Study on

Law enforcement authorities in Egyptian legislation and their role in achieving criminal justice

(Police, Prosecution, Judiciary)

Contents

Introduction

We have already discussed and commented on the guarantees of a fair trial and the laws that violate them and the rights of the accused, in the first section of this study entitled "Guarantees of a fair trial, and their violations in Egyptian criminal legislation." We have mentioned that the standards and guarantees of a fair and equitable trial fall into two sections. The first relates to the pre-trial stage and the rights of the person to safety for himself and to enjoy his full freedom, which requires not to be arrested and then detained without a reasoned judicial authorization - other than in flagrante delicto – and to inform him of the reasons for his accusation and his right to inform his family of what happened to him and to seek the assistance of a lawyer to defend him and other guarantees that include his right to maintain his body and not to be subjected to torture or coercion, and then to be presented to an independent and impartial investigation authority, which is a prelude the start of the second phase of guarantees, by referring the accused to a natural and independent judiciary that has no authority over him and is in the process of the law and then ruling there except for the law and his conscience so that we can talk about real guarantees for a fair trial.

In this section of the study, we will talk about the roles of law enforcement agencies, namely, the police, the Public Prosecution, and the judiciary, and the extent to which their respective roles affect the achievement of fair trial standards, especially legal defects in various laws, whether public or private, regarding the exercise of functions and the determination of criteria for selecting and appointing those responsible for the justice system, as the functional limits, duties, and rights enjoyed by these groups are what in practice lead to knowing the extent to which fair trial guarantees are achieved and the reasons that led to their absence and have a direct impact on the achievement of criminal justice in Egypt.

This study is of great importance in refuting, monitoring and then commenting on the legal articles governing the law enforcement and justice agencies in Egypt. We discuss and comment on the texts that violate the tasks of police officers, the constitutional and international guarantees that are violated and that they must comply with in arrest and detention, as well as the texts that violate the standards governing the judiciary in both parts, whether the Public Prosecution or judges, and the subordination to the executive authority in appointment and financial and administrative supervision, as well as the extent of the executive authority's incursion into the work of the judiciary and the restrictions that affect their independence.

Executive Summary:

In this study, we aim to identify the extent to which the justice and law enforcement agencies comply with the internal constitutional and legal duties that govern them in the exercise of their functions, or with the international obligations and agreements that countries must deal with and integrate into their internal laws to adhere to fair and equitable trial standards that make the public dealing with these agencies safe and confident during their daily dealings with them, and the extent to which these agencies (the police, the Public Prosecution, and the judiciary) obtain the minimum rights that allow them to carry out their tasks independently and impartially, away from any interference or attack on the powers granted to them by the executive or legislative authority, or even restricting these powers by emptying them of their content.

For example, we find that the members of the Public Prosecution, despite their main role in initiating criminal proceedings, this authority is not absolute and adheres to some legal procedures and texts that affect the member of the Public Prosecution in carrying out his duties, such as his inability to initiate criminal proceedings against officers and state employees, as well as non-binding legal texts that make the members of the Public Prosecution a permissive authority in supervising prisons and places of detention and identifying legal violations within them, whether the presence of detainees without legal justification or the commission of crimes of torture and abuse of prisoners without effective control over police personnel, in addition to the appointment of the Public Prosecutor and his subordination to the executive authority.

As for judges, there are many provisions that limit their independence and negatively affect the judgments issued by them. However, the administrative subordination of judges to the Minister of Justice violates the principle of separation of powers, in addition to the expansion of the jurisdiction of exceptional courts such as the State Security Emergency Courts, and the military courts, and the removal of the jurisdiction of the ordinary judiciary from hearing some cases, especially of a political nature, and granting jurisdiction in them to the exceptional courts, which leads to the trial of civilians before them, which deprives them of the right to resort to their natural judge, and violates the principle of equality before the law and the judiciary, which requires similarity between litigants in procedures and courts.

For these and other reasons, we have reached through this analytical study the difficulty of obtaining a fair and equitable trial in light of these laws and decisions that limit the independence and integrity of the judiciary and make the executive authority dominate the inputs and outputs of the judiciary, and lack clear texts to hold accountable the perpetrators involved in human rights violations of police officers, but it gives them the necessary immunity to commit further violations and give them legal loopholes that help to impunity if there is an intention on the part of the authority to do so. Therefore, talking about fair trials before these laws is a fantasy, which leads to a widening trust gap between citizens and judicial bodies, and loses the pivotal role that makes them a safe and last resort for victims, especially since the criminal justice has a special nature as the judgments it issues relate to the freedom and lives of individuals, so it is imperative for the legislator to ensure that these people have similar procedures that ensure them receive fair trials before their natural judge.

Research Methodology:

With the increasing number of cases pending before the exceptional courts, and in conjunction with the approval by Parliament of legal amendments submitted by the executive authority that consolidate the trial of civilians before military courts even after the end of the state of emergency – such as the Law on the Protection of Public Facilities as well as the Law on Epidemics - and with the increasing issuance by these courts of severe judicial rulings that amount to the death penalty and its implementation on huge numbers of defendants in predominantly political cases centered on terrorism crimes, as well as with the high rate of the crime of torture, violations and abuse against detainees and prisoners in places of detention and prisons, we had to monitor the climate and conditions surrounding the work of law enforcement and justice. We also monitor and comment on the laws governing these bodies, the way they are appointed, and the restrictions and considerations that clash with them in the exercise of their functions. Therefore, in this study we monitored and analyzed laws such as the Police Authority Law and the Judicial Authority Law, which regulate the work of both the Public Prosecution and the judiciary, as well as the laws that are closely related to these bodies.

We have devoted three main chapters to talking about these bodies. The first chapter deals with the role of members of the police force, the extent to which law enforcement officials adhere to legal and constitutional texts, as well as the International Bill of Human Rights while exercising their duties, and whether police officers bear in mind – while exercising their work – the prevention of crimes, the search and inference about their perpetrators, and thus the protection of the people and the victory of the law, and the extent to which this role affects fair trial guarantees.

Chapter Two also deals with the role of the Public Prosecution and its many and complex tasks as an accusatory authority as well as an investigation and referral, the importance of these roles in the trial chamber, how to appoint the Public Prosecutor and the extent to which the members of the Public Prosecution enjoy independence before the executive authority.

As for the third part, it deals with the authority that has the power to issue judgments, which is the judiciary, and of course the method of appointing the presidents of the higher courts and then the judges themselves, the availability of independence and integrity in the laws governing them in the performance of their function, the extent of their administrative and financial independence from the executive authority, as well as the quality and nature of the courts. Is the legislation regulating their affairs consistent with the rules of international law and the international human rights law, or do we still need a lot of detailed legislative amendments so that we can say that we have judicial bodies that triumph to achieve justice and the rules of judicial remedy and then adhere to fair and equitable trial standards?

Part One/The role of the police authority in influencing fair trial guarantees in Egyptian legislation and differences with the Constitution and international law

There is no doubt that the role played by the police and its members is a pivotal and important role in enforcing the rules of justice and law, maintaining security, and reducing the commission and spread of crime. Therefore, we have studied this role through the laws that regulate the work of police personnel, especially the Police Authority Law, to identify the vicious circle and the reasons that made the police a scarecrow for citizens and an object of intimidation instead of being a source of protection and the spread of security and reassurance.

Police Authority Law No. 109 of 1971

The police is a civilian statutory body subordinate to the Minister of the Interior, and the Supreme Police Council contributes to the formulation of public policy. It undertakes many of the tasks and competencies outlined in Article 3 of the Police Authority Law, which stipulates that **"the police authority is competent to maintain order, public security and morals, and to protect lives, symptoms and funds, especially the prevention and control of crimes. It is also competent to ensure the tranquility and security of citizens in all fields, and to implement the duties imposed on it by laws and regulations."**

Thus, the police body has a detailed and important role in the daily life of citizens to maintain their security and prevent crimes that affect their lives and money. Despite this lofty role of police officers, which in turn requires that the relationship between citizens and police officers be based on trust and a sense of reassurance by the citizen and responsibility by the police officer. However, over the ages, this relationship has been strained due to the violations committed by many police officers towards citizens, and their involvement in cases of torture that led to death in some cases, which made some police stations instead of being shelters for protection and relief dens for abuse and the practice of legal and constitutional violations.

It is worth mentioning that the Police Authority Law is full of provisions that oblige police officers to observe the enforcement of the law and the Constitution during the exercise of their work, as well as some penalties up to dismissal from service in the event of non-compliance with them. However, we find that the dilemma here is not in the law but in the activation of legal texts in order to deter police officers from exploiting their job to abuse citizens.

There are also some provisions that we have found affect fair trial guarantees, whether they contribute to giving security personnel legitimacy to commit violations against citizens, or they undermine the rights of security personnel and place their fate in the hands of the Minister of Interior and the Supreme Police Council and force them to follow the orders issued even if they contradict legal rules.

In the following, we have monitored and commented on these texts in the hope of highlighting them for amendment by the legislator, which contributes to the achievement of fair trial guarantees, especially since the police have a lot of responsibility in achieving these standards as a law enforcement agency.

Article 102 of the Police Authority Law:

The police officer may use force to the extent necessary to perform his duty if it is the only means to perform this duty.

The use of the weapon is limited to the following cases:

(i) Arrest of:

(1) Every person sentenced to a felony or to imprisonment for a period exceeding three months if he resists or tries to escape.

(2) Every person accused of a felony or flagrante delicto in which it is permissible to arrest or an accused person against whom an arrest warrant has been issued if he resists or tries to escape.

(ii) When guarding inmates in the cases and under the conditions stipulated in the Law on Correction and Community Rehabilitation Centers.

(iii) To disperse the gathering or demonstration that occurs from at least five persons if public security is endangered, after warning the crowd to disperse. The order to use the weapon in this case shall be issued by a superior who must be obeyed.

In all three previous cases, it shall be taken into account that shooting is the only means to achieve the foregoing purposes. The policeman shall start with a warning that he will shoot and then resort to shooting. The Minister of Interior shall, by a decision, determine the procedures to be followed in all cases and how the warning and shooting shall be directed.

This article relates to the use of force by police officers and the identification of cases in which a police officer may use his weapon. Clause (III) of the article states that weapons can be used to disperse crowds and demonstrations that occur from at least five people if public security is endangered. Here, the problem lies in allowing the use of weapons by police officers against demonstrators. It is remarkable that the paragraph has allowed police officers to use weapons even if the number of demonstrators is only 5, a number that can be controlled by police officers and is unlikely to pose a threat to their lives, as this number can be arrested unnecessarily for using weapons that can lead to the killing of one of these demonstrators.

This article contradicts Article 73 of the Constitution as well as the International Bill of Human Rights, which guaranteed the right to peaceful assembly and protest of individuals and prohibited the use of firearms to disperse demonstrators, and placed the responsibility to protect demonstrators on the shoulders of security personnel. This was recognized by the Human Rights Committee in its comment No. 37 of 2020 on the right to peaceful assembly, which was approved by Article 21 of the International Covenant on Civil and Political Rights, as the article stipulates that:

"The right to peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals, or the protection of the rights and freedoms of others. ”

In the commentary on this article by the Human Rights Committee, the Committee has absolutely prohibited the use of firearms to disperse demonstrators and stated that it is not the best way to disperse gatherings and demonstrations if they are forced to do so based on the occurrence of riots or violence by demonstrators, as it said in comment No. 37 of 2020 on the right to peaceful assembly in item 88 that: [1]

[1] For the Human Rights Committee's full comment No. 37 of 2020 on the right to peaceful assembly, please click on https://2u.pw/VXbFjX5.

“Firearms, on the other hand, are not an appropriate tool for policing assemblies. These weapons should never be used just to disperse a gathering. In order to comply with international law, any use of firearms by law enforcement officials in the context of assemblies must be limited to targeting specific individuals in circumstances where there is an unavoidable risk of death or serious injury. Given the life-threatening nature of these weapons, this threshold should also be applied to the firing of rubber-coated metal bullets. If law enforcement officials are prepared to use force or violence is likely, authorities must also ensure that adequate medical facilities are available. Shooting indiscriminately or using firearms in a fully automatic manner shall never take place in the context of crowd policing. ”

Although this clause has limited the use of rubber-coated metal bullets to disperse in the event of danger that threatens death or serious injury, it is subject to this seriousness, which is unimaginable in a demonstration of 5 people, which is the number mentioned in Article 102 of the Police Authority Law and allowed police officers to use weapons to disperse it, thus exaggerating the material and allowing the use of firearms to disperse demonstrations, even if the number of demonstrators was 5 people without explicitly stipulating the existence of an imminent danger and not only the use of weapons to disperse demonstrators. It is tantamount to giving legitimacy to police officers in injuring and killing demonstrators, especially in Egypt, which witnessed the excessive use of live bullets by police, which led to the killing of hundreds and thousands of Egyptian citizens, especially in peaceful demonstrations and gatherings, which occurred in the January 25 revolution and the subsequent peaceful protests in which Egyptian police opened live bullets on demonstrators, killing and injuring large numbers of them.

There are many reports and statements issued by non-governmental human rights organizations that monitor the Egyptian police to cause killings as well as permanent disabilities committed by the police in order to break up demonstrations and sit-ins during the twenty-fifth of January revolution. For example, the statement issued by human rights organizations entitled "After three days of brutal violence against demonstrators: Egyptian human rights organizations demand that the leaders of the Interior Ministry and the military police be brought to criminal trial." In this statement, the killing and injury of the demonstrators by the police was monitored, as well as the statement of the Egyptian Initiative for Personal Rights entitled "The bullets of the Interior targeted the demonstrators to cause permanent injuries in the eyes of the demonstrators in the Qasr al-Aini Hospital alone." This is in contrast to dozens of reports that monitored the killing and injury of demonstrators over the previous years, including the mass killings in the sit-ins of Rab 'a al-Adawiya and Al-Nahda, in which nearly a thousand Egyptian citizens were killed by the bullets of the Egyptian security forces.[2]

We believe that this article should be amended to prevent police officers from using firearms against demonstrators in an absolute manner and to limit their use of other means - when necessary and in case of imminent danger and not just to disperse demonstrations - that are internationally permitted to disperse demonstrators without serious injury or killing them. This is confirmed by General Comment No. 37 of 2020 of the Human Rights Committee mentioned in item No. 86, which stipulates that:

“The use of force should be avoided if the decision to disperse has been taken in accordance with national and international law. If this is not possible, only the minimum necessary force may be used. Any force used should, as far as possible, be directed against a particular individual or group that practices or threatens violence. Force likely to cause more than minor wounds should not be used against individuals or groups who resist passively. ”

[2] To view the statement of human rights organizations, press https://2u.pw/hN4tRqR
To view the statement of the Egyptian Initiative for Personal Rights, press https://2u.pw/6eCUUzZ
To review the statement of the human rights organizations entitled "No acknowledgement of what happened and no justice after 4 months, the mass killings of demonstrators should be investigated and the perpetrators prosecuted, a fact-finding committee should be established as a first step", click https://2u.pw/9Py7E4M.

Clause 87 also refuted less dangerous weapons with widespread effects such as tear gas and water cannons as means of last resort after verbal warning if there is a danger, but the article stressed that all efforts should be made to reduce their danger and that they should only be used as a measure of last resort and after providing the demonstrators with the opportunity to disperse, as it stipulated that:

“Less lethal weapons with widespread effects, such as tear gas and water cannons, usually have indiscriminate effects. When using these weapons, all reasonable efforts should be made to reduce their risks, such as causing a stampede or harm to bystanders. These weapons should only be used as a measure of last resort, after a verbal warning, and with sufficient opportunity for assembly participants to disperse. Tear gas should not be used indoors. ”

Clause 79 also stipulates that the use of force to disperse demonstrators ends once the arrest of violent persons or rioters has been successful. Therefore, the dispersal of demonstrators should not be a goal of the police or the ruling authority in itself, as the clause stipulates that:

“The minimum necessary force may be used only when necessitated by a legitimate law enforcement purpose during the assembly. Once there is no need for any use of force, such as successfully apprehending a violent person, force may not be resorted to again. Law enforcement officials may not use more force than is proportionate to the legitimate objective of dispersing a gathering, preventing the commission of a crime, lawfully apprehending or assisting in the apprehension of a criminal or a suspected criminal. National law should not confer on such personnel vastly expanded powers, such as the power to use “force”or “all necessary force”to disperse assemblies, or simply the power to “shoot one's legs.” In particular, national law must not permit the indiscriminate, excessive or discriminatory use of force against participants in any assembly. ”

Therefore, this is contrary to paragraph 3 of Article 102, which gives police officers the right to use weapons in order to disperse the demonstration and did not require that this demonstration, which allowed the dispersal of weapons, be a danger to the lives of police officers, for example, or the presence of demonstrators committing acts of violence so that the peaceful assembly does not qualify as a demonstration. Rather, the paragraph allowed police officers to use weapons only to disperse this demonstration and compared it to the phrase "if public security is endangered." We find here that the term public security is a rubber and loose term that can be applied to any group of people who have decided to use their right to demonstrate and protest peacefully to pressure the ruling authority or any public or private institution to obtain any of their political or economic and social rights. Therefore, the dispersal of demonstrating using weapons here is one of the forms of repression and threats to citizens and a pretext to prevent the right to peaceful assembly and demonstration. Therefore, this paragraph of Article 102 represents an attack on the constitutional right to peaceful assembly guaranteed in the 2014 Constitution, which stipulates that:

"Citizens have the right to organize public meetings, processions and demonstrations, and all forms of peaceful protests, not bearing arms of any kind, with notification as regulated by law. The right to a private meeting peacefully is guaranteed, without the need for prior notice, and security personnel may not attend, monitor, or eavesdrop on it. ”

Also, Article 42 of Comment No. 37 of 2020 on the right to peaceful assembly prohibits the maintenance of national security from being a reason for preventing or dispersing demonstrations, especially if repression is the reason for the deterioration of national security, as it is stated in Article 42 that:

"The question of the 'maintenance of national security' may constitute a ground for imposing restrictions if such restrictions are necessary to preserve the ability of the State to protect its survival, territorial integrity or political independence from the use of force or from a credible threat of use of force. Only in exceptional cases will “peaceful” assemblies reach this threshold. Moreover, human rights cannot be suppressed to justify further restrictions, including on the right to peaceful assembly, when it is that very repression that has led to the deterioration of national security. ”

Clause 27 further provided that:

"The likelihood that a peaceful assembly will provoke negative or even violent reactions by some members of the public is not sufficient reason to ban or restrict the assembly. States are obliged to take all reasonable measures not to overburden them to protect all participants and to allow such gatherings to take place without interruption. "

The Committee even went further when it recognized that if laws are enacted to criminalize acts of terrorism, the definition of these crimes should not be so broad as to prejudice the right to demonstrate and assemble peacefully, as Article 68 stipulates that:

"Although acts of terrorism must be criminalized in accordance with international law, the definition of these crimes must not be overly broad or discriminatory and must not be applied in a manner that limits or discourages the exercise of the right to peaceful assembly. Counterterrorism laws may not criminalize merely organizing or participating in a peaceful assembly. "

We believe that the Human Rights Committee's comment No. 37 on peaceful assembly is of great importance, especially since it allows the use of force by the state, represented by security personnel or law enforcement agencies, that does not represent a threat to the lives of demonstrators without affecting the right to peaceful assembly of citizens and their right to protest and demonstrate. It also places the onus on these bodies to protect these demonstrators and the need for the state to train law enforcement officers to protect demonstrators, deal with demonstrations and control riots if they occur in a way that does not represent a threat to the lives of demonstrators or serious injuries, and in a way that also ensures the preservation of law enforcement personnel, as Article 81 stipulates that:

"All law enforcement officers responsible for policing assemblies must be appropriately equipped, including, where appropriate, with appropriate and fit for purpose protective equipment and less lethal weapons. States parties must ensure that all weapons, including less-lethal weapons, are subject to rigorous independent testing, that officers deployed with such weapons receive special training, and that the impact of such weapons on the rights of affected people is assessed and monitored. Law enforcement agencies must be alert to and address the potentially discriminatory effects of certain policing techniques, including in the context of new technologies. "

Clause 80 also stressed the need to involve only trained officers in these gatherings and demonstrations to control security in line with human rights standards that they have already received training to respect and maintain if the clause stipulates that:

“Therefore, only law enforcement personnel trained in policing assemblies, including on relevant human rights standards, should be deployed for this purpose. The purpose of the training should be to sensitize these staff to the special needs of vulnerable individuals or groups, including, in some cases, women, children and persons with disabilities, when participating in peaceful assemblies. The military should not be used to police assemblies, but if its personnel are deployed in exceptional cases and on a temporary basis as support, they must have received appropriate human rights training and must comply with the same international norms and standards as law enforcement officers. ”

Item 78 of the commentary of the Human Rights Committee also states that:

“Law enforcement officials should seek to de-escalate situations that may lead to violence. They are obliged to exhaust non-violent means and to give advance warning if the use of force is necessary, unless it proves to be futile. Any use of force must comply with the fundamental principles applicable to the provisions of articles 6 and 7 of the Covenant, namely the principles of legality, necessity, proportionality, precaution and non-discrimination, and persons using force must be held accountable for each use of force. National legal systems on the use of force by law enforcement officials must be aligned with the requirements under international law, guided by standards such as the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials and the *UN Human Rights Guidance on the Use of Less Lethal Weapons in a Law Enforcement Context*.

Article 67 of the Police Authority Law:

The Minister of Interior may, after taking the opinion of the Supreme Police Council, refer officers - except those appointed to their positions by a decision of the President of the Republic - to the reserve, and that is:

(1) At the request of the officer or the ministry for health reasons approved by the competent medical authority.

(2) If it is proven that this is necessary for serious reasons related to the public interest, and this does not apply to officers of the rank of major general.

