor did they identify the sources from which these weapons were obtained. He later mentioned that the Brotherhood leaders acquired weapons from some criminal elements known for arms dealing, although he was unable to determine the identities of these individuals. He also stated that his investigations were based on secret sources and certain individuals he had planted among the protesters at the Rabaa Al-Adawiya sit-in .during its duration

The Public Prosecution also listened to the testimony of Major Hamdi Abu El-Nin Abdullah, who stated that he had received instructions to head towards Al-Nasr Road to deal with some gatherings. Upon arrival with his mission, the forces were suddenly pelted with stones and Molotov cocktails, and live ammunition was fired at them. He was shot in his left arm by birdshot fired by one of the protesters. The Public Prosecution also heard testimony from several Central Security conscripts present during the mission, as well as security employees from Al-Azhar University, the Conference Center, and the Faculty of Dawah's security staff, and ambulance drivers present at the scene. Testimonies were also gathered from citizens about the damage to their private property. In the end, the Public Prosecution referred 79 defendants, including 7 minors under the age of 18, to the Supreme State Security .Court for trial

Trial Procedures -

The case was heard by the First Terrorism Circuit of the Supreme State Security Court for approximately two and a half years, during which around 20 sessions were held. The composition of the court was changed once during the trial. The defendants appeared in person before the court, while some were represented by .legal proxies. All the defendants denied the charges

At the May 22, 2023 session, the court referred the case files to the Grand Mufti for an opinion on the death sentence for the first to eighth defendants (Brotherhood leaders) and set September 20, 2023, as the date for the verdict. On September 20, 2023, the Grand Mufti requested more time to review the case, so the court post-



postponed the verdict to December 2, 2023. On that date, the Grand Mufti's report was presented, but due to an incomplete panel, the court postponed the ruling until March 4, 2024. The Grand Mufti's report indicated that, if the charges against the first defendant "Mohamed Badie" and the seventh defendant "Mohamed Abdel Maqsood" had been legally proven without any doubts raised to invalidate the punishment, their sentence would be death by hanging (as prescribed for those who spread corruption and terrorize civilians)

The defense counsel argued that articles 12, 14, 17, 19, and 20 of the Emergency Law (Presidential Decree No. 162 of 1958) and the Prime Minister's Decree No. 2198 of 2020—concerning the referral of certain crimes by the Public Prosecution to the Supreme State Security Court—were unconstitutional. They also contested Prime Ministerial Decree No. 840 of 2017 regarding the appointment of judges to State Security Courts, claiming it violated several constitutional articles (articles 5, 53, 94, 95, 96, 97, 100, 184, 188, 237, and 240 of the Constitution)

:The court responded to this plea by stating

It is for the trial court, under Article 29 of Law 48 of 1979, to assess the seriousness" of the unconstitutionality claim, and the decision to suspend the case pending a referral to the Supreme Constitutional Court is discretionary and entirely up to the ".court

:The court added

The legislator granted the President of the Republic, or his delegate, the authority" to appoint members of the Emergency State Security Courts after consulting the Minister of Justice, and the authority to refer any crime punishable under public law to these courts without any conditions or limitations. This court was connected to the case under Prime Ministerial Decree No. 199 of 2022, thereby securing its jurisdiction in full constitutional legitimacy and nullifying any claim to the contra-".ry

On March 4, 2024, the court sentenced the Muslim Brotherhood leaders to death and imposed varying sentences on the remaining defendants, ranging from life imprisonment to acquittal

Commentary

The investigations into this case began immediately after the incidents occurred in July 2013, but the state of emergency was not declared in Egypt until August 14, 2013. This means that the crimes were committed before the state of emergency was in effect. Nevertheless, despite the completion of the investigations, the defendants were referred to trial in January 2021, nearly seven years after the



events, during which they were held in Egyptian prisons under pretrial detention. The state of emergency had been in effect since 2017 and was lifted in October of the same year, implying the use of extraordinary trials for cases with political violence backgrounds. The trial sessions lasted for two and a half years, during which the defendants' rights to a fair and just trial were repeatedly violated