The reserve period may not exceed two years, and the order of the officer shall be presented before the expiry of the period to the Supreme Council of Police to decide whether to refer him to the pensioner or return him to active service. If the offer is not made, the officer shall return to his work unless his service period expires for another reason in accordance with the law.

The rank an officer held shall be deemed vacant upon referral to the reserve.

This provision is related to the referral of officers to the reserve in two cases. The first is in the case of the officer's request. The second, which we are discussing, is in accordance with the second paragraph of the article for reasons related to the public interest. Of course, the term "public interest" is a broad and vague term. It allows the possibility of terminating the service of officers - who are not appointed by the President of the Republic in accordance with the article - for an unspecified and unclear reason, which violates the general disciplinary rules, which are determined exclusively and require investigation contrary to this article, which puts the fate of the officer in the hands of the Minister of the Interior without investigation or enabling the officer to defend himself before referring him to the reserve, especially since the Police Authority Law includes in Article 48 the penalties that can be imposed on officers, including suspension from work as well as dismissal from office, as it stipulates that:

"The disciplinary sanctions that may be imposed on officers are:

(1) Warning.

(2) The deduction from the salary for a period not exceeding two months per year. In implementation of this penalty, the deduction may not exceed one quarter of the salary per month after the quarter that may be legally withheld or waived. The period of the deduction shall be calculated in relation to the entitlement to the basic salary alone.

(3) Postponement of the due date of the allowance for a period not exceeding three months.

(4) Deprivation of the allowance.

(5) Suspension from work with payment of half of the salary for a period not exceeding six months and the salary includes the subsequent fixed allowances.

(6) Removal from employment with the possibility of deprivation of some pension or gratuity within the limits of one quarter. "

Article 67 also violates Article 50 of the Police Authority Law, which prohibits the imposition of any penalty on officers without a written investigation, as it stipulates that:

"It is not permitted to impose a penalty on an officer except after investigating him in writing, hearing his statements, and investigating his defense. The decision to impose the penalty must be reasoned. The officer shall be notified to appear before the investigation body to present his defense within seventy-two hours from the date of seizure of the violation, and the investigation shall be presented, together with the opinion, to his competent presidency to dispose of it within seven days at most. As an exception to the provisions of the first paragraph of this article, if the officer refrains from appearing before the investigation bodies without an acceptable excuse despite having previously been announced, the competent disciplinary authority may authorize it**. "**

Thus, according to the previous texts, the existence of Article 67 is unjustified, especially as it represents a violation of the general disciplinary rules, and puts the fate of the officer in the hands of the Minister of Interior and the Supreme Police Council without specific controls or guarantee of his right to defend himself, and this is a great danger to the independence of officers and their compliance with the law because according to the second paragraph of Article 67, the officer will be keen to satisfy and comply with the orders of the Minister of Interior and the higher police commanders more than his keenness to comply with the provisions of the law because his fate is in their hands, where they can refer him to the reserve under the pretext of the public interest, which represents an imminent danger to this important body authorized to enforce the law.

The Constitution stipulates that the fundamental rights of those assigned to work must not be violated, the rights of public servants must be guaranteed and their rights must be protected, and dismissal from employment without disciplinary means must be prohibited. Article 12 of the Constitution stipulates that:

"Work is a right, a duty and an honour guaranteed by the State. No citizen may be compulsorily required to work, except by law, for the performance of a public service, for a specified period, with fair remuneration, and without prejudice to the fundamental rights of those charged with the work. "

Article 14 of the Constitution also stipulates that:

"Public functions are the right of citizens on the basis of competence, without favoritism or mediation, and they are assigned to serve the people. The state guarantees their rights and protection, and they perform their duties in caring for the interests of the people. They may not be dismissed without disciplinary action, except in the cases specified by law."

The Supreme Administrative Court has previously ruled that the disciplinary system may not include ambiguous phrases, as it ruled that:

"It is not permissible for the disciplinary system to include the phrase "for serious reasons related to the public interest "within the scope of the permissibility of punishing the employee for what is attributed to him - this phrase is ambiguous; because of the multiplicity of indications that benefit it, and in such a way that it is not possible to determine the truth of its purpose, which opens the way for interpretation, especially if the disciplinary system is devoid of the controls of its application, if it does not contain a definition of serious reasons related to the public interest, nor criteria for determining these reasons or their relationship to the public interest or the nature of these reasons."[3]

Article 67 also discriminates between the officers to whom the article applies. On the one hand, the referral to the reserve in accordance with the first paragraph does not apply to officers appointed by the President of the Republic, who, in accordance with Article 8 of the Police Authority Law, are first assistants and assistants to the Minister of Interior, heads of sectors and their deputies, and heads of public departments and administrations. On the other hand, the second paragraph, which authorizes the Minister of Interior to refer officers to the reserve in the public interest, does not apply to officers with the rank of major general.[4]

In this exception, a distinction that violates the Constitution and the general rules that must apply to all, it is not conceivable that the officers with the rank of general or the officers appointed by the President of the Republic are free from error or above committing any of the unspecified acts that the legislator described as the public interest. What is the criterion by which the legislator exempted this category from referral to the reserve?

[3] Supreme Administrative Court - Appeal No. 41410 of 56 Judicial Year 2014-03-23.

[4] Article 8 of the Police Authority Law stipulates with regard to the appointment of officers that **"First assistants and assistants of the Minister of Interior, heads of sectors and their deputies, and heads of public departments and administrations shall be appointed by a decision of the President of the Republic.**
The faculties of the Police Academy and its research centre and the security directorates in the governorates are considered interests, and their directors exercise the competences of the head of the authority. The appointment to other posts of the police authority shall be by a decision of the Minister of Interior after taking the opinion of the Supreme Police Council. "

The 2014 Constitution prohibits discrimination and all citizens are considered equal before the law. Article 53 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, colour, language, disability, social level, political or geographical affiliation, or any other reason. Discrimination and incitement to hatred is a crime, punishable by law. The State shall take the necessary measures to eliminate all forms of discrimination. The law shall regulate the establishment of an independent commission for this purpose. "

With regard to the principle of equality, the Supreme Administrative Court has ruled that:

"The Constitution gives the principle of equality a high place in its texts; as a fundamental pillar of rights and freedoms, it aims to preserve rights and freedoms in the face of all forms of discrimination that may affect them or limit their exercise, and as a necessary basis to ensure equal protection between holders of similar legal positions, and in a manner that dictates the unity of the legal rule applicable to them, otherwise it is contrary to the Constitution."[5]

This is contrary to Article 92 of the Constitution, which recognizes that the provisions of the law may not include a restriction of rights and freedoms that affects their origin and essence, as it stipulates that:

"The rights and freedoms inherent in the person of a citizen shall not be subject to derogation or derogation.

No law regulating the exercise of rights and freedoms may restrict them in a manner that affects their origin and essence. "

The Supreme Administrative Court has already referred one of the cases before it - No. 41410 of the judicial year 56 - which relates to the referral of an officer to the reserve to the Supreme Constitutional Court to decide on the constitutionality of the second paragraph of Article (67) of the Police Authority Law. The reasons for the referral stated that the paragraph violates Articles (12), (14) and(92) of the 2014 Constitution and the reasons for that according to its ruling:

[5] Supreme Administrative Court - Appeal No. 41410 of 56 Judicial Year 2014-03-23.

"In the Police Authority Law, the legislator has put in place two systems to address the violations committed by the officer: (one) disciplining him to punish him for the violations attributed to him through disciplinary prosecution, and(two) the system of referral to the reserve and then pension - this system, although it shares with the disciplinary system that he faces facts and violations attributed to the officer, but it is in fact a kind of penalty that is carried out without the disciplinary system contained in the law, and without following its procedures, it is an exceptional penal system; therefore, the legislator has singled it out with special controls and conditions that must be met in order to justify the administration to leave the disciplinary system (which is the original) to the reserve system that may end in retirement (which is the exception) - this system protects the suspicion of unconstitutionality in its decision that the officer may be referred to the reserve for serious reasons related to the public interest; for the following:

(First) It violates the equality between the occupants of the rank (brigade) and those without them,

(II) The referral to the reserve has serious consequences, without ensuring that the person against whom such action is taken has the right to defend himself.

(Third) The entire order is made by the administrative authority in a procedure that it takes on its own initiative, without any previous control from any party outside it, and without any guarantee that it will be issued based on an objective investigation, while it enjoys the guarantee of investigation, confrontation and prosecution of those to whom less serious acts are attributed.

(Fourth) The system of referral to the reserve is nothing more than a suspension from work as a disciplinary sanction without the guarantees prescribed for those who are suspended from work, and with what entails a chapter other than the disciplinary path by naming the concealment of its truth and intent.

(V) This system contradicts the principle of the state's submission to the law, with the implication of determining a disciplinary penalty of this seriousness based on a broad and multi-significant statement (for serious reasons related to the public interest).

(vi) The legislation on the referral to the reserve is incompatible with the right to work provided for in the Constitution. ”

Despite the merits of the reasoning of the Supreme Administrative Court, the ruling of the Supreme Constitutional Court was disappointing, as it rejected the appeal on the grounds, inter alia, that the Police Authority is dominated by relations different from purely civil relations, imposed by the nature of that body and the tasks assigned to it by the Constitution.[6]

Although Article 67 carries a high risk of placing the fate of officers below the rank of major general and who are not appointed by the President of the Republic in the hands of the Minister of Interior to refer them to the reserve without investigation or clear and unambiguous reasons, this risk has doubled after amending Article 102 bis 3 of the Police Authority Law and granting the administration the discretionary authority to implement judicial rulings issued to cancel termination decisions in favor of police officers and to set a limitation period for these rulings, as it stipulates that:

"The right to demand the implementation of the judgments issued to cancel the termination decisions shall be forfeited by the lapse of one year from the date of the issuance of the enforceable judgment in favor of the plaintiff.
Upon implementation, the necessary conditions for filling the position must continue to be met.
The provisions of Articles (382/1, 383, 384/1) of the Civil Code shall not apply to the cases stipulated in this Article. "

The only way for police officers referred to the reserve was to go to the Administrative Court to challenge the referral decision for the reserve. Therefore, the Administrative Court for decades was a control over the decisions of the Minister of Interior, including decisions to terminate service and referral to the reserve. It considered the objective reasons that violate the public interest. There were many judgments issued in favor of the officers that allowed them to return to work. However, after this article, this control was restricted and emptied of its content after the legislator was put in place for a period of only a year to implement the judgment, after which the right to implement it is forfeited, in addition to the condition that the necessary conditions for filling the position continue to be met, which enables the Ministry of Interior to invoke it because the officers did not return to service.

[6] **Supreme Constitutional Court - Case No. 55 of the year 36 Judicial - Constitutional - dated 2019-06-01, To view the ruling, please click on https://www.eastlaws.com/data/ahkam/details/417083/0/0/1/2781.**

The Supreme Administrative Court ruled many judgments in favor of the officers referred to the reserve because of the lack of seriousness of the reasons for this referral. The court stipulated the need for clear and conclusive reasons for the administration's authority to refer the officers to the reserve, as it ruled in one of its judgments that:

"In terms of this text, it is clear that the legislator authorized the Minister of Interior, after taking the opinion of the Supreme Police Council, to refer the officer who occupies a rank less than a brigade to the reserve and provided that serious reasons related to the public interest confirm and prove the need to refer the officer to the reserve. The state of necessity must be clear and unequivocally proven in order for the management authority to refer the officer to the reserve and the condition of the legitimacy of the referral decision to the reserve that this decision is necessary and necessary and that it was used by the management authority to confront a real factual or legal situation that existed against the officer and that holding him accountable in accordance with the normal disciplinary rules is not sufficient to pay his damage to the public interest within the scope of the police authority's function. The administrative judiciary has the right to control whether or not the state of necessity is established. If the seriousness of the reasons and the necessity of the referral to the reserve is proven, the referral decision is sound and in accordance with the provisions of the law, and if it is clear that the reasons were not serious or did not represent the importance that justify the intervention of the administrative authority by referring the officer to the reserve or taking him Disciplinary action was sufficient without resorting to referral to the reserve. The referral decision was null and void and must be canceled."[7]

[7] Supreme Administrative Court - Appeal No. 1764 of 38 judicial year dated 26-11-1996.

There is no doubt that Article 67 is a violation of the International Bill of Human Rights. The International Covenant on Economic, Social and Cultural Rights stressed the need for States to take the necessary measures to safeguard the right to work. Article 6 stipulates that:

"1. The States Parties to the present Covenant recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and shall take appropriate measures to safeguard this right… **”**

The Universal Declaration of Human Rights also affirmed the need for equality before the law and non-discrimination in Article 7, which stipulates that:

"All persons are equal before the law and are entitled without any discrimination to equal protection of the law. They are also entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination."

This is in addition to the affirmation of the Universal Declaration of Human Rights on the right to work and the need for States to adhere to fair conditions of work in the first clause of Article 23, which states that:

"1. Everyone has the right to work, to free choice of employment, to just and favourable conditions of work, and to protection from unemployment. "

Article 102 bis 3 of the Police Authority Law:

The right to demand the implementation of the judgments issued to cancel the termination decisions shall be forfeited by the lapse of one year from the date of the issuance of the enforceable judgment in favor of the plaintiff.

Upon implementation, the necessary conditions for filling the position must continue to be met. The provisions of articles 382/1, 383, and 384/1 of the Civil Code do not apply to the cases stipulated in this article.

This article was added by amending the Police Authority Law by Law No. 4 of 2024, which was issued on 14/2/2024, and it included amending this article only.

The article is an exception to the established general rules followed in the implementation of judicial rulings, as it relates to the rulings issued in favor of the officers to cancel the disciplinary decisions issued against them by the Disciplinary Council or the Minister of Interior to terminate the service, as it sets a specific period for the forfeiture of the officers' right to implement the rulings issued in their favor within one year from the date of the judgment and provided that the necessary conditions for filling the position continue to be met.

Because this conduct represents a departure from the general legal rules and the nature of judicial rulings, the legislator attached the second paragraph and made an exception to this article that the articles that violate it in the Civil Code, which includes how to implement judicial rulings and the principles that characterize them, do not apply to them.

In order to determine the seriousness of this article, we must follow the texts mentioned in the second paragraph of the article that these texts do not apply to Article 102 bis 3, which are the texts No. (382/1), (383), and (384/1) of the Civil Code.

According to the Civil Code, which applies to all civil relations, civil obligations are limited to fifteen years, as Article 374 stipulates that:

"The obligation shall be limited to the lapse of fifteen years, except in the cases for which a special provision is provided in the law and with the following exceptions."

Thus, the judgments issued in favor of police officers over the past decades were applicable to them for a period of fifteen years. However, after amending Article 102 bis 3, the statute of limitations became one year, although this is an exception that does not constitute a legal problem in essence, as there are other special provisions that prescribe rights in the Civil Code, for example, the prescription of periodic rights by five years, such as the rent of buildings and agricultural land, interests, revenues, endowments, wages, pensions, the rights of doctors, pharmacists, lawyers, engineers, and other statute of limitations. As for the exception of the legislator, the execution of judicial judgments related to the termination of service for officers from cases that occur on the statute of limitation and its interruption or cessation, is in violation of the Constitution, the law, and the general rules of the Civil Code.

According to the second paragraph, the provisions of Article 382/2 of the Civil Code do not apply to the period of one year in the forfeiture of the right to implement the judgment issued in favor of the terminated officers, which is the article that suspends the statute of limitations in cases of an impediment with which the sentenced person is unable to implement the judgment or claim his right, as it stipulates that:

"1. The statute of limitations shall not apply whenever there is an impediment that makes it impossible for the creditor to claim his right, even if the impediment is moral, and the statute of limitations shall not apply between the principal and the deputy."

The application of the text of Article 383 of the application to the provisions issued to officers, which regulate the interruption of the statute of limitations, was also excluded, as it stipulated that:

"The statute of limitations shall be interrupted by the judicial claim, even if the lawsuit is filed with a court that is not competent, by the notice, by the seizure, by the request submitted by the creditor to accept his right to bankruptcy or to distribute, and by any action taken by the creditor to uphold his right during the course of one of the lawsuits."

The last article that has been exempted from its application to the statute of limitations stipulated in Article 102 bis 3 is the first paragraph of Article 384, which also relates to the interruption of the statute of limitations in the event that the respondent or the debtor of the claimed right acknowledges that:

"1. The statute of limitations shall be interrupted if the debtor explicitly or implicitly acknowledges the creditor's right."

The cases of interruption and non-applicability of the statute of limitations are of great importance in the maintenance of rights, as the interruption of the statute of limitations in accordance with the text of Article 385 makes the period of limitation interrupted whenever there is a reason that the right holder is unable to claim his right or implement the judgment issued to him until the end of the reason for the interruption and then a new period is calculated. As for the suspension of the statute of limitations, the period that has already elapsed from the statute of limitations is completed, and of course this confers justice and legitimacy to the obligations and rights that deserve implementation, such as the case of the return of officers against whom termination decisions have been issued and judicial rulings have been issued to return to work.[8]

This exception violates the principle of the state's submission to the law, but also violates the preservation of rights, as the legislator stormed the rights of officers who have been issued judicial rulings in exchange for giving the administration, which is here the Ministry of Interior, legitimacy in the abuse of the rights of officers, and even in excess of the provisions of the law and the judiciary. Not only did it reduce the period of forfeiture of the right to implement judicial rulings from fifteen years to one year, but it also made exceptions for the non-applicability of waivers and interruption of the statute of limitations to this already short period.

We believe that the inability of officers to obtain their legitimate rights and even enable the Ministry of Interior to storm their rights will definitely affect fair trial guarantees and make officers, instead of complying with law enforcement and implementing its rules, affect the implementation of the orders of their superiors and the dictates of the Minister of Interior, especially with the existence of Article 67 of the Police Authority Law, which allows the Minister of Interior to refer officers below the rank of major general and not appointed by the President of the Republic to the reserve for the public interest, a term that carries ambiguity and breadth that is likely to make decisions according to the personal whims of the Minister of Interior and the Supreme Police Council.

[8] Article 385 of the Civil Code stipulates that "1**. If the statute of limitations is interrupted, a new statute of limitations shall begin to run from the time of the expiry of the effect resulting from the cause of the interruption, and its duration shall be the period of the first statute of limitations.**
2. However, if the debt is adjudicated and the judgment acquires the force of res judicata or if the debt is one year old and its prescription is interrupted by the debtor's acknowledgment, the new prescription period shall be fifteen years, except that the adjudicated debt includes renewable periodic obligations that are not due for payment until after the judgment is issued. "

Article 94 of the Constitution stipulates that the State must be subject to the law and its sovereignty:

“The rule of law is the basis of government in the state.

The State shall be subject to the law, and the independence, immunity and impartiality of the judiciary shall be fundamental guarantees for the protection of rights and freedoms. "

The jurisprudence of the Egyptian Supreme Courts has also confirmed that the legislative policy must be homogeneous in order for the legislative text to achieve its intended purpose, as it ruled that:

"Rational legislative policy must be based on homogeneous elements. If it is based on conflicting elements, this results in a lack of link between the texts and their objectives, so that it does not lead to the achievement of its intended purpose because of the absence of a logical link between them, in recognition that the origin in the legislative texts - in the legal state - is their mental link to their objectives, as any legislative regulation is not intended for itself, but is merely a means to achieve those objectives. Therefore, it must always be recalled whether the challenged text adheres to a logical framework for the circle in which it operates, ensuring that the purposes it aims at, or is destructive to or exceeds its purposes, and thus contrary to the principle of the state's submission to the law stipulated in Article (94) of the Constitution."[9]

Similarly, case law on the principle of the State's submission to the law has held that:

"The principle of the submission of the state to the law in the light of democratic concepts is based on the fact that the legislation in force does not prejudice the rights and guarantees that are considered one of the pillars of the legal state. The Constitution, as the supreme basic law, lays the rules and principles of the system of government on the basis of which the functions of public authorities and the limits of their activity are determined, together with the determination of public rights and freedoms and the means of protecting them[10]."

[9]Supreme ConstitutionalCourt, Case No. 116 of 22Q dated 6/5/2017.
[10]Administrative Court Case No. 26194 for the year 62 S dated 2/12/2008.

On the other hand, the second paragraph of Article 102 bis 3 included the phrase **"and the conditions necessary for filling the position must continue to be met upon implementation"**. Here, this condition can be taken as another pretext for non-implementation of judicial rulings by returning officers to work after obtaining judicial rulings to cancel termination decisions. Therefore, Article 102 bis 3 carries the obstruction of officers who have received rulings in their favor from implementing them, which constitutes a real danger, as it is unacceptable that the body responsible for enforcing the law and judicial rulings issues legislation that authorizes it to obstruct the implementation of judicial rulings and the receipt of exceptions that authorize it to storm the rights of officers - with regard to the non-applicability of suspensions and interruption of prescription for the period of the right to enforce judgments - guaranteed to all state employees, which constitutes a violation of the principle of equality and discrimination against officers prohibited by the Constitution under Article 53 of the Constitution, which 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, colour, language, disability, social level, political or geographical affiliation, or any other reason. Discrimination and incitement to hatred is a crime, punishable by law. The State shall take the necessary measures to eliminate all forms of discrimination. The law shall regulate the establishment of an independent commission for this purpose. "

The International Covenant on Civil and Political Rights has also prohibited discrimination and guaranteed citizens the preservation of their civil rights and the need to implement the sentences issued to them. Article 2 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, colour, 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.

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,

(c) ensure that the competent authorities enforce the judgments rendered in favour of the aggrieved. "

Article 26 of the International Covenant on Civil and Political Rights 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, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. ”

II. Counter-Terrorism Law No. 94 of 2015:

The Anti-Terrorism Law contains many provisions that are pursued by suspicion of unconstitutionality, due to the fact that its provisions are in clear violation of the provisions of the Constitution, as well as their contradiction with the provisions of the Code of Criminal Procedure. The Anti-Terrorism Law is characterized by excessive and cruelty towards the accused in cases classified as terrorism cases. It also opens the door for arresting officers, including members of the police force, to deal violently with the accused and suspects, which amounts to murder, whether during arrest and detention or afterwards. There is no doubt that the excessive use of violence and disregard for the rights of the accused, and the inclusion of provisions in the law that legitimize these actions, in addition to violating the guarantees of a fair trial, the rights of the accused and the rules of judicial redress. It also allows the impunity of the perpetrators - the arresting officers - when applying the provisions of this law as the most appropriate for the accused in exchange for not relying on the provisions of the penal laws and criminal procedures and the provisions of the Police Authority Law, which stresses the need to enforce the law and not to use cruelty or violence during the arrest or dealing with the accused.

In this section, we have commented on the provisions that allow police officers and bailiffs to escape legal accountability when committing crimes against the accused, which certainly affects the violation of fair trial guarantees.

Article 8:

Those responsible for the implementation of the provisions of this law shall not be criminally liable if they use force to perform their duties, or to protect themselves from an imminent danger that is about to occur to the person, funds, or other assets, all when their use of this right is necessary and sufficient to pay for the danger.

Police officers play an important role in the pre-trial stage when arresting perpetrators and collecting evidence in crimes in general. The role of police officers does not end at this stage, but extends until the end of the trial and then the execution of the sentence imposed by placing the perpetrator in one of the penal institutions, which is supervised by the police authority represented by the Prison Service. Therefore, this text does not only legitimize the use of force during the pre-trial stage, but at all stages of the trial. The security officer, whatever his rank, can deal by force with the accused and the perpetrators, and he is reassured by this legal cover that protects him.

There is no doubt that this article gives a guarantee and protection to police officers anda green light todeal with citizens with more violence, which before its existence amounted to torture andmurder, which the legislator had to find solutions to in light of the increasing cases of violence by police officers against citizens and not vice versa in giving them a legal cover for their use of excessive force, especially since the inclusion of such a text in the Anti-Terrorism Law is not justified, while the Egyptian law is full of provisions that guarantee police officers and policemen the right to legitimate defense if they are forced to do so while exercising the requirements of their job. Therefore, there was no legislative vacuum that requires the enactment of such a text, as Article 102 of the Police Law No. 109 of 1971 stipulates that:

"A police officer may use force to the extent necessary to perform his duty if it is the only means of performing this duty.

The use of the weapon is limited to the following cases:

(i) Arrest of:

(1) Every person sentenced to a felony or to imprisonment for a period exceeding three months if he resists or tries to escape.

(2) Every person accused of a felony or flagrante delicto in which it is permissible to arrest or an accused person against whom an arrest warrant has been issued if he resists or tries to escape.

(ii) When guarding inmates in the cases and under the conditions stipulated in the Law on Correction and Community Rehabilitation Centers.

(iii) To disperse the gathering or demonstration that occurs from at least five persons if public security is endangered, after warning the crowd to disperse. The order to use the weapon in this case shall be issued by a superior who must be obeyed.

In all three previous cases, it shall be taken into account that shooting is the only means to achieve the foregoing purposes. The policeman shall start with a warning that he will shoot and then resort to shooting. The Minister of Interior shall, by a decision, determine the procedures to be followed in all cases and how the warning and shooting shall be directed. "

Thus, the previous article, in addition to ensuring that the police officer uses force to the extent necessary to avert danger, also included cases in which the police officer may use his firearm exclusively, contrary to Article 8 of the Anti-Terrorism Law, which opened the door wide to justify torture as well as extrajudicial killing.

On the other hand, the Penal Code is also crowded with legal texts that determine the reasons for permissibility and prohibitions of punishment, including the right of legitimate defense stipulated in Article 61 of the Penal Code, as it stipulates that:

"There shall be no punishment for whoever commits a crime that he has resorted to committing the need to protect himself or others from a grave danger to himself that is about to occur to him or to others, and his will had nothing to do with his solutions or his ability to prevent him in another way."

Article 245 of the Penal Code stipulates that:

"There shall be no punishment whatsoever for anyone who kills, wounds, or beats another person while using the right of legitimate defense for himself or his property or for the same or his property. The circumstances that give rise to this right and the restrictions to which it relates are set forth in the following articles."

As well as Article 246, which states that:

"The right of legitimate self-defense is permissible for a person except in the exceptional cases indicated after the use of the necessary force to defend any act considered a crime against the person stipulated in this law. and the right to legitimate defense of property allows the use of force to respond to any act that is considered a crime stipulated in Parts Two, Eight, Thirteen and Fourteen of this book and in paragraph 4 of Article 379."

Thus, the Egyptian criminal legislation did not need such an article, especially with the increase in cases of extrajudicial killings and physical liquidation by members of the police towards citizens as well as members of the armed forces, whether during the arrest of suspects of committing terrorist crimes, or killing as a result of torture within police stations and places of detention, as the Egyptian official newspapers are full of news of cases of killings in raids by the army and police forces to thwart terrorism crimes in Sinai and the rest of the Republic.[11]

Many case law has stipulated that the legitimate defense must not be exaggerated and must be to the extent necessary to pay the damage, as one of these precedents stipulated that:

[11] For news of cases of murder and physical liquidation by the police and the army of suspects of committing terrorist crimes without trial, please click on the following links:
https://cutt.us/RxCLn
https://cutt.us/swDEC
https://cutt.us/C3PLP
https://cutt.us/OHIJx

"It is established that the state of necessity that extinguishes responsibility is the one that surrounds a person and drives him to crime, the necessity of protecting himself or others from a serious danger to himself that is about to occur to him or to others, and his will had nothing to do with his solutions. In the case of necessity that extinguishes criminal responsibility, the crime committed by the accused shall be the only means of defending the immediate danger."[12]

In another judgment, it ruled that:

"It is established that the state of necessity that extinguishes liability is the one that surrounds a person and pushes him to the crime, the need to protect himself or others from a serious danger to the self that is about to occur to him or to others and that his will was not involved in its solutions, and it is stipulated that in the case of necessity that extinguishes criminal liability, the crime committed by the accused is the only means to pay the danger, and it is also established that obedience to the superior does not extend in any way to the commission of crimes, and that the subordinate does not have to obey the order issued to him by his superior to commit an act that he knows is punishable by law, and if what was stated in the contested judgment - in the above context - is used to respond to the appellant's defense that he was forced to implement the orders of his superiors and commit the acts that the law does, and justifies his dismissal of his motive to commit the incident by committing the breach of those orders, then what the appellant calls the judgment of deficiency in causation in this regard is not valid."[13]

[12] Judgment of the Court of Cassation - Criminal - Appeal No. 1133 of 45 judicial year dated 1975-11-02.
[13] Judgment of the Court of Cassation, Appeal No. 5732 of the judicial year 63 dated 08/03/1995.

Article 8 of the Anti-Terrorism Law violates the Constitution, the law, and the International Bill of Human Rights.

The Egyptian Constitution of 2014 guarantees many rights and guarantees to citizens, the most important of which is to preserve the human dignity of all people, including those suspected of criminal offenses and anyone whose freedom is restricted. Article 8 - regarding the lack of criminal accountability for those in charge of implementing the provisions of the Anti-Terrorism Law if they use force during their work - violates these constitutional provisions, since it allows security forces to escape punishment and encourages violence by citizens. Article 52 guarantees the prohibition of torture in all its forms and considers it a crime that is not subject to a statute of limitations, as Article 52 stipulates that:

"Torture in all its forms and manifestations is a crime that is not subject to statute of limitations." As for those who are arrested on suspicion of committing a crime or in a case of flagrante delicto, Article 55 of the Constitution stipulates that those who are arrested must be treated in a manner that preserves dignity andprohibits their physical or moral harm, which is understood in the concept of the violation to criminalize the violation of their lives in any way and under any circumstances and under any charges, even if the crime is classified under terrorism, the article stipulates that:

"Anyone who is arrested, imprisoned, or whose freedom is restricted must be treated in a manner that preserves his dignity. It is not permissible to torture, intimidate, coerce, or physically or morally harm him. His detention or confinement shall only be in places designated for this purpose as humanly appropriate and healthy. The state is obligated to provide means of access to persons with disabilities, and violating any of this is a crime whose perpetrator shall be punished in accordance with the law. The accused has the right to silence. Every statement that proves that it was made by a detainee under the weight of any of the foregoing, or the threat of any of it, is wasted and unreliable. "

This is in contrast to the provision of Article 56 that the prison is considered a rehabilitation and reform house, which requires not to treat prisoners by force or humiliation and abuse them. These behaviors that contradict rehabilitation and reform and lead to the release of prisoners from prison after serving the sentence are more hateful and hostile to society. Therefore, force should not be used against prisoners, especially since the prisoner is in the custody of the state, deprived of freedom and will, which requires not to use force with him by torturing, intimidating or harming his life, regardless of the crime he committed and was punished accordingly. Article 56 stipulates that:

"The prison is a reform and rehabilitation house. Prisons and places of detention shall be subject to judicial supervision, and all that is contrary to human dignity or endangers human health shall be prohibited therein. The law shall regulate the provisions for the reform and rehabilitation of convicted persons and the facilitation of a decent life for them after their release. "

The first paragraph of Article 60 of the Constitution also stipulates that:

"The human body is inviolable, assaulting it, mutilating it, or representing it, is a crime punishable by law," and thus the physical liquidation of some suspects and the ease of killing them by the security forces without opening a serious investigation into whether this killing of these suspects was a real necessity and a direct danger to the judicial officers. The forces had no choice but to act as if the dead, for example, were firing shots at the army or police forces, which poses an imminent danger. We must take into account that the police officers are supposed to be trained to engage and arrest the perpetrators and receive the training that is included in the real knowledge of human rights standards and preserving the lives of the suspects and the criminally prosecuted. However, the Egyptian reality is filled with cases of extrajudicial killings by police officers.

Some of these cases proved the innocence of the killed citizens from the crimes attributed to them, for example, the killing of five Egyptian citizens who were followed by police officers on charges of killing the Italian researcher Giulio Regeni, and the Ministry of Interior announced at the time that the researcher's belongings were found in the possession of a criminal gang whose members were killed in an exchange of fire, and then it became clear that four Egyptian officers were involved in kidnapping Giulio Regeni and torturing him to death.[14]

Based on a report issued by Human Rights Watch in September 2021 entitled "The forces dealt with them.. Suspicious killings and extrajudicial executions by Egyptian security forces ”The report traced cases of extrajudicial killings and stated that after the overthrow of President Mohamed Morsi in July 2013, at least 817 protesters were killed in a single day in the dispersal of the Rab 'a al-Adawiya sit-in. Between January 2015 and December 2020, security forces killed

[14] Arabic website - News entitled (Egypt liquidates the killers of the Italian student) For more information, press https://2u.pw/qtJlc2tb
DW website - News entitled (Rome begins the trial of Egyptian officers in absentia for the murder of an Italian student) For more information, press https://2u.pw/4LGMdZmo

at least 755 alleged“militants ”or“ terrorists”in 143 shoot-outs or fire-fighting incidents in 19 governorates across the country. [15]

The use of excessive force that kills suspects or accused of terrorist crimes violates the principle of the presumption of innocence guaranteed by Article 96 of the Constitution, which states that:

"The accused is innocent until proven guilty in a fair legal trial, in which he is guaranteed the guarantees of self-defense."

There is no doubt that extrajudicial killing practiced by the security forces deprives the deceased from appearing before the judiciary and exhausting the aspects of defending himself, and appealing the judgment issued against him until he reaches the possibility of acquitting him of the charge against him. Therefore, the disregard for the lives of those accused of terrorism and the facilitation of killing them by the security forces undermines the most basic rules of a fair trial and judicial fairness, and undermines basic human rights such as the right to life, the right to resort to justice, the right to a lawyer, the right to self-defense, and the right to exhaust legal remedies.

There are many case law of the Egyptian Supreme Courts that confirm the principle of the presumption of innocence, including the following:

"Whereas the decision is that every accused of a crime, no matter how serious, is innocent until proven guilty by a final judicial ruling, and this assumption results in the inadmissibility of his conviction without conclusive evidence concluded by the court, and the lesson is the conviction of the judge based on the evidence presented to him, it is his right to extract from all the elements before him on the table of research the correct picture of the incident of the case as it leads to his conviction, and to put forward what contradicts him from other forms, as long as his conclusion is reasonable based on evidence acceptable in reason and logic, and has its origin in the papers; Therefore, the law made it his authority to weigh the strength of evidence in the field of proof, and to take from it any evidence or presumption that he needs as evidence for his judgment, and he may weigh the statements of witnesses to take from them what reassures him and put forward what does not reassure him, and it is enough to question the validity of attributing the charge to the accused in order to acquit; as it is due to what reassures him in estimating the evidence. [16]"

[15] Human Rights Watch report in September 2021 entitled "The forces dealt with them" Suspicious killings and extrajudicial executions at the hands of the Egyptian security forces "For information, click https://2u.pw/lUvhGJYe.
[16] Judgement of the Supreme Administrative Court - Appeal No. 57446 for the year 60 judicial on 06-02-2016.

The use of force is not only limited to extrajudicial killings, but also the use of force is practiced by the security forces in the form of enforced disappearance of citizens as well as torture and physical and moral intimidation, which also violates all the rules of criminal justice and the most basic standards of fair trial and also violates the principle of the rule of law and the principle of no punishment except on the basis of a judicial ruling, which is guaranteed by the first paragraph of Article 94 of the Constitution, which states that:

“The rule of law is the basis of government in the state.”

As well as Article 95, which states 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."

There are also many case law issued by the Egyptian Supreme Courts that affirm the rule of law and the character of punishment if one of these precedents states that:

"The judiciary of this court has been that the legal state - and according to what is stipulated in Article (94) of the 2014 Constitution - is the one that abides in the exercise of its powers, whatever its functions or purposes, by legal rules that transcend it, and return it on its heels if it exceeds them, so that it does not disintegrate from them, as these powers - and whoever is responsible for them - are not considered a personal privilege for those who assume them, nor are they of their making, but rather established by the will of the masses in their gatherings throughout the country, and seized by imperative rules that may not be waived, and then these rules are a restriction on all their actions and actions, so they come to them only within the limits set by the Constitution, and in a manner that takes care of the interests of their society."[17]

[17] Judgment of the Supreme Constitutional Court - Case No. 185 of 32 Judicial - Constitutional - dated 2019-05-04.

Impunity in the Criminal Procedure Code

Article 8 was considered one of the most dangerous articles recently legislated and immunized the police from accountability. However, there are some legal provisions stipulated in the Code of Criminal Procedure that originally hinder the accountability of judicial officers and police officers, such as the text of Article 63, which prevents the initiation of criminal proceedings against public officials against prosecutors below the rank of chief prosecutor, as well as the text of Article 232.

The second paragraph of Article 63 states that "Except for **the crimes referred to in Article 123 of the Penal Code, only the Attorney General, the Public Defender, or the Head of the Public Prosecution may file a criminal case against an employee, public servant, or an arrestee for a felony or misdemeanor committed by him during the performance of his job or because of it."**

The second paragraph of Article 232 also stipulates that **"However, the plaintiff of civil rights may not file a lawsuit with the court by directly ordering his opponent to appear before it in the following cases:**

First: - If an order is issued by the investigating judge or the Public Prosecution that there is no face to file the lawsuit and the civil rights plaintiff does not appeal the order on time or appeal it, it is confirmed by the appellate misdemeanor court sitting in the counseling room.

Second: - If the lawsuit is against an employee, public employee, or an officer for a crime committed by him during the performance of his job or because of it, unless it is one of the crimes referred to in Article 123 of the Penal Code.

In addition to the text of Article 162, which prevents the civil rights plaintiff - who is the victim as well as any victim of the crime committed - from appealing against decisions not to file a lawsuit issued by the investigating judge - with the exception of crimes of non-implementation of orders issued by the government and judicial rulings - as it states that:

"The civil rights plaintiff may appeal the orders issued by the investigating judge that there is no cause of action unless the order is issued in a charge against an employee, public employee, or an officer for a crime committed by him while performing his job or because of it, unless it is one of the crimes referred to in Article 123 of the Penal Code."[18]

[18] Article 123 of the Penal Code stipulates that **"Any public official who uses the authority of his office to suspend the execution of orders issued by the government or the provisions of laws and regulations, delay the collection of funds and fees, or suspend the execution of a judgment or order issued by the court or any competent authority shall be punished by imprisonment and dismissal. Any public official who wilfully refrains from executing a judgment or order**

Consequently, these texts led to the laxness of the Egyptian Public Prosecution over the decades in investigating reports of torture committed by police officers, as well as the obstruction of victims to prosecute police officers, which led to the escape of many security personnel charged with torture from criminal prosecution and the issuance of deterrent sentences against them, which resulted in systematic torture within the corridors of police stations and places of detention, which is the dominant and shameful feature of the Egyptian security forces, which led many citizens to lose confidence in the security services in their ability to maintain security and enforce the law, which is the main role of the police forces and stipulated in Article 3 of the Police Authority Law No. 109 of 1971.[19]

Many victims of torture and their families have suffered from the Public Prosecution's neglect of the reports and complaints submitted to it to investigate these reports and then initiate criminal proceedings against the accused police members involved in torture crimes, which have been ignored by the Public Prosecutor, which makes the Public Prosecution a partner in these crimes with complicity and deliberate negligence. For example, but not limited to, the family of human rights lawyer Ahmed Saif Al-Islam Hamad is among the families affected by torture crimes, in which they submitted many reports and complaints that were ignored by the Public Prosecution, which prompted them to submit a warning against the Public Prosecutor to [20]investigate these reports, which numbered between 2019 and 2021, eleven reports, one of which was not investigated or taken seriously.

mentioned eight days after being warned by a bailiff shall also be punished by imprisonment and dismissal if the execution of the judgment or order falls within the competence of the employee. "

[19] Article 3 of the Police Authority Law stipulates that**"the Police Authority is competent to maintain order, public security and morals, protect lives, symptoms and property, and in particular to prevent and control crimes. It is also competent to ensure the tranquility and security of citizens in all fields, and to implement the duties imposed on it by laws and regulations."**

[20] To view the text of the warning submitted against the Attorney General by the family of Mr. Ahmed Saif Al-Islam Hamad, please click on the link https://cutt.us/yGVfo.

Article 8 of the Anti-Terrorism Law in light of the crimes of torture and the use of cruelty in the Penal Code:

The Penal Code establishes a penalty for torture and the use of cruelty in Articles 126 and 129 of the Penal Code No. 58 of 1937.

Article 126 of the Penal Code stipulates that **"any public official or employee who ordered the torture of an accused person or did so himself to get him to confess shall be punished by rigorous imprisonment or imprisonment from three to ten years. If the victim dies, he shall be sentenced to the penalty prescribed for intentional killing. "**

Article 129 of the same law also stipulates that **"every public official or employee and every person entrusted with a public service who uses cruelty to people based on his job so that he violates their honor or causes pain to their bodies shall be punished by imprisonment for a period not exceeding one year or a fine not exceeding two hundred Egyptian pounds."**

Although these two articles prescribe penalties for the crime of torture and the use of cruelty up to the death penalty in the event of the death of the victim following torture, these texts contain many loopholes that lead to the impunity of the accused, especially in Article 126 on torture, which is included in the criminal intent of the article that torture must be for the purpose of obtaining a confession from the victim, which is not available in many torture crimes that can have motives other than obtaining a confession from the victim . By tracking torture crimes in Egyptian reality, we find that there are other motives such as a show of influence andforce by police officers on citizens, which often leads to cases of torture and killing, or taking torture as an additional punishment in police stations or places of detention, whether by police officers themselves or by inciting some detainees to play this role in front of them.

Article 126 of the Penal Code is also inconsistent with the global trend of the crime of torture, which is contained in the United Nations Convention **against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment**, which was adopted by the United Nations in 1987 and joined by Egypt in 1986 under Resolution No. 154 of 1986, and published in the Official Gazette on 7-1-1986, and is therefore committed to the Convention and has international obligations in accordance with Article 93 of the Constitution. [21]

[21] Legal publications - Resolution No. 154 of 1986 on Egypt's accession to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment Please see the link https://manshurat.org/node/43659.

Article 1 of the agreement stipulates that:

“Torture means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a second person information or a confession, punishing him for an act he or a second person has committed or is suspected of having committed, or intimidating or coercing him or any other person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity and does not include pain or suffering arising solely from, inherent in or incidental to lawful sanctions.”

Thus, the Convention did not make obtaining a confession the sole motive behind the crime of torture, but rather made discrimination, incitement and even silence by the heads of the accused after knowing of torture and physical or moral abuse by threat or coercion as complicity in committing the crime subject to punishment, which was lacking in Egyptian law, which made it more worthwhile for the Egyptian legislator to avoid these gaps, especially with the high rate of reports of torture and cases of police bullying against citizens, rather than entrenching torture more and extrajudicial killing by enacting Article 8 of the Anti-Terrorism Law, which hinders the criminal accountability of the security forces and gives them the green light to commit more crimes of violence against citizens and not only those accused of terrorist cases.

Despite these gaps in Egyptian law that make the initiation of criminal proceedings against security personnel rare enough to be applied in Egyptian practice, in some cases that have reached the Egyptian judiciary, case law has expanded the concept of torture and the criminal intent of the crime, as one of these precedents ruled that:

"It is established that the accused in the provision of the first paragraph of Article 126 of the Penal Code is everyone who is accused of committing a certain crime, even while the judicial officers are searching for the crimes and their perpetrators and collecting the evidence necessary for the investigation and the lawsuit against the requirements of Articles 21 and 29 of the Criminal Procedure Code, as long as there is suspicion that he is involved in committing the crime in which those officers collect the evidence, and there is no objection to one of them falling under the penalty of the text of Article 126 of the Penal Code if he tells himself to torture that accused to make him confess, whatever the motive to do so. There is no way to distinguish between what the accused says in the investigation report conducted by the investigation authority, and what he says in the evidence collection report, as long as the criminal judge is not

originally restricted by a specific type of evidence and has absolute freedom to derive from any source in the case who is convinced of its validity, and there is no reason to say that the street is intended to protect a certain type of confession because this is an unallocated allocation and inconsistent with the launch of the text[22]."