The violations began with the National Security officer's report, which was based solely on his personal investigation without any material evidence. The Public Prosecution's investigation took seven full years, followed by trial proceedings held in police academies and training centers, with defense requests to refer the provisions of the Emergency Law to the Constitutional Court being dismissed. The trial ultimately resulted in the death sentences of eight out of 79 defendants, with the court failing to respond to critical arguments raised by the defense, including prior rulings on charges of joining and leading the Muslim Brotherhood, and the lack of clarity regarding charges of murder and assaults on public and private property

International covenants, such as the International Covenant on Civil and Political Rights (ICCPR), outline the guarantees that must be adhered to in criminal and civil trials. A fundamental guarantee relevant to this context is the right to equality before the courts, ensuring that all individuals are treated equally before the law

This key guarantee entails dealing with similar cases according to the same procedures, prohibiting any extraordinary or special tribunals or procedures. This stands in contrast to the procedural nature established by the Emergency Law, which grants the executive branch the authority to refer specific crimes—already punishable under ordinary criminal law—to extraordinary trials without the justifications outlined by international conventions, such as crimes committed during wartime

As a result, extraordinary trials for crimes already punishable under criminal law, especially those that discriminate against citizens based on their political opinions, combined with procedural restrictions during trials—such as preventing the defense from accessing case files, confronting the accused with the evidence collected against them, and issuing rulings without any possibility of appeal—represent a flagrant violation of the principle of fair and just trials

The second principle relevant to guaranteeing a fair trial is the independence and impartiality of the judiciary. The courts established under the Emergency Law lack this principle due to the involvement of the President of the Republic in selecting the judges for these courts



Despite the constitutional guarantee in Article 9413 of the Constitution, which stipulates that judicial independence and impartiality are essential safeguards for protecting rights and freedoms, the Emergency Law, by granting the President—who is also the head of the executive branch—the authority to appoint judges, constitutes a constitutional violation of this article

Moreover, the Emergency Law allows for the formation of State Security Courts with panels composed of both civilian judges and military officers, or even entirely of military officers, who, according to military systems, follow a hierarchical chain of command and execute orders from their superiors. This undermines the independence and impartiality mandated by the principles of a fair and just trial

Furthermore, international standards on judicial independence dictate that judges must be appointed independently of the executive branch, both in terms of court formation and operational procedures. Each judge must enjoy complete independence, and the decision-maker in any case—particularly those involving crimes punishable by death—must be free to make independent and impartial judgments based solely on the facts and in accordance with the law, ensuring fair procedures for the accused.¹⁴

B) The Case of the Police Bus Bombing in Beheira 201515

Summary of Facts -

The events of this case date back to August 24, 2015, when 16 defendants targeted a bus carrying a number of police officers and personnel in Beheira Governorate, Rashid District, by planting an explosive device on the side of Al-Rashidiya Canal, near an artificial speed bump in front of the Azba Al-Sharif Bridge, within the village of Mahlet Al-Amir in the district. The bomb was detonated remotely as the bus (registration number 2757/B12, belonging to the Directorate of Police) was transporting police personnel along the "Damanhour-Rashid" line. The explosion resulted in the deaths of police officers: Mujahid Ibrahim Abdulsalam Al-Ajami, Sami Ali Ibrahim Al-Gharbawi, and Gomaa Ali Abdulmonem Al-Ghoroubi, all members of Rashid Police Station. Thirty-nine others sustained injuries, including fractures and shrapnel wounds, and the entire right side of the bus was shattered. The Public Prosecution inspected the explosion site and found that the perpetrators had planted a 6-kilogram explosive device on the canal's edge and detonated it via remote control from the opposite side of the canal. The inspection revealed that the bomb created a hole about one meter deep at the site of the explosion, and iron nails and ball bearings were found scattered around the area

Article 94 of the 2014 Constitution "The rule of law is the basis of government in the State. The State is subject to the law, the independence, immunity and impartiality of the judiciary -13 as fundamental safeguards for the protection of rights and freedoms