As well as in another provision, it was ruled that:

"It is established that obedience to the president does not extend in any way to the commission of crimes, and that a subordinate does not have to obey the order issued to him by his superior to commit an act that he knows is punishable by law, and therefore what the appellant raises in this regard is nothing more than a legal defense that appears null and void, which does not merit a response from the court."[23]

It is worth mentioning that the Egyptian law does not consider the crimes of torture and the use of force as crimes that require dismissal from employment in the Egyptian criminal legislation. Rather, Article 27 of the Penal Code stipulates the possibility of the return of a public official who commits a felony and is treated with clemency. He was sentenced to imprisonment. He is sentenced to dismissal from employment but for a temporary period, which is not less than twice the period of imprisonment, which means that he can return to his job again after this period. [24]

Also, judges often resort to the use of clemency stipulated in Article 17 of the Penal Code with police officers, which increases the indifference of judicial officers while dealing with suspects andprisoners, as the Egyptian legislative system does not establish real deterrent penalties with regard to crimes of torture, but rather enables security officers to escape punishment. In the worst cases, if these crimes reach the judiciary, the sentence will be issued lightly and the convicted person can return to his job again after serving the prescribed sentence. [25]

Thus, the crimes of torture and the use of cruelty against citizens are crimes that occur with the approval of successive ruling regimes in Egypt and are even considered accomplices in these

[22] Judgment of the Court of Cassation, Appeal No. 36562 of the judicial year 73 dated 17-02-2004.
[23] Appeal No. 6533 of the judicial year 52 dated 24-03-1983.
[24] Article 27 of the Penal Code stipulates that "every employee who commits a felony stipulated in Title III, IV, VI and XVI of Book II of this law has been treated with mercy and has been sentenced to imprisonment. He shall also be sentenced to isolation for a period not less than twice the period of imprisonment he was sentenced to."
[25] Statement of the Egyptian Commission for Human Rights "A light sentence of 6 months imprisonment against a policeman who tortured a prisoner, causing him to lose his sight in one of his eyes" To view the sentence, click on the link https://2u.pw/Uip8S7G5.

crimes, which explains the large number of cases of extrajudicial killings as well as systematic torture within police stations and places of detention.

Article 8 of the Anti-Terrorism Law in light of international covenants.

The lack of criminal accountability for the security forces when they use excessive force represents the encouragement of enforced disappearances and torture, as well as extrajudicial killings, which violate regional and international laws of all human rights, as they represent an attack on the right to life and the right to bodily integrity, as well as the right to equality before the law and the judiciary, and access to justice, and undermine the basis of criminal justice and fair trial guarantees. In the following lines, we will detail each right separately and monitor the international texts that protect it.

Violation of the right to life:

The right to life is one of the basic rights recognized by the International Bill of Human Rights as an inherent right that cannot be invoked by States in their domestic laws. It recommended for States that approve the death penalty in their domestic laws that they apply it in crimes of the highest gravity and the narrowest limits. This is because the death penalty is widely criticized in international law as an irreversible punishment, especially in the event of the innocence of the perpetrator. Therefore, many States have abolished the death penalty and replaced it with other measures closer according to their vision to achieve criminal justice. Therefore, extrajudicial killing, which was spread by the security forces against suspects in the commission of internationally criminalized crimes of violence and terrorism, is classified as a crime against humanity if it occurs repeatedly and systematically.

Article 3 of the Universal Declaration of Human Rights states:

“Everyone has the right to life, liberty and security of person.”

Also, Article 6 of the International Covenant on Civil and Political Rights stipulates that:

"1. The right to life is inherent to every human being. The law shall protect this right. No one shall be arbitrarily deprived of his life.

2. In countries which have not abolished the death penalty, the death penalty may be imposed only for the most serious crimes in accordance with the legislation in force at the time of the commission of the crime and not contrary to the provisions of the present Covenant and the Convention on the Prevention and Punishment of the Crime of Genocide. This penalty may not be applied except by virtue of a final judgment issued by a competent court....."

The **African Charter** on Human and Peoples' Rights stipulates in Article 4 that **“The human person shall be inviolable and shall have the right to respect for his life and for the physical and moral integrity of his person. He shall not be arbitrarily deprived of this right. "**

On the other hand, the **"Principles on the Effective Prevention and Investigation of Extra-legal**, **Arbitrary** and Summary **Executions**"emphasized that extra-legal killings are prohibited and that governments are required by law to prohibit all extra-legal, arbitrary and summary executions, and to ensure that such operations are considered crimes under their criminal laws, punishable by appropriate penalties that take into account their gravity, as well as that states of exception, including a state of war or threat of war, internal political instability or any other public emergency, may not be invoked to justify such executions. Such executions shall not be carried out under any circumstances, including but not limited to situations of internal armed conflict, cases of excessive or unlawful use of force by a public official or any other person acting in an official capacity, or by a person acting at the instigation or with the express or implied consent of that person, and deaths in custody**.** [26]

The principles also stressed the need to control the security forces empowered to arrest people and the need to punish them with deterrent penalties if they commit such crimes, as it stipulated in the second principle that:

"In order to prevent extra-legal, arbitrary and summary executions, Governments shall ensure strict control, with a clear chain of command, over all officials responsible for the arrest, arrest , detention, custody and imprisonment of persons and those authorized by law to use force and firearms."

This is contrary to the principles of the need to prohibit the issuance of presidential or government decisions that justify extrajudicial killings in the third principle, which states that:

"Governments shall prohibit superior officers and public authorities from issuing orders authorizing or inciting other persons to carry out any kind of extrajudicial, arbitrary or summary execution. Any person has the right and duty to refrain from complying with such orders. It emphasizes the above provisions in the training of law enforcement officials. ”

[26] The first item of the “Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Killings” was adopted by the Economic and Social Council in its resolution No. 65 of 1989, and adopted and published by the General Assembly of the United Nations in its resolution 44/163 of 15 December 1989.

Given the international community's concern about the seriousness of extrajudicial killings and extrajudicial executions and thus emphasizing the inherent right to life from the oppression of dictatorial and fascist regimes, which tend to get rid of their political opponents and opponents, the United Nations issued the Minnesota Protocol **"on the Investigation** of Potentially Unlawful **Deaths**," a guide **that** includes detailed investigation procedures that states must follow and incorporate into their domestic laws when investigating extrajudicial killings, arbitrary executions, and extrajudicial executions involving the security services. The guide includes a comprehensive program of investigation mechanisms as well as the tasks of forensic doctors, law enforcement officials, lawyers, and prosecutors, as well as the roles of non-governmental organizations so that criminal accountability is carried out fairly and effectively. [27]

The preamble to the Protocol states:

"Any suspicious death occurring anywhere in the world can constitute a violation of the right to life, which is often described as the supreme human right, and therefore a prompt, impartial and effective investigation is the key to ensuring that a culture of accountability prevails – not a culture of impunity. The same applies to enforced disappearances. "

[27] The United Nations Manual for the Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions was first adopted in 1991 and a revised version was issued in 2016. To view the manual in Arabic, please click on the link https://www.ohchr.org/Documents/Publications/MinnesotaProtocol_AR.pdf.

Violation of the right to bodily integrity.

The human right to physical integrity is an inherent right associated with the right to life, as the safety of a person on his body from torture inflicted on him or treatment that undermines his dignity and humanity is a right that cannot be undermined, especially if he is accused of a crime, whatever its criminal seriousness. Many international covenants have meant this right and have singled out many provisions that criminalize torture and physical harm, especially the Universal Declaration of Human Rights, which stipulates in Article 5 that:

“No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment”

The International Covenant on Civil and Political Rights states in article 7 that:

“No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation. ”

Also, Article 10 stipulates that:

"1. All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person..."

Under Article 93 of the Egyptian Constitution, the International Covenant on Economic, Social and Cultural Rights has the force of law and has been valid in Egypt since Egypt ratified it on January 14, 1982. Article 93 stipulates that:

"The State shall abide by the international human rights conventions, covenants and instruments ratified by Egypt, and they shall have the force of law after their publication in accordance with the prescribed conditions."

This is in addition to the African Charter, which Egypt also ratified on March 20, 1984, and which contains many provisions that guarantee the right to preserve the body through Article 5, which stipulates that:

"Everyone has the right to respect for his dignity, recognition of his legal personality, and the prohibition of all forms of exploitation, humiliation, and enslavement, especially slavery, torture of all kinds, and cruel, inhuman, or degrading punishment and treatment."

As well as the Arab Charter on Human Rights 8, 20 which prohibited physical and psychological torture and also guaranteed the right of convicts to receive appropriate treatment. [28]

One of the most important charters that condemned acts **of torture and its seriousness is the Convention against Torture and Other Cruel, Inhuman or** Degrading **Treatment or Punishment**, which was approved by the General Assembly of the United Nations in 1984 and approved by Egypt by Presidential Decree No. 154 of 1986. Article 2 of the Convention stipulates that:

"1. Each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction.

2. No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture.

3. Orders issued by higher-ranking officials or by a public authority may not be invoked as a justification of torture "

Similarly, Article 4 of the Convention states that "1. Each State Party shall ensure that all acts of torture are offences under its criminal law, and the same shall apply to any attempt to commit torture and to any other act constituting complicity or participation in torture.

2. Each State Party shall make these offences punishable by appropriate penalties which take into account their grave nature. "

[28] "Article 8 of the Arab Charter on Human Rights states that"1 It is prohibited to physically or psychologically torture or treat any person with cruel, degrading, degrading or inhuman treatment.
2. Each State Party shall protect each person under its jurisdiction from such practices and shall take effective measures to prevent them. The practice of or contribution to such conduct shall be considered a punishable offence with no statute of limitations.
Each State Party shall also ensure in its legal system that those who are subjected to torture obtain redress and enjoy the right to rehabilitation and compensation."
Article 20 of the Charter also stipulates that:
"1. All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person."

Violation of the right to resort to justice:

Article 8 of the Anti-Terrorism Law - as it encourages extrajudicial killing as well as torture, enforced disappearance and the use of force by arresting officers - deprives the right of a person accused of a terrorist crime of being brought to justice andhaving a trial that guarantees him fair and equitable trial guarantees, which are among the fundamental rights that a society or a state of law is inconceivable without.

Article 10 of the Universal Declaration of Human Rights states:

"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."

Article 7 of the African Charter on Human and Peoples' Rights 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.

(b) A person is innocent until proven guilty before a competent court,

(c) The right of defence, including the right to choose a defender;

(d) The right to be tried within a reasonable period and by an impartial court.

2. A person may not be convicted for an act or omission that does not constitute an offence punishable by law at the time of its commission, nor a punishment except by a provision, and the punishment is personal."

Violation of the right to equality before the law:

The right to equality before the law means the right of a person to be treated with the same treatment and receive the same procedures with persons who are in the same legal status without discrimination, regardless of their nationality, religion, color or the crime for which they are convicted. Since the Terrorism Law in Article 8 stipulates that law enforcement officials shall not be held criminally accountable if they use force in the exercise of their function in the search for perpetrators of terrorist crimes, the legislator has permitted torture, murder and enforced disappearance against those accused of terrorist crimes. Thus, it has violated the principle of equality before the law from their counterparts in other criminal cases. All international covenants stipulate the right to equality before the law and the judiciary, including Article 7 of the Universal Declaration of Human Rights, which stipulates that:

"All persons are equal before the law and are entitled without any discrimination to equal protection of the law. They are also entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination."

As well as **the International Covenant on Civil and Political Rights,** which states in Article 26 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. ”

And Article 14, which stipulates 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 a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. "

The **African Charter** on Human and Peoples' Rights also stipulates in Article 3 that:

"1. People are equal before the law.

2. Everyone has the right to equal protection before the law "

Thus, Article 8 of the Anti-Terrorism Law, which gives legislative cover to law enforcement officials to kill outside the framework of the law and without a final judicial ruling, is a regression of the rule of law and an entrenchment of fascism and dictatorship. It destroys all constitutional and international legal principles that unite together to form human rights principles, which cannot be accepted as a derogation under the rule of law. The loss of any of these principles and rights is a waste. Therefore, the legislator must put an end to all these violations that make the citizen under the weight of these laws and allow the violation of his rights on a daily basis, especially with all the broad terms and general terms contained in the Anti-Terrorism Law and make the description of a terrorist can be inflicted on anyone who opposes the public and economic policy of the state.

Article 41 of the Anti-Terrorism Law.

> **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.**

As Article 8 of the Anti-Terrorism Law encourages security forces to torture and extrajudicial killing, Article 41 encourages and legitimizes the enforced disappearance of suspects by the authority in terrorism cases, including the phrase **"without prejudice to the interest of inference "** at the end of the article, which gives arresting officers the discretionary power to allow or not a suspect of a terrorist crime to inform his family of the reservation he has made, as well as his right to use his lawyer if this affects the interest of the investigation, which violates the legal rules and constitutional principles that guarantee the right of the accused in a criminal crime to immediately inform his family of his arrest and the use of a lawyer. Otherwise, his presence in the custody of security officers without the knowledge of his relatives is considered a forced disappearance that empties the concepts of justice of its content and violates the rules of international law and represents a flagrant attack on the personal freedom guaranteed under the Egyptian Constitution.

Article 41 of the Anti-Terrorism Law violates the Constitution and the law

There is no doubt that the detention of the suspect or the accused and depriving him of his right to contact his family and seek the assistance of his lawyer is a real disaster that violates the guarantees of a fair trial and represents a serious violation of personal freedom protected by the provisions of the Constitution in Article 54 in its first paragraphs, which 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 immediately informed 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 shall begin only in the presence of his lawyer, and 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 established by law. ”

The Constitution did not make any exceptions to the right to inform the accused of his relatives of the reservation he signed and then to seek the assistance of a lawyer, which is self-evident, as it is not conceivable in the state of law that the discretionary power is given to the arresting officers, who are most often the security forces to kidnap citizens and keep them in their possession without informing their relatives, as Article 8 did. The decision was made by the arresting officer, which makes this article closer to unconstitutional, as it violates a clear constitutional rule that does not accept room for doubt or confusion.

Article 92 of the Constitution also stipulates that:

"The rights and freedoms inherent in the person of a citizen shall not be subject to derogation or derogation. No law regulating the exercise of rights and freedoms may restrict them in a manner that affects their origin and essence. "

Article 41 of the Anti-Terrorism Law also contradicts the general rules in the Criminal Procedure Law No. 150 of 1950, which stipulates that the arrested accused has the right to seek the assistance of a lawyer immediately after his arrest, as well as informing his family of what happened to him, according to the text of Article 139, which states 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. Seizure and habeas corpus orders and detention orders may not be executed after the lapse of six months from the date of their issuance unless approved by the investigating judge for another period.

In addition to these constitutional and legal articles, their application in the jurisprudence of the Egyptian Supreme Courts determines the right of the accused to seek the assistance of his family and a lawyer and considers this a right of defense, as it stipulates in one of the jurisprudence that:

"Whereas it is one of the basic principles in criminal proceedings – in application of the right to a fair trial guaranteed by successive constitutions - that every accused person enjoys the presumption of innocence until he is finally convicted in a fair 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, and it is also a principle whose application has been established in democratic countries, and within it lies a set of basic guarantees that ensure the integrity of a concept of justice in which civilized nations do not differ, regardless of the nature of the crime and regardless of its degree of seriousness. Guided by these principles, the right of the accused to defend himself has been established and has become a sacred right that transcends the rights of the social body, which is not harmed by the acquittal of the guilty as much as it harms it and harms justice. Together, it is an innocent conviction. In the last paragraph of Article 54, the Constitution required the presence of a lawyer assigned or assigned with the accused at his trial for the crimes for which imprisonment is permissible. The law also required the presence of a lawyer who defends every person accused of a felony referred to the Criminal Court; in order to ensure a real defense, not just a formal defense; in recognition of the fact that the charge of a felony is dangerous, this purpose can only be achieved if this defender has attended the trial proceedings from the beginning to the end; in order to be familiar with the investigation conducted by the court and the procedures taken throughout the trial[29]. "

[29] Judgement of the Court of Cassation - Criminal - Appeal No. 20238 of the judicial year 84 dated 24/01/2015.

In another important ruling, the Administrative Court ruled that:

"It is taken advantage of the foregoing 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 detained in pretrial detention 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 recommended - since its early 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 - in the texts in which it guarantees the guarantee of the defense - is supposed to give every advocate 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. "[30]

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

Violation of Article 41 of the Anti-Terrorism Law of International Covenants:

The human right not to be forcibly disappeared, as well as the right of the arrested person to have access to a lawyer and inform his family immediately after arrest are basic rights guaranteed by international covenants and considered as guarantees of a fair trial, as Article 9 of the Universal Declaration of Human Rights states that:

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

Article 14 of the International Covenant on Civil and Political Rights states:

"3. Every person charged with a criminal offence 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 therefor;

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

In view of the importance of the right not to be forcibly disappeared, the **International Convention for the Protection of All Persons from Enforced Disappearance** was concluded and adopted by the United Nations General Assembly Resolution No. 61/177 of December 2006, Article 1 of which stipulates that:

"**1. No one shall be subjected to enforced disappearance.**

2. No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other state of exception, may be invoked to justify enforced disappearance. "

In the definition of enforced disappearance, Article 2 of the Convention 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."

The Convention also emphasizes the need for States to take measures to make enforced disappearance an offence punishable under domestic criminal law. Article 4 provides that:

"Each State Party shall take the necessary measures to ensure that enforced disappearance constitutes an offence under its criminal law."

Unfortunately, Egypt has not yet signed or ratified this agreement and incorporated it into its domestic laws.

Third: Law on the Organization of Correction and Community Rehabilitation Centers No. 396 of 1956

Under Law No. 14 of 2022, the name of the Law "Regulating Prisons" was amended to become "Regulating Community Reform and Rehabilitation Centers". This amendment, according to the then Speaker of the House of Representatives, Hanafi Jabali, "The amendment of some provisions of the Law on Regulating Prisons, comes within the framework of the state's move in its entirety towards implementing what is contained in the National Strategy for Human Rights launched by Egyptian President Abdel Fattah El-Sisi." This strategy was a document issued by the Permanent Supreme Committee for Human Rights in September 2021 as a kind of announcement of the state's move towards a new stage, which the President claimed at the time would be a stage in which human rights values would be upheld. It included a set of principles that guarantee the rights and freedoms that already exist in the Constitution and the law. As a result, the name of the Law on Regulating Prisons was changed as well as some of the terms contained in the law, such as changing the term "prisoner" to " to" inmine "," prison sector "to" Community Protection Sector "," Prison "to " Reform and Rehabilitation Center ", and other terms and names of prisons.[31]

Despite this trend, the Egyptian reality has not changed with regard to laws or dealing with the security services. Many of the laws issued after this strategy violate and derogate from the rights and freedoms guaranteed by the Constitution, for example, but not limited to the amendments made to laws such as the Anti-Terrorism Law and the Penal Code, which constituted a significant expansion of the criminalization and punishment of acts that do not constitute a real criminal danger, but rather are protected under the umbrella of the right to express an opinion and circulate information, such as criminalizing the dissemination of information, data, and statistics related to the armed forces in general without obtaining written permission from the Ministry of Defense, and issuing the Law on the Protection of Public Establishments Law, which expands the prosecution of civilians before the military judiciary.[32]

In the midst of this strategy, Egypt has not signed or ratified any international covenants or conventions related to human rights, despite the persistent demands to sign many conventions, for example, the International Convention for the Protection of All Persons from Enforced

[31] **To view the document "National Human Rights Strategy 2021 "please click on https://manshurat.org/node/73991.**

[32] **The Egyptian Commission for Human Rights - A research paper entitled "What after the Egyptian Parliament approved the amendments to the Law on the Protection of Public Facilities, the Anti-Terrorism Law, the Penal Code and the draft Law on Pandemic Procedures?" For more information, click https://2u.pw/Sb3y5TZi.**

Disappearance, as these steps are what make countries take real steps towards respecting and adhering to human rights standards.

In the following lines, we monitor the provisions related to police personnel in the Law on the Organization of Correction and Community Rehabilitation Centers, which infringes the rights guaranteed to prisoners, violates fair trial guarantees, and violates the Constitution, the law, and the International Bill of Human Rights.

Article 8 bis:

Upon entering the correctional center, the inmate shall be informed of his rights, duties, prohibited acts, and penalties imposed on him when he violates the laws and regulations. He shall also be informed of how to submit his complaint and the procedures that have been carried out therein.
The forces of the correctional center may use force with the inmate in self-defense or in the event of an attempt to escape, physical resistance by force, or refraining from executing an order based on the law or the regulations of the correctional center. In these cases, the use of force must be to the extent and to the extent necessary, and in accordance with the procedures and conditions specified by the internal regulations.

Article 81 bis of the bylaws of the Community Correction and Rehabilitation Centers also stipulates that:

Without prejudice to the right of legitimate defense and the provisions of Article (87) of the Law Regulating Correction and Community Rehabilitation Centers, the security forces may use force against the inmate to an adequate extent and within the limits necessary to defend themselves, or in the event of an attempt to escape, or physical resistance by force, or refraining from implementing an order based on the law or the regulations of the Correction and Rehabilitation Center.

It shall be taken into account that the use of force with inmates shall be as far as possible in the following order:

Issuing verbal audible warnings to inmates from the director of the Correction and Rehabilitation Center or the most senior officer present at the Correction Center of the need to adhere to the systems and regulations of the Correction Center, and that in the event of non-compliance, the use of force will be resorted to.

Use of water hoses.

Use of tear gas.

Use of plastic batons.

Firing cartridge shots.

The aforementioned articles contradict the use of force on prisoners as a method of punishment within the corridors of prisons with the global modern philosophy of the role of penal institutions, which revolves around discipline, reform, rehabilitation of the prisoner and his integration with society after serving the punishment of deprivation of liberty and then his release, as the punishment of deprivation of liberty and the idea of prisons has arisen in itself to prevent corporal punishment, as the means of punishment in ancient times were limited to between execution, flogging or cutting off some parties, which was denounced in modern societies until the emergence of the idea of imprisonment as a penal institution that can achieve public deterrence in an attempt to reduce the rates of crimes by detention for a period commensurate with the type of the crime committed instead of execution on the body.

Thus, the use of force against a prisoner, which is understood to cause him physical or moral pain, is a step backwards, especially after the punishment of whipping inside prisons was abolished by Minister of Interior Decree No. 668 of 2002, which was stipulated in Articles 32 and 81 of the Prisons Regulation.[33]

It is worth mentioning that these provisions were recently added to the Prisons Regulation Law - the Law on the Organization of Correction and Community Rehabilitation Centers - where Article 8 bis was added to the law by virtue of Article 2 of Law No. 106 of 2015. As for Article 83 bis, it was added by virtue of Article 3 of the Minister of Interior Resolution No. 345 of 2017 regarding the amendment of some provisions of the Internal Regulations.

There was no realistic or legislative need for such articles, especially since the Prisons Regulation Law itself and its internal regulations are crowded with many deterrent penalties for dealing with prisoners and their punishment, which can amount to solitary confinement – despite the existence of human rights reservations regarding the length of the period that can be imposed on the prisoner. Article 43 of the Law on the Organization of Correction and Community Rehabilitation Centers regulates the penalties that can be imposed on the prisoner in the event of violation of the executive regulations and the law, as it stipulates that:

"The penalties that may be imposed on a prisoner are:

1- Warning.

2- Deprivation of all or some of the privileges prescribed for the degree or category of the prisoner for a period not exceeding thirty days.

3. Delaying the transfer of the prisoner to a higher degree than his degree in prison for a period not exceeding six months if he is sentenced to imprisonment or imprisonment, and for a period not exceeding one year if he is sentenced to life imprisonment or rigorous imprisonment.

4. Reducing the prisoner to a lesser degree than his degree in prison for a period not exceeding six months, if he is sentenced to imprisonment or imprisonment, and for a period not exceeding one year if he is sentenced to life imprisonment or rigorous imprisonment.

5- Solitary confinement for a period not exceeding thirty days.

6- Placing the convict in a special high-security room for a period not exceeding six months, in the manner specified in the bylaws.

[33] **To view the decision of the Minister of Interior No. 668 of 2002, click on the link https://manshurat.org/node/12387.**

It is not permitted to transfer the convict from prison to the room referred to in the preceding paragraph unless he is at least eighteen years of age and not exceeding sixty years, and the transfer results in depriving the transferred of all or some of the privileges prescribed by the law or the bylaws.

As well as Article 44, which stipulates that:

"The prison warden may impose the following penalties:

(1) Warning.

(2) Deprivation of some of the privileges prescribed for the prisoner category.

(3) Delaying the transfer of the prisoner to a higher level for a period not exceeding three months if he is sentenced to life or rigorous imprisonment, or for a period not exceeding one month if he is sentenced to imprisonment or imprisonment with work.

(4) Solitary confinement for a period not exceeding fifteen days.

These penalties shall be imposed after the prisoner has been informed of the act attributed to him, his statements have been heard, and his defense has been investigated. The decision of the prison warden to impose the penalty shall be final.

As for other punishments, they are signed by the Assistant Minister for the Prisons Authority Sector at the request of the prison warden, after writing a report that includes the statements of the prisoner, the investigation of his defense, and the testimony of witnesses. "

The law also permitted the use of firearms in a specific manner in the event of repelling an attack on prisons, in Article 87, which stipulates that:

It **is** permitted for supervisors and custodians assigned to guard inmates to use their firearms against inmates in the following cases:

(1) Repel any attack or resistance accompanied by the use of force if they are unable to repel it by other means.

(2) Preventing the escape of an inmate if it cannot be prevented by other means. In this case, the first shot must be fired in space. If the inmate continues to try to escape after this warning, the persons assigned to guard him may shoot in the direction of his leg. "

In addition, the last paragraph of Article 81 bis, which allows arresting officers to fire cartridge shots as a way of using force in the event that prisoners violate the rules and regulations of correctional centers, is likely to endanger the lives of prisoners. The legislator should have been satisfied with the methods he decided before firing cartridge shots, such as the use of water hoses, plastic batons, or tear gas.

Violation of Articles 8 bis of the Law on the Organization of Correction and Community Rehabilitation Centers, as well as Article 81 bis of its Executive Regulations to the Constitution:

Each of the two articles is highly incompatible with the provisions of the Egyptian Constitution, which stipulates in Article 55 that: **"Anyone who is arrested, imprisoned, or whose freedom is restricted must be treated in a manner that preserves his dignity. He may not be tortured, intimidated, coerced, or physically or morally harmed. His detention or imprisonment shall only be in places designated for that purpose as humanly appropriate and healthy. The state is obligated to provide means of access to persons with disabilities. The violation of any of this is a crime, the perpetrator of which shall be punished in accordance with the law. The accused has the right to remain silent. Every statement that proves that it was made by a detainee under the weight of any of the foregoing, or the threat of any of it, is wasted and unreliable. "**

Article 56 also stipulates that:

"The prison is a reform and rehabilitation house. Prisons and places of detention shall be subject to judicial supervision, and all that is contrary to human dignity or endangers human health shall be prohibited therein. The law shall regulate the provisions for the reform and rehabilitation of convicted persons and the facilitation of a decent life for them after their release. "

Other than the text of Article 60, which states that:

"The human body is inviolable, and assaulting, mutilating, or impersonating it is a crime punishable by law. Trafficking in its organs is prohibited, and no medical or scientific experiment may be carried out on it without its free, documented consent, and in accordance with the established foundations in the field of medical sciences, as regulated by law. "

Thus, the loose wording authorizing the use of force in Articles 8 bis and 81 bis allows all forms of physical and moral torture, which are constitutionally criminalized and do not fall under the statute of limitations, to be committed under its umbrella under the provisions of Article 52, which stipulates that:

"**Torture in all its forms and manifestations is a crime that is not subject to statute of limitations**."

Contrary to the articles of the Egyptian Constitution, the torture and suffering of prisoners, whether psychologically or physically, under the name of "the use of force" and the right of prisoners to be treated in a manner that preserves their dignity, there are many judicial precedents of the Egyptian courts that confirm the right of prisoners and those whose freedom is restricted to be treated in a manner that preserves their dignity, as one of these precedents ruled that:

"Article (55) of the Constitution, protecting the natural rights of anyone who is arrested, imprisoned, or whose freedom is restricted, obliges him to be treated in a manner that preserves his dignity. It is not permissible to torture, intimidate, coerce, or physically or morally harm him, and his detention or imprisonment shall not be except in places designated for that purpose in a humane and healthy manner."[34]

[34] **Judgement of the Administrative Court No. 59757 of the judicial year 69 dated 2016-04-26.**

Also, in what is represented by the crime of torture as a crime that does not fall under the statute of limitations, one case law stated:

"Article 57 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. Neither the criminal nor the civil lawsuit arising therefrom shall be subject to a statute of limitations. The State shall guarantee fair compensation to the victim of the attack. " Article 2 of the Convention against Torture - which was approved by the General Assembly of the United Nations on 10/12/1984 - and approved by Presidential Decree No. 154 of 1986 - provides that "each State shall take effective legislative, administrative, judicial or any other measures to prevent acts of torture in any territory under its jurisdiction. "No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any state of public emergency, may be invoked as a justification of torture." "Orders issued by higher-ranking officials or a public authority may not be invoked as a justification of torture." Article IV states that "Each State Party shall ensure that all acts of torture are offences under its criminal law (…) punishable by appropriate penalties which take into account their grave nature." In Article 14, "Each State Party shall ensure in its legal system that a person subjected to an act of torture obtains redress and enjoys an enforceable right to fair and adequate compensation" indicates that the legislator has assessed that torture committed by the authority against individuals is a criminal act of a serious nature, regardless of the circumstances in which it occurs or the authority ordering its commission, and that the lawsuits arising from it may be inaccessible to the right as long as the political circumstances in which they occurred persist. Therefore, the legislator excluded these lawsuits from the general rules, preventing their statute of limitations and not limiting responsibility to the perpetrators of torture and their subordinates, but making this responsibility incumbent on the State with their effect[35].

[35] **Judgment of the Court of Cassation - Civil - Appeal No. 3619 of the year 63 Judicial on 07-03-2002.**

In addition, the use of violation of regulations as a violation requires the use of force to the extent that cartridge shots can be used inside places of detention and endanger the lives of prisoners from general terms that are not used in penal texts, which must be the result of specific acts exclusively so as not to misuse them as a pretext to abuse prisoners and detainees as a precaution, which was ruled by one of the case law of the Court of Cassation, which 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, the right to the integrity of personality, and that everyone insures against unlawful arrest or detention[36]."

It is no secret that our dissatisfaction with this article, which permits the use of force against restrictions on freedom and prisoners, and the fear of using these texts as a pretext for torture or impunity for those charged with law enforcement, is not a matter of speculation, but that there are many prisoners and pretrial detainees who have already been beaten and even in some cases killed as a result of torture in many Egyptian prisons and places of detention. Therefore, the frequency and frequency of these cases and the bullying of the bodies and lives of prisoners by the security services by abuse, impairment of dignity and murder are what must be faced with strict laws that prohibit the use of force against prisoners and punish violations committed by the security forces.

We mention, for example, but not limited to, some cases that were attacked or killed inside places of detention in order to stand on the Egyptian reality, which requires the amendment of legal texts that encourage the use of force against prisoners and pre-trial detainees: [37]

A/ In August 2013, 37 persons in pretrial detention were killed in connection with political cases by a police officer throwing a gas bomb inside the deportation vehicle after a decision was issued to deport them to Abu Zaabal prison. After the gas bomb was thrown, the officer closed the deportation vehicle on the pre-trial detainees until 37 out of 45 suffocated to death. [38]

[36] Judgment of the Supreme Constitutional Court - Case No. 105 of 12 Judicial - Constitutional - dated 12-02-1994.

[37] Al- 'Arabi al-Jadid - 212 cases of killings inside places of detention since June 30 - A report on extrajudicial killings issued in 2014. For more information, click https://2u.pw/9peDiwb.

[38] A report by the Association for Freedom of Thought and Expression on the deportation car accident entitled "Deportation.. A report on the incident of the deportation vehicle "Abu Zaabal""To view the report, click on https://2u.pw/p7uWzLoP.

B/On August 26, 2017, in the 15 May Central Prison, during the execution of the prisoner Munir, who is serving a five-year prison sentence pending Case 5571 of 2016 Shubra Felonies, an officer assaulted Munir Yusri by beating him with an iron pipe, which led to a permanent disability of the prisoner with the explosion of the left eye and loss of vision.[39]

A/On January 15, 2018, in the Mokattam Police Department during the arrest of the citizen Muhammad 'Abd-al-Hakim - known as Afroto- by two police officers on the pretext that he is suspected of carrying narcotic substances, as they took him to the Mokattam Police Department and then beat him and tortured him to death.[40]

Articles 8 bis of the Law on Correction and Community Rehabilitation Centers and 81 bis of the Executive Regulations of International Law contradict:

Modern theories in the science of punishment and then the international trend adopt reform and discipline within prisons, including the International Covenant on Civil and Political Rights in Article 10, which states that:

"1. All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.

3. The prison system must take into account the treatment of prisoners with the primary aim of their reform and social rehabilitation. Juvenile offenders shall be separated from adults and treated in accordance with their age and legal status. "

The Standard Minimum **Rules for the Treatment of Prisoners**, known as the Nelson Mandela Rules, clarified the standards to be relied upon in penal institutions, which urge respect for prisoners. The first rule stated that:

“All prisoners shall be treated with due respect for their inherent dignity and value as human beings. No prisoner shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment, and all prisoners shall be protected therefrom. No circumstances whatsoever may be invoked as a justification. The safety and security of prisoners, staff, service providers and visitors must be ensured at all times. ”

[39] **The Egyptian Commission for Human Rights - a light sentence of 6 months imprisonment against a policeman who tortured a prisoner, causing him to lose his sight in one of his eyes - for information, click https://2u.pw/Uip8S7G5.**

[40] **For more information about the torture case of Mohamed Abdel Hakim El Shahr in Afroto, please click on the following links: - https://cutt.us/Sk4X6 andhttps://cutt.us/FqbTJ.**

As well as the fourth rule in item 1 has mentioned:

“Imprisonment and other measures depriving persons of their liberty are primarily aimed at protecting society from crime and reducing recidivism. These two purposes can only be achieved if the period of confinement is used to the maximum extent possible to ensure the reintegration of these persons into society after their release, so that they can live on their own with respect for the law. ”

In the use of force by prison staff, the rules affirmed the need not to use force against prisoners except in cases of self-defense in rule 82, which also affirmed the need for staff to receive training to deal with the most violent prisoners. It stated:

“1. Prison officials shall not resort to force in their relations with prisoners except in self-defense, or in cases of attempted escape or physical resistance by force or by passively refraining from an order based on law or regulation. Employees who resort to force should use it only to the minimum extent necessary and immediately report the incident to the prison director.

2. Prison staff shall be provided with special physical training to enable them to restrain aggressive prisoners.

3. Employees performing tasks that bring them into direct contact with prisoners should not be armed, except in exceptional circumstances. In addition, in no case may a weapon be surrendered to an employee unless he has been trained in its use. ”

In addition, the **Basic Principles for the Treatment of Prisoners**, adopted by General Assembly resolution 46/111 of December 1990, affirmed the need to treat prisoners in a manner that preserves their dignity in article 1, which stipulates that:

“All prisoners shall be treated with the necessary respect for their inherent dignity and value as human beings.”

Article 4, which stipulates that:

"Prisons shall assume their responsibility for the incarceration of prisoners and the protection of society from crime in a manner consistent with the other social objectives of the State and their primary responsibilities for the promotion of the well-being and development of all members of society."

The Arab Charter on Human Rights stipulates in Article 15 that: "Persons sentenced to a penalty of deprivation of liberty shall be treated humanely."

Part Two/ The role of the Public Prosecution in influencing fair trial guarantees in Egyptian law, and inconsistencies with the Constitution and the International Bill of Human Rights

The Public Prosecution is a judicial body whose task is to represent the people in initiating criminal proceedings, in accordance with the text of Article 1 of the Criminal Procedure Law.[41] Therefore, it plays an important role, especially as it is also the one who investigates crimes, collects evidence, and searches for their perpetrators, in addition to its role in referring case papers to the courts and initiating the case as a prosecuting authority before them. Therefore, the Public Prosecution, in order to perform these many extremely dangerous roles in an optimal manner with integrity and impartiality, must enjoy full independence from the executive authority, as well as some powers that ensure it to carry out its many roles.

In the following, we will comment and monitor the most important topics that violate that desired independence and directly affect the powers of the Public Prosecution, and then violate the guarantees of a fair trial, and monitor the violations that contradict the Constitution and the International Bill of Human Rights.

[41] Article 1 of the Criminal Procedures Law stipulates that "the Public Prosecution shall have the exclusive competence to initiate and conduct criminal proceedings, and it shall not be initiated by others except in the cases specified in the law. It is not permitted to abandon, suspend, or obstruct the conduct of criminal proceedings except in the cases specified in the law."

Section I - Appointment of the Attorney General and members of the Public Prosecution by the President of the Republic in light of the Judicial Authority Law No. 46 of 1972

The desired independence of the Public Prosecution and its members in practice is constrained by laws that undermine it and lose its content, and make the Public Prosecution subordinate to the executive authority, and this is evidenced by the method of appointing the Public Prosecutor, who is appointed by the President of the Republic, as well as both the Assistant Public Prosecutor and the Public Defender, and the rest of the members of the Public Prosecution in accordance with Article 119 of the Judicial Authority Law No. 46 of 1972, which states that:

The Attorney General shall be appointed by a decision of the President of the Republic from among three nominated by the Supreme Judicial Council from among the Vice-Presidents of the Court of Cassation, the Presidents of the Courts of Appeal, and the Assistant Attorneys General, for a period of four years or for the remaining period until he reaches retirement age, whichever is earlier, and for one time throughout his term of office.

The names of the candidates shall be communicated to the President of the Republic at least thirty days before the end of the term of office of the Attorney General.

In the event that candidates are not nominated before the expiry of the period mentioned in the preceding paragraph, or if fewer than three candidates are nominated, or if those who do not meet the criteria mentioned in the first paragraph are nominated, the President of the Republic shall appoint the Attorney General from among the holders of the positions mentioned in the first paragraph.

The public prosecutor may request his return to work in the judiciary, in which case his seniority among his colleagues shall be determined according to what it was when he was appointed as a public prosecutor, while retaining his salaries and allowances in a personal capacity.

The appointment of the Assistant Attorney General, the Chief Public Defender, and the rest of the members of the Public Prosecution shall be by a decision by the President of the Republic after the approval of the Supreme Judicial Council. It is permitted for him to delegate to carry out the work of the Chief Public Defender at the Court of Appeal with his consent and while retaining the financial treatment prescribed for his position.

It is not permitted to appoint a public defender except for those who meet the conditions for appointment as a judge in the courts of appeal, with the exception of the age requirement. Appointment or promotion is considered from the date of approval by the Supreme Judicial Council.

This is in addition to the affiliation of the Public Prosecution with the Minister of Justice of the Executive Authority, who has the right to supervise and control it in accordance with the text of Article 125 of the Judicial Authority Law, which stipulates that **"members of the Public Prosecution follow their heads and the Attorney General, and the Minister of Justice has the right to supervise and administratively supervise the Public Prosecution and its members."** In addition to the administrative affiliation of members of the Public Prosecution to the Attorney General – appointed by the President of the Republic - who has the right to impose penalties and sanctions that can be applied selectively to restrain members of the Public Prosecution from performing their job independently and impartially. All of this is to restrict members of the Public Prosecution from initiating criminal proceedings against public officials such as police officers who are not charged or interrogated without the permission of the Attorney General or the Attorney General. Thus, we find that loyalty to the authority controls the decisions issued by the Public Prosecution, especially related to corruption cases by state officials or cases of a political nature.

The position of the Attorney General was first introduced in the first regulation of the arrangement of mixed courts in 1875, and he was appointed and dismissed by the Khedive. In 1881, the Board of Supervisors decided to form a committee headed by the head of Haqqaniya to arrange the courts by appointing the first deputy general of the civil courts. The English occupation realized from the beginning the seriousness of this position, so it made him a subordinate to him to obey and invoke his order, so he became a sword on the necks of the Egyptians and owned their destinies, and with the establishment of the Court of Cassation and conclusion The Public Prosecutor became selected from among its advisers through the mandate. Then, after the 1937 Convention, foreign privileges in Egypt were canceled. Law No. 49 of 1937 was issued. The Public Prosecutor was of a foreign nationality and was assisted by a public defender (Avocato General I) of Egyptian nationality and a second public defender of foreign nationality. This remained the case until the issuance of the Law on the Independence of the Judiciary No. 66 of 1943, which made the appointment of the Public Prosecutor by royal decree and sworn in before the King and the presence of the Minister of Justice, until Decree No. 188 of 1952 was issued after the July Revolution. Nothing has changed, but the appointment of the Public Prosecutor, the Public Defender and their agents was by a decision of the President of the Republic, including the original. The historical dependence of the Public Prosecution on

the executive authority and the will of everyone at the head of the authority throughout the ages to acquire the position of the Attorney General and then the Public Prosecution.[42]

With regard to the appointment of the Public Prosecutor in the Egyptian Constitution issued in 2014, before the amendment of Article 189[43] in 2019, it was stipulated that the selection of the Public Prosecutor shall be the competence of the Supreme Judicial Council from among the deputies of the Court of Cassation or the presidents of the courts of appeal. This selection shall be issued by a decision of appointment by the President of the Republic, who may only issue the decision of appointment at the choice of the Supreme Judicial Council. However, after the constitutional amendment of 2019, the article was amended to explicitly stipulate that the appointment of the Public Prosecutor shall be the competence of the President of the Republic, and thus became the text of Article 119 of the Judicial Authority Law.

Article 189 of the Constitution stipulates that:

"The Public Prosecution is an integral part of the judiciary. It undertakes the investigation, initiation, and prosecution of criminal cases, except for those excluded by law. The law shall determine its other competences. The Public Prosecution shall be headed by a public prosecutor appointed by a decision of the President of the Republic from among three nominated by the Supreme Judicial Council, from among the vice-presidents of the Court of Cassation, the presidents of the courts of appeal, and the assistant public prosecutors, for a period of four years, or for the remaining period until he reaches retirement age, whichever is earlier, and for one time throughout his term of office.

[42] Abdullah Khalil "The Public Prosecution is an agent of society or a subordinate of the executive authority?"The Lawyer in Cassation, First Edition 2006 Publisher Cairo Institute for Human Rights Studies.

[43] The original text of Article 189 of the Constitution before the constitutional amendment of 2019 stipulated that "the Public Prosecution shall be an integral part of the judiciary. It shall investigate, prosecute, and initiate criminal proceedings, except for those excluded by law. The law shall determine its other competences.
The Public Prosecution shall be headed by a public prosecutor chosen by the Supreme Judicial Council from among the vice-presidents of the Court of Cassation, the presidents of the courts of appeal, or the assistant public prosecutors. His appointment shall be issued by a decision by the President of the Republic for a period of four years, or for the remaining period until he reaches retirement age, whichever is earlier, and for one time throughout his term of office. "

There is no doubt that the original text of the article before the amendment was the best and most guaranteed for the independence of the Public Prosecution, as the selection of the fittest for this position, which affects the course of criminal justice, must be within the competence of the Supreme Judicial Council as a judicial body that must have the means of independence and impartiality, and be away from the executive authority in his appointment, which will undoubtedly try to attract the Public Prosecution to its favor, which violates the content of independence and makes it a mere formal slogan that is disconnected from practical reality.