.Fair Trial Manual - Amnesty International-14

(Case No. 303 of 2018 Supreme State Security Emergency Centre Rasheed, restricted by No. 114 of 2018 Supreme State Security Crimes)-15



Investigation Procedures -

According to documents the researcher was able to access, two of the defendants, who were arrested by security forces—(A.A.) and (M.A.)—were subjected to several violations, including enforced disappearance, detention in unauthorized locations, torture, and interrogation without a lawyer present. The Public Prosecution failed to investigate these violations, instead conducting the interrogations in their illegal detention sites at the Kafr El-Dawar Security Forces camp

It seems that the problem for these two defendants was merely that they were from the village where the incident occurred. The two had previously been charged with protesting in 2014 in Rashid, Beheira, and were acquitted by the court without any involvement in further criminal activities. However, due to this prior incident, they were arrested, along with several others from the same village, after the .August 24, 2015, incident

was arrested on September 7, 2015, at his workplace, while (M.A.) was arrested (A.A.) on September 4, 2015, according to their statements in the investigation report dated September 14, 2015. According to testimony from a relative, the researcher learned that they were released on bail pending further investigation by the Public Prosecution into the bus bombing case on February 26, 2018. They were subjected to enforced disappearance between February 26, 2018, and April 7, 2018. They reappeared afterward and were detained for a new case. They were interrogated by the Public Prosecution from April 7, 2018, to June 17, 2018, and subsequently released in .June 2018

During this period, both defendants were required to make weekly visits to the police station in their hometown. However, on October 4, 2018, they were arrested again from the police station and disappeared until (A.A.) reappeared on February 2, 2019, and (M.A.) on February 9, 2019, at the State Security Prosecution headquarters in Cairo, where they were interrogated in connection with a new case numbered .311 of 2019, and both were held in pretrial detention

Trial Procedures -

According to the testimony of a relative obtained by the researcher, the trial sessions were limited to the defendants and their lawyers, and no family members were allowed to attend. Furthermore, they were denied visitation rights from October 4, 2018, until the verdict was issued on July 29, 2021. The court sentenced 16 defendants to death, with 10 of the defendants being sentenced in absentia. No additional information regarding the trial process or the rationale behind the death .sentences imposed on the defendants was available to the researcher



Commentary -

The case was referred to trial in 2018 before the Supreme State Security Court, and the events took place a year prior—in 2017—before the nationwide declaration of the state of emergency. This suggests that the Emergency Law was applied retroactively in violation of all constitutional and international principles and public order rules.

Article 6(4) of the International Covenant on Civil and Political Rights (ICCPR) states:

Any person sentenced to death shall have the right to seek pardon or commutation of the sentence. Amnesty, pardon, or commutation of the sentence of death may be granted in all cases.

The Human Rights Committee's interpretation of this article emphasizes that the right to life is an overriding right that cannot be restricted, even during a public emergency that threatens the life of the nation, as stipulated in Article 4 of the same covenant. The Committee considers that depriving people of their right to life should not be narrowly interpreted; instead, member states must take all positive measures to protect their citizens from the gravest threats to their lives, such as malnutrition, diseases, or epidemics.

The Committee also stresses that, although states are not obligated to entirely abolish the death penalty, they are required to limit its use, especially by restricting its application to "the most serious crimes." Therefore, states should reconsider their criminal laws in light of the above and, in any case, are obliged to restrict the application of the death penalty to "the most serious crimes," which should be confined to crimes like war crimes and genocide. 16

Nevertheless, Articles 12 and 15 of the Emergency Law contradict all international or constitutional safeguards meant to limit the use of severe penalties such as the death penalty.

Article 12 of the law prohibits any form of appeal against rulings issued by the Supreme State Security Court, even if these rulings impose the death penalty. Article 15 prevents the President of the Republic from using his powers to pardon or reduce sentences or suspend executions when a ruling has been issued for premeditated murder or complicity in such cases, which are also punishable by death.