Perhaps what makes us believe that leaving the position of the Attorney General in the hands of the President of the Republic is extremely dangerous is that the arresting officers are also subordinate to the Attorney General, as Article 22 of the Code of Criminal Procedure stipulates that:

"**Judicial officers shall be subordinate to the Attorney General and subject to his supervision in relation to the work of their office. The Attorney General may request the competent authority to consider the matter of anyone who commits a violation of his duties or a default in his work. He may request the filing of a disciplinary lawsuit against him, and all this does not prevent him from filing a criminal lawsuit**."

As well as Article 22 of the Judicial Authority Law, which also stipulates that:

"**Judicial officers shall be subordinate to the Public Prosecution in connection with the work of their functions and may, if necessary, assign the assistant public prosecutor to investigate an entire case**."

This is in contrast to the Attorney General's subordination to the Minister of Justice, who has the right to supervise and control the Public Prosecution, which makes the executive authority control the Public Prosecution completely, whether through appointment or even administrative subordination to the Minister of Justice.

Thus, we find that the executive authority with this subordination has the inputs of the judiciary, which violates the principle of separation of powers, as well as the principle of the independence of the judiciary, and generally violates the guarantees of a fair and equitable trial and opens the way for abuse of power and oppression to all those whom the regime wants to get rid of by appointing a person of trust - for the regime - in the position of the Public Prosecutor. This ensures that the Public Prosecution is a representative of the ruling authority and not the society.

Appointment of members of the Public Prosecution in International Law: -

A specific method for the appointment of prosecutors has not been defined in international law, but the Guidelines on the Role of Prosecutors make[44] it clear that the criteria for the selection of prosecutors shall be based on objective grounds that are free from bias and favouritism if they say in clause 2 (a):

"States shall ensure that:

(a) The inclusion in the criteria for the selection of prosecutors of safeguards against their appointment on the basis of bias or favouritism, so as to exclude any discrimination against persons based on race, colour, sex, language, religion, political or other opinion, national and social origin, ethnic origin, property, birth, economic condition or other status. ”

It also states in its preamble:

"Whereas it is essential to ensure that members of the Public Prosecution have the necessary professional qualifications to carry out their functions, by improving their methods of recruitment and legal and professional training, and by providing all the means necessary for them to properly perform their role in combating crime, especially in its new forms and dimensions... ".

As for the Basic Principles on the Independence of the Judiciary, [45]they are mentioned in the first article:

"The independence of the judiciary shall be guaranteed by the State and provided for by the Constitution or laws of the country. It is the duty of all governmental and other institutions to respect and observe the independence of the judiciary. ”

[44] Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held in Havana from 27 August to 9 September 1990.

[45] Adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held in Milan from 26 August to 6 December 1985, as adopted and made public by United Nations General Assembly resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985.

Although we have already pointed out that international law has not imposed on States provisions that include institutional independence from the executive, the directives of the Inter-American Commission on Human Rights, with regard to the independence of prosecutors in the State of Mexico, have indicated that:

“The Public Prosecutor's Office shall be an organ independent of the executive branch, and shall enjoy guarantees of the non-removability of the Public Prosecutor”as well as “the proper exercise of prosecutorial functions requires independence from other branches of government.”[46]

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The second topic - The broad powers of the Public Prosecution in combining the powers of accusation, investigation, and referral

One of the most prominent matters that violate the principle of separation of powers is the combination of the Public Prosecution between the authority to initiate criminal proceedings, that is, the accusation, and judicial work, which is the preliminary investigation, which also violates the impartiality that must be enjoyed by the person in charge of both authorities, as well as the authority to refer the accused to the judiciary. The accusation authority, which manifests itself since the occurrence of the crime and requires the examination procedure and the collection of incriminating and interrogating evidence, does not separate from the lawsuit once it is initiated and referred to the judiciary. The deputy public prosecutor remains an opponent to the accused in the lawsuit in what is known as the "prosecution " authority, which accompanies him not only during the stage of initiating the criminal case, but also remains so during the trial, and then he can submit applications and appeal against the judgment issued against the accused if the court rules in his favor. Therefore, the authority to initiate the criminal case imposes bias to assign the accusation to the accused. On the contrary, the authority of investigation, which is an act of the judiciary aimed at reaching the truth and investigating the evidence of proof and the denial of the complete neutrality in preference between them until they reach the truth of these accusations and the perpetrated crime.[47]

As for the referral authority, it is the stage of preparing the case and preparing it for referral to the judiciary, which requires conducting supplementary investigations, preparing witness lists, examining the evidence of the accusation, the adequacy of investigations, and then referring the case to the judiciary.

In recent decades, the Egyptian legislator has approved empowering the Public Prosecution with the powers of accusation, investigation and referral, despite repeatedly demanding their dismissal, and the importance of the investigation being carried out by a judicial body other than the Public Prosecution in order to preserve the principle of separation of powers, but the authority has always invoked the lack of judges for cases that require investigation.

[47] Dr.Safaa Youssef Sedky "Obstacles to Judicial Justice in Egypt".
Manual on "International Principles on the Independence and Responsibility of Judges, Lawyers and Representatives of the Public Prosecution" published by the International Commission of Jurists(ICJ) 2007.

However, in 1951, the legislator entrusted the investigative authority to the investigative judge, and not a year later, until the Criminal Procedure Law was amended by Law No. 353 of 1952, after the July 1952 revolution. The authority led by former President Gamal Abdel Nasser issued a package of authoritarian laws to establish exceptional courts such as the Treachery Court established by Law No. 344 of 1952, as well as the Revolutionary Court 1953, all under the slogan of revolutionary legitimacy to prosecute persons who, according to the allegations of the ruling authority at the time, conspired against the revolution and the large number of cases of a political nature. Therefore, the authority wanted to regain its grip on the Public Prosecution and gave the prosecution the powers of the investigative judge, who now has the authority to investigate as an exception and at the discretion of the Public Prosecution. [48]

As for the power of referral, it was entrusted to the Indictment Chamber, which was composed of three judges according to the Criminal Investigation Law, in order to achieve the guarantee of judicial supervision. Then Law No. 107 of 1962 was issued to amend the Code of Criminal Procedure to assign the power of referral to the Referral Counsel. The Referral Counsel continued to perform his duties in preparing the criminal case and referring it to the judiciary until an amendment was made to the Code of Criminal Procedure under the decision of the President of the Republic at the time, Hosni Mubarak, by Law No. 170 of 1981, which abolished the Referral Counsel system and delegated the power of referral to the Public Prosecution.[49]

As for the Constitution, although it stipulates the need for the independence of the judiciary and that the Public Prosecution is an integral part of it and that it should carry out its work impartially and independently, it gives the Public Prosecution all these powers constitutional legitimacy, as it stipulates in Article 189 of the Constitution that:

"The Public Prosecution is an integral part of the judiciary. It undertakes the investigation, initiation, and prosecution of criminal cases, except for those excluded by law. The law shall determine its other competences. The Public Prosecution shall be headed by a public prosecutor chosen by the Supreme Judicial Council from among the vice-presidents of the Court of Cassation, the presidents of the courts of appeal, or the assistant public prosecutors. His appointment shall be issued by a decision by the President of the Republic for a period of four years, or for the remaining period until he reaches retirement age, whichever is earlier, and for one time throughout his term of office. "

[48] Abdullah Khalil "The Public Prosecution is an agent of society or a subordinate of the executive authority?"The Lawyer in Cassation, First Edition 2006 Publisher Cairo Institute for Human Rights Studies.
[49] Ibid p. 101.

The Code of Criminal Procedure stipulates the competence of the prosecution to initiate the investigation authority in misdemeanors and felonies, and the task of the investigating judge becomes limited to the discretionary authority of the Public Prosecution in felonies in which it deems his mandate or at the request of the Minister of Justice, which represents a reduction of the powers of the investigating judge and a significant expansion of the powers granted to the Public Prosecution, which the legislator must reduce these powers in order to achieve the principle of separation of powers as well as the principle of impartiality. Article 63 of the Code of Criminal Procedure stipulates in the second paragraph that:

"The Public Prosecution in the articles of misdemeanors and felonies may request the assignment of a judge to the investigation in accordance with Article 64 of this law, or it may undertake the investigation in accordance with Article 199 and the following articles of this law."

As for Article 199, to which Article 63 of the Code of Criminal Procedure refers, it stipulates that:

"**With the exception of the crimes that the investigating judge is competent to investigate in accordance with the provisions of Article 64, the Public Prosecution shall initiate an investigation into the articles of misdemeanors and felonies in accordance with the provisions prescribed for the investigating judge, taking into account what is stipulated in the following articles.**"

Article 64 of the same law also stipulates that:

"If the Public Prosecution considers in the articles of felonies and misdemeanors that the investigation of the case by the investigating judge is more appropriate in view of its special circumstances, it may, in any case, request the competent court of first instance to assign one of its judges to carry out this investigation. The assignment shall be by a decision of the general assembly of the court or whoever it authorizes at the beginning of each judicial year. In this case, the delegated judge shall be exclusively competent to conduct the investigation from the time he initiates it.
The accused or the plaintiff of civil rights may, if the lawsuit is not directed against an employee, a public employee, or one of the policemen for a crime committed by him during the performance of his job or because of it, request the court of first instance to issue a decision on this assignment. The general assembly of the court or whoever it authorizes shall issue the decision if the reasons set out in the preceding paragraph are fulfilled after hearing the statements of the public prosecution. The Public Prosecution shall continue the investigation until the delegated judge proceeds with it in the event of a decision to that effect. "

According to the previous texts, the investigation authority is now in the hands of the Public Prosecution with the accusatory authority, in violation of the principle of impartiality that the Public Prosecution must obey and not combine the authorities in accordance with the principle of separation of powers. It is worth noting that this combination is reprehensible by all jurists and legal practitioners, as the Egyptian legislator has been aware of the great importance of the separation of powers throughout the previous years, especially the accusatory and investigative powers, but the amendments to the Code of Criminal Procedure proceed almost every year without prejudice to these texts. It is noteworthy that the French legislation, from which Egyptian laws derive most of their legislation, adopts this principle in separating both authorities for decades, but successive Egyptian regimes - which control most of the legislation issued - still do not want to give up such an advantage that makes the Public Prosecution in its grip, especially in cases of a political nature.

At the international level, the Convention on the Guidelines on the Role of Prosecutors, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders on 27 August 1990, stressed the importance of the crucial role of the prosecution in the administration of justice, as stated in its preamble:

“Whereas prosecutors play a crucial role in the administration of justice, and that the rules concerning the discharge of their important responsibilities should strengthen their respect for and adherence to the aforementioned principles, thus contributing to the establishment of fair criminal justice and to the effective prevention of crime by citizens.”

Article 10 stipulates that "the positions of prosecutors shall be completely separate from judicial functions", given the subordination of the Public Prosecution in most countries to the executive branch.

The principles also recommended that the Public Prosecution should adhere to impartiality and objectivity in the performance of its work, which is contrary to the combination of the powers of investigation and accusation, which affects this impartiality and makes the prosecution bias to the evidence of the accusation and attribute it to the accused. Therefore, there is no room to talk about the impartiality of the investigation under these circumstances, as the guidelines stipulate in Article 12 that:

“Prosecutors shall perform their duties in accordance with the law, in a fair, consistent and expeditious manner, respecting and protecting human dignity and upholding human rights, thus contributing to ensuring due process and the proper functioning of the criminal justice system.”

Article 13 also stipulates that:

“In the performance of their duties, prosecutors shall:

(a) Perform their functions without prejudice, and avoid all political, social, religious, racial, cultural, sexual or any other type of discrimination.

(b) Protect the public interest, act objectively, take due account of the position of both the accused and the victim, and take care of all relevant circumstances, whether for or against the accused. "

Article 14 states that “prosecutors shall refrain from initiating or continuing prosecution, or shall use their best efforts to discontinue the proceeding, if an impartial investigation shows that the charge is unfounded.”

Likewise, Article 9/3 of the International Covenant on Civil and Political Rights stipulates 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 jurisprudence of the Court of Cassation has elevated the value of the impartiality of the investigator and considered it as a procedural legitimacy with legal constants that the Constitution has upheld, as it ruled that:

"The Court of Cassation has also ruled that procedural legality, whether it relates to the impartiality of the investigator or the guarantee of personal freedom and human dignity of the accused and the observance of the rights of the defense, or whether it relates to the obligation of the conviction to adhere to the principle of the legitimacy of the evidence and not to oppose it to a prescribed constitutional origin, are all legal constants, the highest of which is the Constitution and the law, and the judiciary is keen to protect them not only for the interest of the accused, but because they primarily target a public interest represented in protecting the presumption of innocence and providing people's confidence in the justice of the judiciary. Procedural legality prevails, even if its implementation leads to the impunity of a criminal, due to higher considerations covered by the Constitution and the law."[50]

It also ruled with regard to the principle of origin in the human innocence, which is contradicted by the fact that the powers of accusation and investigation are in the hands of the Public Prosecution, which makes it biased towards attaching the accusation to the accused and weighing the excavation on the evidence of innocence with the same impartiality and determination, as it ruled that:

[50] **Judgment of the Court of Cassation No. 17251 of 66 Judicial Year – Criminal Cassation - issued on 4/4/2009.**

"Whereas, the judgment of the Supreme Constitutional Court has also established that the presumption of innocence of the accused and the preservation of personal freedom from every aggression against them are two principles guaranteed by the Constitution in Articles 41 and 67 of it, there is no way to refute the origin of innocence without the evidence established by the Public Prosecution, and its persuasive power reaches the amount of certainty and certainty, proving the crime that it attributed to the accused in each of its pillars, and for every incident necessary for its existence, otherwise the origin of innocence does not collapse, as it is one of the pillars on which the concept of a fair trial is based. This judiciary is in line with the provisions of Article 67 of the Constitution that "the accused is innocent until proven guilty in a legal trial in which he is guaranteed the guarantees of self-defense." This constitutional provision states that the origin of the accused is innocence and that proving the charge before him is the responsibility of the Public Prosecution, which alone has the burden of providing evidence. The accused is not obliged to provide any evidence of his innocence, nor does the legislator have the right to impose legal evidence to prove the charge or to transfer the burden of proof to the accused.[51]

[51] **Judgment of the Court of Cassation, Appeal No. 17251 of 66 Judicial Year - Criminal Cassation - issued on 4/4/2009.**

Section III - Limiting the power of prosecutors to initiate criminal proceedings against police officers

Although the Public Prosecution is competent to initiate and initiate criminal proceedings in accordance with the text of Article 2 of the Criminal Procedure Law, which stipulates that:

"The Public Prosecutor himself or through one of the members of the Public Prosecution shall initiate the criminal case as prescribed by law, and it is permitted for the performance of the function of the Public Prosecution to be performed by those who are not appointed for that purpose in accordance with the law."

However, this role is limited by several restrictions that restrict the Public Prosecution from exercising this role due to many considerations, which we will clarify and comment on as follows:

Article 63 of the Code of Criminal Procedure No. 150 of 1950 states that:

If the Public Prosecution considers in the articles of violations and misdemeanors that the lawsuit is valid to be filed based on the evidence collected, it shall charge the accused to appear directly before the competent court.

The Public Prosecution in the articles of misdemeanors and felonies may request the assignment of a judge to the investigation in accordance with Article 64 of this Law, or it may undertake the investigation in accordance with Article 199 et seq. of this Law.

With the exception of the crimes referred to in article 123 of the Penal Code, it is not permitted for anyone other than the public prosecutor, the public advocate, or the head of the public prosecution to file a criminal lawsuit against an employee, public servant, or an arrestee for a felony or misdemeanor committed by him during the performance of his job or because of it.

As an exception to the provision of Article 237 of this Law, the accused may, when filing a lawsuit against him through direct prosecution, deputize him at any stage of the lawsuit as an agent to present his defense, without prejudice to the right of the court to order his presence in person.

The third paragraph of Article 63 placed a restriction on the indictment by members of the Public Prosecution without the rank of a chief prosecutor against police officers, or even the interrogation of a police officer without obtaining permission from the Attorney General, the Attorney General or the Chief Prosecutor, as well as in the crimes and penalties referred to in Article 123 of the Penal Code [52] - which are crimes and penalties against public officials when suspending the execution of orders issued by the government or failing to implement a judicial ruling, etc. -. This article is also similar to Article 8 of the Code of Criminal Procedure, which limited the right to initiate criminal proceedings against public officials in crimes of assault on property or abuse of power against the Attorney General or the Attorney General, stating that:

"Criminal proceedings may not be instituted for the offences provided for in Article 116 bis (a) [53] of the Penal Code, except by the Attorney General or the Attorney General."

A member of the Public Prosecution also cannot interrogate any of the police officers without referring to the Attorney General or the Chief Prosecutor to obtain his approval, according to the instructions of the Public Prosecutor, which required the members of the Public Prosecution when a report was received against a police officer for a crime committed during the exercise of his work to interrogate the complainant and his witnesses and then send the papers to the Attorney General or the Chief Prosecutor for his opinion. The member of the Public Prosecution also cannot arrest or detain police officers on remand without obtaining permission from the Attorney General or the Chief Prosecutor.[54]

[52] Article 123 of the Penal Code No. 58 of 1937 stipulates that "Any public official who uses the authority of his office to suspend the execution of orders issued by the government or the provisions of laws and regulations, delay the collection of funds and fees, or suspend the execution of a judgment or order issued by the court or any competent authority shall be punished by imprisonment and dismissal. Any public official who deliberately refrains from executing a judgment or order mentioned after eight days of being warned by a bailiff if the execution of the judgment or order falls within the jurisdiction of the employee shall also be punished by imprisonment and dismissal."

[53] Article 116 bis (a) of the Penal Code stipulates that "any public official who, by his mistake, causes serious harm to the funds or interests of the entity to which he works or is connected by virtue of his job or to the funds or interests of others entrusted to that entity, whether arising from negligence in the performance of his job, from a breach of its duties, or from abuse of power, shall be punished by imprisonment and a fine not exceeding five hundred pounds or one of these two penalties.
The punishment shall be imprisonment for a period no less than one year and not exceeding six years and a fine not exceeding one thousand pounds if the crime results in damage to the economic status of the country or to its national interest. "

[54] Obstacles to Judicial Justice in Egypt Dr. Safaa Youssef Sedky, p. 34.

It is noted that such restrictions on public prosecutors without the rank of chief prosecutor hinder law enforcement and thus the achievement of criminal justice, and constitute immunity for police officers, judicial officers and public officials in general and facilitate the commission of violations as well as impunity, especially in crimes of torture and extrajudicial killings, in addition to obstructing public prosecutors in directing crimes of abuse of power against senior state officials.

This restriction affects the members of the Public Prosecution in performing their role in prosecuting the perpetrators of crimes from among public officials and then investigating them impartially and impartially without interfering with political considerations, in addition to the fact that the law prohibits direct prosecution by the victim or his family against police officers in the event of committing violations and crimes, in accordance with the text of Article 232 of the Code of Criminal Procedure, which stipulates that:

"The case shall be referred to the Court of Misdemeanors and Violations on the basis of an order issued by the investigating judge or the Court of Appeal of Misdemeanors sitting in the counseling room or on the direct assignment of the accused to attend by a member of the Public Prosecution or by the plaintiff in civil rights. It is permitted to dispense with assigning the accused to attend if he attends the hearing and is charged by the Public Prosecution and before the trial.

However, the civil rights claimant may not submit the lawsuit to the court by directly assigning his opponent to appear before it in the following cases:

First: If an order is issued by the investigating judge or the Public Prosecution that there is no face to file the lawsuit and the civil rights plaintiff does not appeal the order on time or appeal it, it is confirmed by the appellate misdemeanor court sitting in the counseling room.

Second: If the lawsuit is against an employee, public employee, or an officer for a crime committed by him during the performance of his job or because of it, unless it is one of the crimes referred to in Article 123 of the Penal Code.

Although the law has guaranteed the right of direct prosecution in misdemeanors and violations to the victim of the crime – the plaintiff of the civil right - to defend his interest and give him another opportunity to appear before the judiciary if the Public Prosecution fails to initiate the criminal case, the legislator has prevented this right granted to other victims in all misdemeanors except those committed by a judicial officer or public officials in general.

We believe that this is unjustified discrimination and a restriction on the right of recourse to the judiciary guaranteed by the Constitution to all citizens, as it would have been more appropriate for the legislator to give the right of direct prosecution to the injured in these particular crimes, because the suspicion of The Public Prosecution's favoritism of the judicial officers is not excluded because they are originally subordinate in the work of their job to the Public Prosecution in accordance with the text [55]of Article 22 of the Code of Criminal Procedure. The Public Prosecution of the civil plaintiff in this way becomes an adversary and a judgment. Therefore, the direct prosecution at the time will become the last lifeline for the victim of the crime to resort to the judiciary and claim compensation for the attack, especially since the victim, for example, in a crime such as torture, is subjected to many pressures for not reporting the crime by the accused, who is influential and powerful enough to threaten the victim with further attacks if reported. Therefore, the victim in this case is the weakest party, which makes it more appropriate to facilitate the litigation procedures against him, not to prevent or close them to him, and in return, the immunity of the judicial officers from initiating cases On the other hand, preventing direct prosecution against arresting officers or law enforcement officials facilitates the removal of criminal evidence, especially in cases of beatings and physical assault, which must be proven at the time of their occurrence in medical reports, especially in the case of assault on prisoners or pre-trial detainees in prisons and places of detention.

There is no doubt that this prohibition of direct prosecution against police officers by victims as well as the restriction of the authority of prosecutors to initiate criminal proceedings against them is the reason why crimes of torture rarely reach the judiciary, but that the crime of torture has become a systematic and common crime that such texts cause to spread and the presence of more victims.

This is in addition to the inability of the civil plaintiff to appeal against the decisions issued without a face to file the lawsuit issued by the investigating judge if the accusation is against one of the judicial officers. [56]

There are many reports issued by Egyptian and international non-governmental organizations that monitor torture inside Egyptian places of detention and prisons without the Public

[55] Article 22 of the Criminal Procedure Law No. 150 of 1950 stipulates that "judicial officers shall be subordinate to the Attorney General and subject to his supervision in relation to the work of their office, and the Attorney General may request the competent authority to consider the matter of anyone who violates his duties or neglects his work, and he may request the filing of a disciplinary lawsuit against him, and all this does not prevent the filing of a criminal lawsuit. "

[56] Article 162 of the Criminal Procedure Law stipulates that "the civil rights plaintiff may appeal the orders issued by the investigating judge that there is no cause of action unless the order is issued in a charge against a public official or employee or one of the police officers for a crime committed by him during the performance of his job or because of it, unless it is one of the crimes referred to in Article 123 of the Penal Code."

Prosecution initiating criminal proceedings against the officers accused in them. In some cases, the Public Prosecution refuses to prove the facts of torture in its records. Of course, because victims and their families are prevented from filing direct criminal proceedings against police officers, victims cannot resort to the judiciary and prosecute these accused officers, which has raised cases of suicide inside places of detention due to ill-treatment and medical negligence. [57]

The Constitution prohibits this discrimination before the law in Article 53 - by giving the right of direct prosecution in misdemeanors and violations to the victim of the crime and preventing him in crimes committed by police officers and public officials - as it 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, colour, language, disability, social level, political or geographical affiliation, or any other reason. Discrimination and incitement to hatred is a crime, punishable by law.

The State shall take the necessary measures to eliminate all forms of discrimination. The law shall regulate the establishment of an independent commission for this purpose. "

The Constitution also guarantees the right of recourse to the judiciary, as Article 97 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. "

[57] A report issued by the Egyptian Commission for Rights and Freedoms entitled "Do not statute of limitations"issues its report "The Unaffordable: Suicide in Places of Detention in Egypt " to see https://n9.cl/j8i51.
Daraj website also published a report entitled "Bodies outside the accounts of the state": incidents of torture inside Egyptian prisons. For more information, click https://2u.pw/wx58jUkE.

The Egyptian courts have a lot of jurisprudence that established the right of litigation, as it ruled that:

"Whereas the Constitution's guarantee of the right of litigation - in the text of Article (97) - means that all people, a group of them or one of them, shall not be isolated from access to a judicial body that guarantees its formation, the rules of its organization, and the content of the substantive and procedural rules in force before it, a minimum of undeniable rights for those who access its doors, in order to ensure their fair trial. The right of litigation had a final end, which is represented by the judicial satisfaction that litigants struggle to obtain in order to redress the damages they have suffered as a result of the aggression against the rights they seek. If the legislator overburdens them with restrictions that are difficult to obtain or prevent them, this is a violation of the protection guaranteed by the Constitution to this right. "[58]

[58]**Judgment of the Supreme Constitutional Court - Case No. 39 of 27 Judicial Year 2018-01-13.**

There are also judicial precedents that included a refutation of the direct claim and the reasons for making it available to the civil plaintiff and confirmed that granting the direct claim to the civil rights plaintiff is a kind of control over the Public Prosecution if it abuses power, as it ruled that:

"Whereas the Constitution, by virtue of the text of Article (189) thereof, made the authority to investigate, initiate and initiate criminal proceedings an inherent right of the Public Prosecution, with the exception of the cases excluded by the law, and in this context, the contested text permitted the lawsuit to be referred to the Court of Misdemeanors and Violations on the basis of the accused's summons to appear from the civil rights plaintiff, in the desire to find a balance between the right of the Public Prosecution to initiate criminal proceedings as a legal representative of society, in reparation for the public harm arising from the crime, and the right of the civil rights plaintiff to initiate criminal proceedings arising from the act in violation of the law, This represents a kind of control over the power of the Public Prosecution to initiate criminal proceedings, in order to avoid its abuse of this power by refraining from exercising it unnecessarily, and in the public interest, as the initiation of criminal proceedings by direct means in this case is a right of the injured party, guaranteed by the Constitution under the text of Article (99) of it, in the event of an attack on personal freedom or the inviolability of private life and other public rights and freedoms guaranteed by the Constitution and the law, as well as in the event that public officials refrain from implementing judicial rulings or delaying their implementation in accordance with the text of Article (100) of the Constitution As well as what the first paragraph of Article (189) of the Constitution empowers the legislator to determine the cases in which it is permissible for other than the Public Prosecution to initiate criminal proceedings, all except for what is excluded by the Constitution in the text of Article (67) thereof, regarding the initiation of lawsuits to stop or confiscate artistic, literary and intellectual works or against their creators, which in this case is limited to the Public Prosecution alone."[59]

[59] **Ibid.**

It is worth mentioning that the unconstitutionality of Article 232 of the Code of Criminal Procedure has already been challenged in its provision prohibiting the filing of a criminal case directly against an employee, public employee or arrestee for a crime committed by him during the performance of his job or because of it, according to Constitutional Case No. 47 of the 17th Judicial Year, in which the judgment was issued on January 4, 1997, rejecting the case, and the Supreme Constitutional Court said in the reasons for its ruling:

"The legislator balanced the contested text between two things, the first of which is the necessity necessitated by the use of this right within the framework of the purposes for which it was legislated, and the second is the damage that should be prevented if such use negates those purposes and causes them, thus threatening the responsibility for the performance of public work, so the second of them referred to the first of them, in recognition that the damage associated with the abuse of the right to direct claim, is necessary to be paid, and may not be provided by its advantages. Public officials - whose contested text prevented them from being assigned by the plaintiff with civil rights to appear directly before the criminal court - do not carry out their jobs away from the interests of citizens who resort to their doors to meet their needs, but rather their position is reluctant to meet or oppose them, which raises the instincts and whims of the human psyche, which often tends with its misconception to insult away from the scales of truth and justice, so its impulsiveness is only excessive, and its narrowness to those in charge of public work is only hasty and slanderous, and they are - in most cases - insulting them by degrading their destiny, and they do not persevere in their work, but rather they slacken or abstain from it completely, which distracts them from performing it properly, especially since the project has singled them with crimes of limiting them and burdening their punishments to carry them to do their duties. Thus, it is not permissible to over-assure them if every civil rights claimant has the right to prosecute them criminally for crimes they are alleged to have committed, even if the evidence for them is flimsy and sluggish, dressed in the guise of the right, thus undermining their tranquility as long as the criminal accusation remains on them, wasting their efforts, discouraging them, and raising suspicions around them. The legislator, therefore, had to respond to them - with the contested text - with the result of a more likely and inferior aggression to ensure that the right to direct claim remains restricted to the purposes for which it was initiated, and does not turn against it. This means that dropping the right to direct claim, within the limits set forth in the contested text, does not seek to protect the public official, but rather to preserve the public service from its obstacles in a way that enables those in charge of it to perform their intended services, so that its flow is not hindered by a restriction that prevents its flow and regularity, or that is contrary to the essence of its purposes. "

However, we believe that despite the relevance of the opinion of the Supreme Constitutional Court that the direct prosecution against public officials – including judicial officers – can be exploited to take revenge on these employees and expose them to undermining their consideration and degrading them, which made the legislator decide to protect them, it is due to the fact that these employees, especially the officers, have influence and authority that enables them to defend themselves, and the Supreme Constitutional Court has responded itself in another ruling by refuting the controls that preserve the proper functioning of justice and prevents the abuse of this right – the direct prosecution – which of course is informed by the officers with their great knowledge of the law and mechanisms to protect themselves from oppression. The ruling ruled in response to whether the direct prosecution was abused by those who deal with public officials that:

"The street, when granting the civil rights plaintiff this right, was keen to restrict the scope of the direct lawsuit and limit it to misdemeanors and violations. Moreover, the legislator in the Code of Criminal Procedure surrounded this right with a number of controls that preserve the proper functioning of justice and limit the abuse of this right. According to the text of Article (251 bis) of that law added to Law No. 174 of 1998, the initiation of the criminal case by direct means is limited to anyone who suffers direct personal harm resulting from the crime and the investigator, now or in the future. The fourth paragraph of Article (63) of the aforementioned law allowed the accused, when filing the lawsuit against him directly, to appoint an attorney at any stage of the lawsuit to present his defense, and Article (267) of that law allowed the accused to claim the plaintiff of civil rights before the criminal court to compensate for the damage he suffered due to filing the lawsuit if he had a face, and he may also file a direct lawsuit against him for the same reason before the same court for the charge of false reporting if he had a face, by directing him to appear before it. Article (260/1) of that law also allowed the civil rights plaintiff to abandon his lawsuit in any case, without prejudice to the right of the accused to compensation if it has a face, and the second paragraph of that article required, in the event that the civil lawsuit is abandoned or the civil rights plaintiff is considered to have abandoned it, to rule that the criminal lawsuit is over. Article (261) of it has been expanded in cases where the civil rights plaintiff is considered to have abandoned his lawsuit, and it includes not appearing before the court without an acceptable excuse or not sending him as his representative, as well as not submitting requests at the hearing. "[60]

[60]**Judgment of the Supreme Constitutional Court - Case No. 39 of 27 Judicial Year 2018-01-13.**

The extent to which depriving public prosecutors without a chief prosecutor's degree of the right to initiate criminal proceedings against officers and public officials is consistent with international conventions.

The Guidelines on the Role of Prosecutors provide in Clause 15 that:

"**Prosecutors shall pay due attention to the prosecution of crimes committed by public officials, in particular corruption, abuse of power, gross violations of human rights and other crimes under international law, and to the investigation of such crimes if permitted by law or consistent with local practice."**

Clause 16 further states that:

"**If prosecutors come into possession of evidence against suspects and they know or believe, on reasonable grounds, that it has been obtained by unlawful means that constitute a serious violation of the human rights of the suspect, in particular by the use of torture or cruel, inhuman or degrading treatment or punishment, or by other human rights violations, they shall refuse to use such evidence against any person other than those who used the said methods or notify the court thereof, and shall take all necessary measures to ensure that those responsible for the use of these methods are brought to justice**."

As for depriving the injured person of the crimes in which a police officer is accused of direct prosecution in accordance with the provisions of Article 232 of the Code of Criminal Procedure, which is a violation of the principle of equality as well as the right to resort to justice, 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 9 of the Arab Charter on Human Rights also states that:

“All people are equal before the judiciary and the right to litigate is guaranteed to every person on the territory of the State.”

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. ”

In addition to the provision of Article 7 that:

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

1- **The right to have recourse 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,”.**

This is contrary to Article 7 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which states that:

"3. Fair treatment shall be guaranteed at all stages of legal proceedings to any person against whom such proceedings are instituted in respect of any of the offences referred to in Article 4. ”

Also, Article 12 of the Convention states that:

“Each State Party shall ensure that its competent authorities proceed to a prompt and impartial investigation whenever there are reasonable grounds to believe that an act of torture has been committed in any territory under its jurisdiction.”

The fourth topic - The Public Prosecution's laxness in inspecting prisons and places of detention

Article 42 of the Code of Criminal Procedure states that:

> **Each of the members of the Public Prosecution and the presidents and agents of the courts of first instance and appeal may visit the public and geographical reform and rehabilitation centers in their jurisdictions and ensure that there is no illegal detainee. They may view the books of the reform center and the arrest and detention orders, take copies of them, contact any detainee and hear from him any complaint he wants to make to them. The director and employees of the reform centers shall provide them with all assistance to obtain the information they request.**

Although this text authorizes prosecutors to supervise and visit prisons and places of detention to ensure that there is no illegal prisoner, as well as to meet prisoners directly, hear their complaints, identify the legal violations and violations committed against them by the prison administration, and provide them with assistance, the text did not oblige prosecutors to play this important role in controlling prisons, as the article came out in the form of a recommendation from the legislator to prosecutors who have the discretionary authority to carry it out.

This power of prosecutors to supervise and control prisons has affected the situation in prisons and places of detention to the extent that it has lost the role it must play in reforming perpetrators and reintegrating them back into society. Places of detention and prisons have become places where all kinds of violations are committed, especially the abuse of prisoners, which includes torture,[61] deprivation of exercise times, and prolonged solitary confinement, especially prisoners held in connection with cases of a political nature, in addition to intransigence against them and the denial of visits to their families or the introduction of some ordinary necessities such as books and writing tools.

Crimes such as the crime of torture have become systematically committed in prisons and places of detention to the extent that it is difficult for a prisoner to escape from them, regardless of the accusations against him. His torture has become physical and moral to pressure him, whether by police officers to confess or to intimidate or even by other detainees and prisoners at the instigation of police officers and law enforcement officials. How many reports has the Public Prosecutor's Office received from victims of torture or the victims themselves to investigate incidents of torture inside the corridors of places of detention and prisons in which the Public Prosecution has not acted?[62]

There is no doubt that one of the reasons for the prevalence of torture in Egyptian prisons and places of detention is the limited role of the Public Prosecution in monitoring and inspecting places of detention and prisons, and its laxness in ensuring that there are no violations of the law, which requires meeting prisoners and receiving their complaints and requests in consideration. Therefore, the legislator must amend the article by obliging members of the Public Prosecution to visit prisons periodically, which is specified in the law on a monthly basis, for example, and to ensure that there are no violations against prisoners or the presence of prisoners in prisons and places of detention without legal justification.

[61] Torture as defined by the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in Article I (1) means "for the purposes of this Convention," any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. This does not include pain or suffering arising solely from, inherent in, or incidental to lawful sanctions. "

[62] Darb Khobar website entitled "A new day in the life of the Saif family: A report to the Attorney General about their abuse.. Laila Soueif heads to Latra again with Khaled Ali to request a letter from Alaa. "To read https://2u.pw/CmbuWOq1, see also the Cairo Institute for Human Rights Studies,"Torture in Egypt is a systematic practice whose perpetrators enjoy complete impunity. "To see https://2u.pw/efzAK3am.

This is in addition to the increase[63] in the number of enforced disappearances in recent years, including the former member of the House of Representatives, Dr. Mustafa Al-Najjar, who disappeared several years ago and whose relatives[64] suspect the involvement of the security forces in his disappearance. According to reports by the Egyptian Commission for Rights and Freedoms on cases of enforced disappearance, enforced disappearances reached between August 2016 and August 2017 about 378 cases of enforced disappearance[65] in only one year.

Over the past years, the "**Stop Enforced Disappearance**" campaign has also been able to document that 2,723 people have been subjected to enforced disappearance for varying periods within the headquarters of the National Security Sector and other official and unofficial detention facilities. Therefore, with the number of enforced disappearances so high, we cannot exempt the Public Prosecution from its responsibility for these numbers and the failure of Article 42 of the Criminal Procedure Law to deter these crimes.[66]

Article 42 of the Code of Criminal Procedure is not the only article that entitles members of the Public Prosecution to supervise and control prisons. Article 85 of the Prisons Regulation Law stipulates that:

[63]Enforced disappearance means, as defined by the Convention for the Protection of All Persons from Enforced Disappearance, "for the purposes of this Convention, 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."

[64] Reports of Enforced Disappearances – The Egyptian Commission for Rights and Freedoms Report entitled "More than a thousand days of disappearance.. We knocked on all doors and there is no official response.. Where is Mustafa Al-Najjar? ", To view the report, please click on the link https://cutt.us/WJjjl.

[65] Reports of Enforced Disappearances – The Egyptian Commission for Rights and Freedoms A report entitled "The Second Annual Report Including 378 Cases of Enforced Disappearances , which I have documented since August 2016". To view the report, please click on the link https://cutt.us/DeVq3.

[66] Reports of Enforced Disappearances – Egyptian Commission for Rights and Freedoms A report entitled "Continuous Violation and Absent Justice "To view the report, please click on the link https://cutt.us/ZWAtR.

"The Attorney General and his agents in their jurisdictions shall have the right to enter all places of imprisonment at any time to verify:

(1) The orders of the prosecution and the investigating judge in the cases that he is assigned to investigate and the decisions of the courts are executed in the manner indicated therein.

(2) No person is unlawfully imprisoned.

(3) Failure to employ a prisoner who has not been sentenced to employment, except in the cases specified in the law.

(4) Isolating each group of prisoners from the other group and treating them as prescribed for their group.

(5) Records imposed in accordance with the law are used in a regular manner.

In general, taking into account the provisions of the laws and regulations and taking what they deem necessary regarding the violations that occur.

They may accept complaints from prisoners and examine judicial records and papers to verify their conformity with the prescribed forms.

The prison warden shall provide them with all the data they request regarding the task they are assigned to perform. "

Likewise, Article 27 of the Judicial Authority Law stipulates that:

"The Public Prosecution shall supervise prisons and other places where criminal sentences are executed. The Public Prosecutor shall inform the Minister of Justice of the observations that appear to the Public Prosecution in this regard."

It is worth mentioning that the instructions of the Public Prosecution are also stipulated, especially Article 1747, that prisons must be inspected by the Public Prosecution at least once a month, provided that this inspection is without prior announcement to the prison administrations to be able to identify the truth of what is happening inside them. Despite the existence of this article, it must be copied into laws, as the instructions of the Public Prosecutor are only administrative decisions that are not equal in their binding and degree to the force of law, in accordance with the principle of the hierarchy of legal rules. What confirms this is the limitation of the instructions of the Public Prosecution, despite its presence in eliminating torture and other violations that occur in places of detention and prisons. Therefore, it requires a more mandatory legislative text than the instructions of the Public Prosecutor in the hope that these practices committed by the various prison administrations against prisoners will stop.

According to some human rights reports, many prisoners and those who have spent long periods in prisons have reported that they have not met during their detention with any of the members of the Public Prosecution despite being subjected to several violations inside the prisons and despite the existence of Article 1747 of the instructions of the Public Prosecutor, which confirms the need to amend Article 42 to oblige the members of the Public Prosecution to perform their role in inspecting and monitoring places of detention and prisons periodically and preparing public statements of the names of detainees and places of detention. [67]

The role of the Public Prosecution in the supervision and control of prisons in international law:

Article 12 of the Guidelines on the Role of Prosecutors states:

“Prosecutors shall perform their duties in accordance with the law, in a fair, consistent and expeditious manner, respecting and protecting human dignity and upholding human rights, thus contributing to ensuring due process and the proper functioning of the criminal justice system.”

Article 15 further states that:

[67] **D. Abdullah Khalil "The Public Prosecution is an agent of society or a subordinate of the executive authority? "p. 132.**

"Prosecutors shall pay due attention to the prosecution of crimes committed by public officials, in particular corruption, abuse of power, gross violations of human rights and other crimes under international law, and to the investigation of such crimes if permitted by law or consistent with local practice."

With regard to the crime of enforced disappearance, the responsibilities of States to avoid it, the prosecution of offenders and the role of investigators in this crime, article 3 of the Convention for the Protection of All Persons from Enforced Disappearance provides that: **"Each State Party shall take appropriate measures to investigate acts specified in article 2 committed by persons or groups of persons acting without the authorization, support or acquiescence of the State, and to bring those responsible to justice."**

The Convention also imposes criminal liability on anyone who is able to prevent or suppress the crime of enforced disappearance and who has failed in his duties, as article 6 of the Convention stipulates that:

"1. Each State Party shall take the necessary measures to hold criminally responsible at least:

(b) a chairman who:

(i) was aware that one of his subordinates under his effective command and control had committed or was about to commit an offence of enforced disappearance, or deliberately omitted information which was clearly indicative thereof;

(ii) exercise effective responsibility for and control over the activities to which the offence of enforced disappearance relates;

(iii) fails to take all necessary and reasonable measures within his power to prevent or suppress the commission of the offence of enforced disappearance or to submit the matter to the competent authorities for the purposes of investigation and prosecution "

Article 12 (4) further provides that:

"3. Each State Party provided that the authorities referred to in paragraph 1 of this article:

(a) the powers and resources necessary to carry out the investigation, including access to documents and other information relevant to its investigation;

(b) Access, if necessary with the prior permission of a court deciding the matter as expeditiously as possible, to the place of detention and any other place where there are reasonable grounds to believe that the disappeared person is present.

4. Each State Party shall take the necessary measures to prevent and punish acts that impede the conduct of the investigation. In particular, it shall ensure that persons accused of having committed an offence of enforced disappearance are not able to influence the course of the investigation by pressuring or carrying out acts of intimidation or reprisal against the complainant, witnesses, relatives of the disappeared person and their defenders, as well as those involved in the investigation. ”

This is contrary to Article 12 of the **Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment** regarding the role of investigators – prosecutors - in crimes of torture, which states that:

“Each State Party shall ensure that its competent authorities proceed to a prompt and impartial investigation whenever there are reasonable grounds to believe that an act of torture has been committed in any territory under its jurisdiction.”

Part Three: The Role of the Judiciary in Influencing the Guarantees of a Fair Trial in Egyptian Law and the Disagreements with the Constitution and International Law

The judicial authority is the cornerstone of achieving fair trial guarantees. We cannot talk about achieving criminal justice without talking about the judicial facility, the powers and independence granted by the Constitution to the judiciary and the axes that govern it, as well as the provisions that violate it in various laws.