Despite the fact that the death penalty is applied to many crimes for which it is not proportionate to the seriousness of the offense, and in some cases where the importance of the crime does not justify taking the perpetrator's life, the gravest concern with the death penalty is that, if a mistake occurs in its execution, it cannot be rectified, unlike other penalties. Additionally, the deterrent effect of the death penalty remains highly questionable. It is essential not to overlook the political reasons that often lead to the declaration of a state of emergency. From August 2013 until the presidential elections in May 2014, the state of emergency was imposed nationwide to prepare the political and legal environment for addressing the changes brought by the transfer of power

During this period, the Public Prosecution and Military Prosecution referred hundreds of cases to State Security Courts. In many of these cases, the sentences included the death penalty, all within a highly turbulent political context filled with unrest, protests, and clashes that led to the deaths of hundreds on both sides

Amid these circumstances, and with the lack of any guarantee under the law or procedures practiced before the Supreme State Security Court, dozens of defendants were sentenced to death without ensuring that they had a fair and just trial with all the necessary safeguards to mount a defense against the charges brought against them

Chapter Three: The Legal Issue of Articles 19 and 20 of the Emergency Law

A) Continuation of Trials Despite the End of the State of Emergency

Article 19 of the Emergency Law states

Upon the termination of the state of emergency, State Security Courts shall continue" to have jurisdiction over the cases referred to them, and they shall proceed with the cases in accordance with the procedures followed before them. As for crimes in which the accused have not been referred to trial, they shall be referred to the ordinary courts, and the procedures applicable before those courts shall be followed

Although the legal status of the defendants, with regard to the timeframe during which the crimes were committed, is the same—since the crimes were committed

Every person charged with an offence deemed innocent until legally established in a public trial where all the necessary guarantees of self-defence have been provided" No person shall be convicted of an offence for any act or omission that did not constitute an offence under national or international law at the time, nor shall any more severe penalty be imposed than that which was in force at the time when the offence was committed

"If, after the commission of the offence, a law providing for a lighter penalty has been passed, the offender must benefit from such mitigation"

Review in this respect - Supreme Constitutional Court judgement - Case No. 48 of 17 Judicial - Hearing of 22 February 1997



during the declared state of emergency—this article creates a distinction between defendants who were investigated for acts criminalized under the state of emergency. In the first scenario, trials continue before the State Security Courts even after the state of emergency has ended. In the second scenario, defendants who were under preliminary investigation are referred to ordinary courts, despite the fact that the time-frame for committing the crime or crimes is the same. This distinction, in essence, violates the principles established by the Supreme Constitutional Court regarding the legality of crimes and punishments and the application of the more lenient law for the accused. The Constitutional Court has, in its interpretation, referenced international human rights law, such as Article 11 of the Universal Declaration of Human Rights,¹⁸ Article 15(1) of the International Covenant on Civil and Political Rights¹⁹, and Article 7 .of the European Convention on Human Rights

The Supreme Constitutional Court has determined that the principle of legality concerning crimes and punishments, although rooted in the protection of personal freedom, is itself limited by that very freedom. Thus, the enforcement of this principle of legality is necessary only to the extent that it protects the personal freedom of the accused.²⁰

Accordingly, the Constitutional Court ruled that it is impermissible to apply punitive or procedural provisions that negatively affect the existing legal status of the accused. Furthermore, the scope of their application should not be expanded, and the provisions that provide greater safeguards for the accused's personal freedom should .always take precedence

In considering Article 19 of the Emergency Law, we find that the legislator allowed the retroactive application of the law on the accused even after the end of the state of emergency, despite the fact that no final ruling had been issued against them with the force of *res judicata*. Therefore, the application of ordinary criminal law—which is by its nature more lenient and provides more appropriate treatment for the legal status of the accused—should take precedence over the exceptional law, which in this case is .the Emergency Law

The Supreme Constitutional Court has ruled that denying the retroactive application of laws assumes that their application is detrimental to the accused, as they would not be more beneficial in relation to the prosecuting authority. Thus, we are dealing with :two complementary principles

Therefore, the constitutional violation in Article 19, which allows for the continuation of trials before the Supreme State Security Court without referring the accused to their natural judge, undermines the principle of legality concerning crimes and pun-



punishments. This principle asserts that penalties for actions are justified only if they serve a social purpose. If the law exceeds these societal limits, it becomes unconstitutional.

The Egyptian Constitution provides several guarantees for the accused that the legislator must not violate when drafting laws. For instance, Article 92 of the Constitution states that no law infringing on the rights and freedoms of citizens may undermine the essence or substance of those rights. Article 97 guarantees every citizen the right to be tried before their natural judge. Therefore, the failure to transfer defendants, for whom no judgments had yet been issued, from the Supreme State Security Court to the Criminal Court constitutes a violation of these constitutional guarantees and contradicts the principle of applying the law that is more favorable to the accused. In this context, the Supreme Constitutional Court ruled that

Whenever a more lenient law is enacted after the commission of the act and before a final judgment is rendered, the subsequent law, in relation to acts criminalized by the prior law, becomes more favorable to the accused. This new law creates a new legal status for the accused, invalidating the previous status. Consequently, the new law, which is more favorable to the accused and more conducive to preserving personal freedom, replaces the old law, without any overlap between the two

Regarding the Suspension of the State of Emergency

The Supreme Constitutional Court has also confirmed

Whenever a new law is enacted that restores the previous situation before the criminalization, the rights and freedoms that were diminished by the previous law must be returned to their rightful owners. The old law must retract its effects, acknowledging the values embraced by the new law, which aims to preserve these values without disrupting public order. Thus, its enforcement serves only to reinforce public order, which is a flexible and evolving concept aligned with collective reasoning, and the new law, being more protective of the people governed by the old law, aligns with these principles." 22

B) The President's Powers and Their Contradiction with Constitutional Safeguards

The constitutional scholar James Madison once said

The accumulation of all powers, executive, legislative, and judicial, in the same hands—whether of one, a few, or many, and whether hereditary, self-appointed, or elected—may justly be pronounced the very definition of tyranny." 23



Upon examining the provisions of the Emergency Law, one finds it to be inherently despotic, granting the President wide-ranging powers, including executive, legislative, and judicial authority. The President has the right to issue orders, set penalties, form judicial panels, select judges, dismiss investigations, release detainees, approve sentences, reduce penalties, order retrials, and even grant pardons

:Article 20 of the Emergency Law states

The provisions of the first paragraph of the previous article shall apply to cases where" the President of the Republic decides to order a retrial in accordance with the provisions of this law. The President of the Republic shall retain all the powers granted to him under this law concerning cases in which judgments have been issued by State Security Courts before the suspension of the state of emergency but have not yet been ratified, as well as judgments issued by these courts according to the provisions of this ".article and the previous one

This article grants the President the authority to order a retrial before the State Security Court—even after the end of the state of emergency—and to confirm, amend, annul, or suspend the enforcement of judgments issued by these courts prior to the state of emergency's termination. The final paragraph of this article grants the President all the powers previously outlined in the law regarding cases that are still being considered by the State Security Court after the state of emergency has ended and judgments issued by these courts

The legal scholar Hans Kelsen ²⁴ established the theory of the "Rule of Law" as a political system governed by abstract and fixed laws, ensuring absolute legal sovereignty so that the rights and freedoms of individuals are protected from despotism, since power itself holds no intrinsic value but is merely a tool for applying the law

However, the application of law often clashes with the changing political landscape, allowing for its interpretation, modification, or suspension. This transforms the rule of law into a new type of sovereignty, manifesting as personal authority centered around the President, especially under extraordinary conditions like the declaration of a state of emergency.²⁵

In such circumstances, the principle of the separation of powers (a key aspect of the rule of law) is replaced by the consolidation of authority, enabling those in power to exploit this extraordinary situation to restrict social freedoms and political and economic rights. In such cases, the exceptional powers granted during the state of emergency become the norm.²⁷

²²Supreme Constitutional Court - former source

²³Federal Papers - Alexander Hamilton, James Madison, John Jay - Institute of Strategic Studies - 2006

²⁴Austrian Law (1881 - 1973)



Concentrating all these powers in the hands of the President represents a grave violation of the legal principle of the separation of powers, which is one of the most fundamental constitutional guarantees ensuring the establishment of a state governed by law and the upholding of legal legitimacy. The French legal philosopher Charles Montesquieu argued that the principle of legality requires both the ruler and the ruled to submit to the law. The authority in this context is subject to the law, which defines its limits and invalidates any actions that deviate from these regulations. Hence, it is both unreasonable and dangerous to grant both legislative and executive powers to a single entity, as this would strip the law of its essential character—generality and abstraction—transforming it into a mere tool in the hands of the authority to resolve its problems, thus negating the impartiality and universality of the law.²⁸

The Supreme Constitutional Court interprets the principle of the separation of powers as follows

The legislative authority's role in establishing legal rules, or delegating the executive authority to issue them within the boundaries defined by the Constitution, does not entitle either of them to encroach upon powers vested in the judiciary by the Constitution. Any such encroachment would constitute an overreach of their jurisdiction and a violation of judicial independence. Furthermore, the legislative authority's power to define crimes and determine their penalties does not extend to any interference with ".judicial powers

Thus, despite the apparent facade that the rulings issued by the State Security Courts are delivered by civilian judges, these judges are appointed by the President after consulting with his ministers. This appointment process compromises their independence. Once these judges issue a ruling, which cannot be appealed under any circumstances, the President or his military deputy has all the powers typically held by two higher courts in ordinary circumstances. The President has the authority to overturn the ruling, order a retrial before a different panel (which he also forms), reduce the sentence, or dismiss the case after a verdict has been rendered. Consequently, the state acts as both the adversary and the judge, erasing any concept of the rule of law or the separation of powers. Any political entity that does not adopt the principle of the separation of powers cannot provide the essential guarantees for rights and freedoms .and thus operates without a true constitution

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Conclusion

The analysis presented in this paper concerning the circumstances and background of the cases we have reviewed, as well as the analysis of the provisions of the Emergency Law in relation to constitutional principles and international obligations—such as those outlined in the International Covenant on Civil and Political Rights (ICCPR)—demonstrates that the current application of the Emergency Law results in the continuation of trials before the Supreme State Security Courts even after the law has expired. This undermines the general jurisdiction of the Criminal Courts, which are the courts with original jurisdiction. Despite the existence of sufficient punitive and procedural provisions in criminal law, as well as specific laws such as the Anti-Terrorism Law and the Law on the Protection of Public Facilities, the Emergency Law continues to have an impact

Recommendations

- Replace the death penalty in all criminal laws with a sentence of life imprisonment without parole, particularly for certain crimes specified by law
- Introduce a clause in Article 154 29 of the Constitution mandating post-declaration constitutional oversight of executive decisions during states of emergency, pending the suspension of the Emergency Law
- Repeal Articles 19 and 20 of the Emergency Law, which grant the President exceptional powers concerning criminal trials. These articles weaken judicial independence and contradict the Egyptian Constitution's guarantee of the separation of powers
- Amend laws to ensure that all defendants have the right to appeal judgments against them, including those issued by the State Security Courts prior to their dissolution, and ensure that severe punishments, such as the death penalty, are only carried out after all avenues of appeal have been exhausted
- Establish a judicial review committee composed of members of the Court of Cassation, the Supreme Constitutional Court, the Administrative Judiciary, and the Military Judiciary to review all judgments issued under the Emergency Law, particularly those involving death sentences in political and criminal cases
- Reduce the number of crimes punishable by death in Egyptian law, currently exceeding 50 offenses, and limit the application of the death penalty to the most serious crimes
- The Egyptian government should adhere to the provisions of Article 6 of the ICCPR and work to reduce the implementation of the death penalty, if not abolish it entirely
- The Egyptian government should also consider signing the Second Optional Protocol to the ICCPR