It is no secret that the ruling authority throughout the ages since the establishment of the civil courts in 1883 always seeks to control the judiciary, even if it does not do so directly, it tries to control by issuing laws that stifle this independence, including the Judicial Authority Law itself, which makes the judiciary directly subject to the Minister of Justice, one of the representatives of the executive authority, as well as by issuing laws that exclude the jurisdiction of the ordinary judiciary and remove its jurisdiction from hearing some cases, especially of a political nature, such as the Emergency Law, which allows the establishment of exceptional courts (state security courts) and the Military Justice Law, which complicates the jurisdiction of military courts and expands the appearance of civilians before them, in addition to issuing laws such as the Law on the Protection of Public Establishments and Facilities, which allows the expansion of the jurisdiction of the Military Court to hear some crimes that do not directly relate to military installations or persons.

Executive Power Practices Affecting the Independence of the Judiciary:

A fair and equitable trial requires that the judiciary platform be held by judges who are administratively and financially independent of any subordination to the executive authority. This requires the realization of the principle of separation of powers in order to ensure the independence of the judiciary from its legislative and executive counterparts. Therefore, judges will have no authority when carrying out their function in issuing judgments except for their consciences, and the legal rules that must also be issued in accordance with general and abstract fair standards aimed at achieving justice, equality, and general deterrence for all violators of its provisions, which leads to the issuance of judgments that are consistent with the principles of justice and then international human rights standards in the independence of the judiciary, which will be reflected in the confidence of litigants and then citizens accordingly in the judgments of the judiciary.

The independence of the judiciary is one of the principles on which the entire justice system is based, which stems from the principle of separation of powers, which requires non-interference by the executive or the legislature in the work of the judiciary. The Constitution affirms the independence of the judiciary, as 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 statute of limitations."

The independence of the judiciary does not mean this literal meaning from all state institutions and authorities and leaving the absolute freedom of the judge to issue his judgments according to his free will. Rather, according to modern societies, the judge rules by law, which is the legislative authority represented in Parliament. He drafts it and enacts various legislations and penal texts, as well as the power of legislation granted as an exception to the President of the Republic. Therefore, the judge has no authority over these laws or to express his opinion on their legitimacy, as even the judiciary of the Supreme Constitutional Court, which can annul laws that are inconsistent with the Constitution, does not have the authority to write laws, but this task is left to Parliament.[68]

[68] **Manual on the Independence of the Judiciary – Sherif Younis – Cairo Institute for Human Rights Studies, p. 20.**

The independence of the judiciary means non-interference in its internal organization and judicial affairs, as well as the impossibility of judges to be dismissed other than through the disciplinary path regulated by the Judicial Authority Law, and that there is no authority superior to the judge while he is in the process of issuing judgments.

At the international level, the Basic Principles on the Independence of the Judiciary, adopted by the United Nations at the Seventh Congress in Milan in 1985, stipulate in its first article that:

"The independence of the judiciary shall be guaranteed by the State and provided for by the Constitution or laws of the country. It is the duty of all governmental and other institutions to respect and observe the independence of the judiciary. ”

Clause 10 of the Principles also clarified the criteria on which judges should be selected, stating that:

"Persons selected for judicial office shall be individuals of integrity and competence, with appropriate training or qualifications in law. It shall include any method for the selection of judges. safeguards against improperly motivated judicial appointments. In the selection of judges, no person shall be discriminated against on grounds of race, colour, sex, religion, political or other opinion, national or social origin, property, birth or status, provided, however, that it shall not be deemed discriminatory to require a candidate for judicial office to be a national of the country concerned. "

Judiciary and subordination to the executive authority in the appointment, transfer, assignment, secondment andinspection in light of the Judicial Authority Law

Section I: Appointment of Judges, and the Impact of Recent Amendments to both the Judiciary Law and the Constitution in 2019

Article 44 of the Judicial Authority Law states that:

> **Judicial posts, whether by appointment or promotion, shall be filled by a decision of the President of the Republic.**
> **The President of the Court of Cassation shall be appointed by a decision of the President of the Republic from among the seven most senior Vice-Presidents of the Court, for a period of four years or for the remaining period until he reaches retirement age, whichever is earlier, and for one time throughout his term of office.**
> **The Vice-Presidents of the Court of Cassation shall be appointed with the approval of the Supreme Judicial Council based on the nomination of the General Assembly of the Court of Cassation.**
> **The Chancellor of the Court of Cassation shall be appointed with the approval of the Supreme Judicial Council from among two candidates, one of whom shall be nominated by the General Assembly of the Court of Cassation and the other shall be nominated by the Minister of Justice.**
> **The presidents, vice-presidents, and advisers of the Courts of Appeal, the presidents of the Courts of First Instance, and the judges shall be appointed with the approval of the Supreme**
> **The date of appointment or promotion shall be deemed from the date of approval or taking the opinion of the Supreme Judicial Council, as the case may be.**

The appointment of judges in Egypt, as well as in many countries of the world, is done through the executive authority – some countries, such as the United States of America, take the system of universal suffrage - on the grounds that the judiciary facility is one of the public utilities of the state. However, the executive authority is not absolute in appointing judges, but rather appoints them based on the nomination of the Supreme Judicial Council[69].

The Supreme Judicial Council shall be a judicial body that shall assume dominance over all matters relating to judges and their affairs, such as appointment, promotion, transfer, delegation, etc. The President of the Court of Cassation shall be the President of the Supreme Judicial Council, and its members shall be the President of the Cairo Court of Appeal, the Attorney General, the two most senior vice-presidents of the Court of Cassation[70], and the two most senior presidents of other courts of appeal[71].

Thus, according to the aforementioned article 44, judges are appointed based on the nomination of the Supreme Judicial Council. However, the appointment of the President of the Court of Cassation - due to the importance of the position, where the person who holds this position will be in addition to being the President of the Court of Cassation, he is also the President of the Supreme Judicial Council - has gone through several successive amendments. In the original text of the article, he was appointed by a decision of the President of the Republic from among the Vice-Presidents of the Court of Cassation after taking the opinion of the Supreme Judicial Council, then it was amended by Law No. 13 of 2017 to [72] be appointed by the

[69] Dr.Ahmed Abouloufa - Code of Pleadings – p. 62.

[70] Article 77 bis 1 of the Judicial Authority Law stipulates that "The Supreme Judicial Council shall be formed under the chairmanship of the President of the Court of Cassation and with the membership of: - the President of the Cairo Court of Appeal. Attorney General. I present two Vice-Presidents of the Court of Cassation. I present two presidents of other Courts of Appeal. In the event that the position of the President of the Court of Cassation is vacant, absent, or there is an impediment to him, he shall be replaced in the chairmanship of the council by his oldest deputy. In this case, the oldest vice-presidents of the Court of Cassation other than the two members referred to in the preceding paragraph shall join the membership of the council. When the position of a member of the Council is vacant, absent, or there is an impediment, the Attorney General shall be replaced by the most senior assistant attorney general or his substitute, and the presidents of the courts of appeal shall be replaced by the presidents of the other courts of appeal who follow them in seniority, and the vice-presidents of the Court of Cassation shall be replaced by those who follow them in seniority from the deputies. "

[71] Article 77 bis 2 of the Judicial Authority Law stipulates that "the Supreme Judicial Council shall have the competence to consider all matters related to the appointment, promotion, transfer, assignment, and secondment of the judiciary and the Public Prosecution, as well as all their affairs, as set forth in this law. Its opinion shall be taken on draft laws related to the judiciary and the Public Prosecution."

[72] The amendment of the article regarding the appointment of the President of the Court of Cassation in 2017 under Law No. 13 of 2017 stipulates that "the text of the second paragraph of Article (44) of the Judicial Authority Law promulgated by Law No. 46 of 1972 shall be replaced with the following text: The President of the Court of Cassation shall be appointed by a decision of the President of the Republic from among three of his deputies, nominated by the Supreme Judicial Council from among the seven oldest Vice-Presidents of the Court, for a period of four years or the remaining period until he reaches retirement age, whichever is earlier, and for one time throughout his term of office. The names of the candidates shall be communicated to the President of the Republic at least sixty days before the end of the term of office of the President of the Court. In the event that the candidates are not nominated before the expiry of the period mentioned in the preceding paragraph, or the nomination of a number less

President of the Republic from among three Vice-Presidents of the Court of Cassation nominated by the Supreme Judicial Council from among the oldest seven deputies. This latest amendment came in 2019 under Law No. 77 of 2019,[73] which empowers the President of the Republic to choose and appoint the President of the Court of Cassation without requiring an opinion or nomination of the Supreme Judicial Council, which negatively affects the independence of the judiciary emanating from the principle of separation of powers.

The Court of Cassation is the highest Egyptian court and sits at the top of the judicial pyramid, where its judgments are considered as legal principles to be followed by all courts, and legal practitioners refer to it in interpreting legal judgments and articles, as well as citing its judgments in many lawsuit memoranda and legal research, in addition to its responsibility to verify the extent to which legal rules are applied and monitor the judgments of the lower courts to unify legal principles through the appeals of litigants before it as the second degree of litigation, and the judgments issued from it are final and final.

Of this great importance to the Court of Cassation comes the importance of the position of President of the Court of Cassation as he is also President of the Supreme Judicial Council, which justifies the will of the executive authority, represented by the President of the Republic, to tighten its control over the position and encroach on it, which represents an attack on the judicial authority and the shackling of the entire justice service, especially after giving constitutional cover to such [74]an amendment with the constitutional amendments to Article 185

than three, or the nomination of those who do not meet the controls mentioned in the second paragraph, the President of the Republic shall appoint the President of the Court from among the seven most senior Vice-Presidents of the Court. "

[73]The original text of Article 44 before the amendments stipulated that "the filling of judicial positions, whether by appointment or promotion, shall be by a decision of the President of the Republic. The President of the Court of Cassation shall be appointed by a decision of the President of the Republic from among the Vice-Presidents of the Court of Cassation after taking the opinion of the Supreme Council of Judicial Bodies. The Attorney-General shall be appointed by a decision of the President of the Republic. The Vice-Presidents of the Court of Cassation shall be appointed by a decision of the President of the Republic based on the nomination of the General Assembly of the Court of Cassation and after taking the opinion of the Supreme Council of Judicial Bodies. The Presidents of the Courts of Appeal and their Vice-Presidents and the First Public Defender shall be appointed by a decision of the President of the Republic with the approval of the Supreme Council of Judicial Bodies. One of them shall be nominated by the General Assembly of the Court of Cassation and the other shall be nominated by the Minister of Justice. The session of the Council shall not be attended in this case by the President of the Cairo Court of First Instance. In the event of equal opinions, the side in which the president prevails shall prevail. It is permitted to select the advisers of the Court of Cassation, not exceeding one quarter of the number of vacant positions during a full fiscal year, through a competition whose conditions, dates, and method of arbitration shall be determined by a decision of the Minister of Justice with the approval of the Supreme Council of Judicial Bodies. Advisers to the Courts of Appeal, presidents of the courts of first instance, judges, and members of the Public Prosecution shall be appointed by a decision of the President of the Republic with the approval of the Supreme Council of Judicial Bodies. The date of appointment or promotion shall be from the date of approval by the Supreme Council of Judicial Bodies.

[74]Article 185 of the Constitution, after the amendments of 2019, stipulates that "Each judicial authority or body shall be based on its affairs, and its opinion shall be taken on the draft laws regulating its affairs, and each of them shall have an independent budget. The President of the Republic shall appoint the presidents of the judicial bodies from among the seven most senior of their deputies, for a term of four years, or for the remaining period until he reaches retirement age, whichever is earlier, and for one time during his term of office, in the manner regulated by law. Its joint affairs shall be governed by a Supreme Council of

of the Constitution in 2019 and giving constitutional legitimacy to Article 44 after there was hope of challenging such an article.

The amendments gave the President of the Republic the authority to appoint heads of judicial bodies and councils, in addition to the establishment of a Supreme Council of Judicial Authorities and Bodies headed by the President of the Republic, whose task is to consider the conditions for appointing, promoting and disciplining members of judicial bodies and bodies, as well as expressing its opinion on draft laws regulating the affairs of these bodies and bodies, and its decisions are issued with the approval of a majority of its members, provided that the Speaker of the Council is among them.

According to these amendments, talking about the principle of the separation of powers and the independence of the judiciary is ridiculous because of the reality of the justice facility, which has become a prison for the executive authority, which undermines the guarantees of a fair and equitable trial. The independence, impartiality and immunity of the judiciary were one of its most important standards, and the only hope for human rights victims of the oppression of authority.

Therefore, the legislator must seek to liberate the judiciary from the siege of its executive authority in order to achieve the independence of the judiciary, and amend the article to make the appointment of judges one of the competencies of the Supreme Judicial Council and that the executive authority has no interference, especially the position of President of the Court of Cassation, who in turn is also President of the Supreme Judicial Council so that we can talk about fair guarantees for the independence of the judiciary and then move forward towards the application of fair trial standards.

Judicial Authorities and Bodies, chaired by the President of the Republic, with the membership of the President of the Supreme Constitutional Court, the heads of judicial authorities and bodies, the President of the Cairo Court of Appeal, and the Attorney General. The Council shall have a Secretary General, who shall be appointed by a decision of the President of the Republic for the period specified by law and alternately among the members of the Council. The President of the Republic shall be replaced in his absence by any of the heads of judicial bodies. The Council shall be competent to consider the conditions of appointment, promotion and discipline of members of judicial bodies and bodies. His opinion shall be taken on draft laws regulating the affairs of these bodies and bodies. Its decisions shall be issued with the approval of a majority of its members, provided that the Speaker of the Council is among them.

Independence of the Judiciary in the Constitution.

There is no doubt that the appointment of the President of the Court of Cassation, who became the President of the Republic under the last amendment to Article 44, has the absolute power to choose him, is a serious violation of the principle of separation of powers, from which the principle of the independence of the judiciary emanates. The Constitution is keen on the principle of the independence of the judiciary and makes it coupled with the rule of law in the state, as Article 94 of the Constitution states that:

"The rule of law is the basis of government in the state, and 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."

Article 184 also stipulates the independence of the judiciary and makes interference in the affairs of justice a crime that does not fall under the statute of limitations, as the article 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 statute of limitations**."

However, the recent amendments to the Constitution have undermined the principle of the independence of the judiciary by introducing into the text of Article 185 the addition of the paragraph on the establishment of a Supreme Council of Judicial Authorities and Bodies headed by the President of the Republic, as well as the appointment by the President of the Republic of the heads of judicial authorities and bodies, as the article now states:

"Each judicial authority or body shall be based on its affairs, and its opinion shall be taken on the draft laws regulating its affairs, and each of them shall have an independent budget.

The President of the Republic shall appoint the presidents of the judicial bodies from among the seven most senior of their deputies, for a term of four years, or for the remaining period until he reaches retirement age, whichever is earlier, and for one time during his term of office, in the manner regulated by law.

Its joint affairs shall be governed by a Supreme Council of Judicial Authorities and Bodies, chaired by the President of the Republic, with the membership of the President of the Supreme Constitutional Court, the heads of judicial authorities and bodies, the President of the Cairo Court of Appeal, and the Attorney General. The Council shall have a Secretary General, who shall be appointed by a decision of the President of the Republic for the period specified by law and by rotation among the members of the Council.

In his absence, the President of the Republic shall be replaced by the heads of judicial authorities and bodies he delegates.

The council shall have the competence to consider the conditions for appointing, promoting, and disciplining members of judicial bodies and bodies. Its opinion shall be taken on draft laws regulating the affairs of these bodies and bodies. Its decisions shall be issued with the approval of a majority of its members, provided that the chairman of the council is among them.

Thus, this article has given constitutional legitimacy to Article 44 of the Judicial Authority Law, which made the entire justice sector subject to the control of the executive authority represented by the President of the Republic, which seriously violates the principle of separation of powers and eliminates any hoped-for independence of the judiciary.

It is worth mentioning that the Egyptian Commission for Rights and Freedoms has already published a study entitled **"Constitutionally on Unconstitutional Amendments"** that deals with the constitutional amendments to the Constitution in 2019 with analysis and criticism and highlighted all the risks that unjust amendments to the Constitution and fair trial guarantees have entrenched for it.[75]

We find that the independence, impartiality and integrity of the judiciary and the need to be immune from the executive authority and the guarantees of a fair trial have been mentioned by

[75] **To view the study of the Egyptian Commission for Rights and Freedoms entitled "Constitutionally on Unconstitutional Amendments", please click on the link https://cutt.us/Xd40H.**

many of the jurisprudence of the Egyptian Supreme Courts, especially the Supreme Constitutional Court and the Court of Cassation, which ruled that:

"The independence of the judiciary - in essence, the remoteness of its effects - is not just a substitute for the ambition of the executive branch, which stops it from interfering in the affairs of justice, and prevents it from influencing it to the detriment of the rules of its administration. Rather, it is an introduction to the rule of law, which preserves legitimacy and draws its borders. That sovereignty, which is guaranteed by the Constitution in the text of Article 64, and the Constitution has coupled the rule of law with the text of Article 65, which obliges the State to submit to its provisions, to form together a basis for governing it, controlling its actions and then strengthening the rule of law, in the text of Article 72, which it formulated as an essential guarantee for the implementation of judicial decisions by the competent officials. [76]"

[76] **Judgment of the Supreme Constitutional Court - Case No. 27 of 16 Judicial - Constitutional - dated 15-04-1995.**

Another precedent also ruled that:

"Whereas the Constitution, in article 65, stipulates that the State is subject to the law and that the independence and immunity of the judiciary are essential guarantees for the protection of rights and freedoms, it thus indicates that the legal State is the one that adheres in all aspects of its activity - regardless of the nature of its powers - to legal rules that transcend it and are in themselves a control of its actions and actions in their various forms, as the exercise of power is no longer a personal privilege for anyone, but it acts on behalf of and for the benefit of the group. While it is true that authority is not considered legitimate unless it is the result and expression of the popular will, but the emergence of this authority from that will and its dependence on it does not necessarily mean that whoever exercises it is bound by legal rules that are immune from its wildness and to ensure its response on its heels if it exceeds its borders, and it was inevitable that the state in its contemporary concept - especially in the field of its orientation towards freedom - based on the principle of legitimacy of authority coupled with and strengthened by the principle of submission to the law as complementary principles without which legitimacy does not exist in its most important aspects, and because the legal state is the one in which every citizen has the primary guarantee to protect his rights and freedoms, and to organize and exercise authority within a framework of legitimacy, which is a guarantee supported by the judiciary through its independence and immunity to become the legal base of each organization, the unity of each authority, and a deterrent against aggression.[77] "

[77] **Judgment of the Supreme Constitutional Court - Case No. 22 of the Year 8 Judicial - Constitutional - dated 04/01/1992.**

Appointment of Judges in International Law:

The independence of the judiciary is one of the most important pillars called for by international law, and the need for the laws of States to include provisions that establish the independence of the judiciary, and that States must ensure adequate resources to enable the judiciary to perform its functions in a proper manner. The Universal Declaration of Human Rights stipulates in Article 10 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**."

In the first paragraph of Article II of the Global Judges Charter adopted on November 17, 1999 and updated on November 14, 2017 that:

“The independence of the judiciary must be enshrined in the Constitution or at the highest possible legal level. Judicial status must be ensured through a law that establishes and protects the judicial office in a genuine and effective manner and independent of other state authorities. ".

Article 1 of the Basic Principles on the Independence of the Judiciary, adopted by the United Nations at the Seventh Congress on the Prevention of Crime and the Treatment of Offenders, held in Milan in 1985, states:

"The independence of the judiciary shall be guaranteed by the State and provided for by the Constitution or laws of the country. It is the duty of all governmental and other institutions to respect and observe the independence of the judiciary. ”

Also, Article 3 of the Principles states that:

“The Judiciary shall have jurisdiction over all matters of a judicial nature and shall have sole authority to decide whether any matter brought before it for adjudication is within its competence as defined by law.”

Also, Article 6 of the Principles states that:

“The principle of the independence of the judiciary guarantees this authority and requires it to ensure that judicial proceedings are conducted fairly, and that the rights of the parties are respected.”

Article 7 states that:

“It is the duty of each Member State to provide adequate resources to enable the judiciary to perform its functions in a proper manner.”

This is contrary to what is stipulated in the International Covenant on Civil and Political Rights in general about the independence of the judiciary, as the first clause in Article 14 stipulates that "**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**. "

Article 26 of the African Charter on Human and Peoples' Rights states:

“States Parties to the present Charter shall ensure the independence of the courts and enable the establishment and improvement of competent national institutions entrusted with the promotion and protection of the rights and freedoms guaranteed by the present Charter.”

Section Two: Judicial Inspection and Imposition of Penalties on Judges.

One of the forms of interference by the executive authority in the work of the judiciary in violation of the independence of the judiciary is the subordination of the Judicial Inspection Department to the Minister of Justice, which is responsible for the technical inspection of the work of judges and presidents of the courts of first instance in order to monitor the validity of the application of the law, and the subsequent assignment of the Minister of Justice to impose sanctions on judges, which affects the desired independence of the judiciary.

Article 78 of the Judicial Authority Law stipulates that:

The Ministry of Justice shall form a department for judicial inspection of the work of judges and presidents of the courts of first instance. It shall be composed of a director and an agent chosen from among the advisers of the court of cassation or the courts of appeal, a sufficient number of them, and the presidents of the courts of first instance.
The Minister of Justice shall draw up a regulation for judicial inspection with the approval of the Supreme Judicial Council.
Judges must be informed of all notes or other papers filed in their service files.
Sufficiency is estimated by one of the following grades:
Competent - above average - average - below average.
The inspection must be conducted at least once every two years, and the inspection report must be filed within two months at most from the date of completion of the inspection.
The Minister of Justice may refer to the Supreme Judicial Council any matters he deems appropriate relating to the inspection of the work of judges.

Although the judicial inspection regulation set by the Minister of Justice is issued with the approval of the Supreme Judicial Council, the subordination of the Judicial Inspection Department must be to the Supreme Judicial Council and not the Minister of Justice as it is subordinate to the executive authority. The task of this department is to inspect the work of judges, including the review of judges' judgments and to determine their consistency with legal rules, as well as the postponements made by the judge and how cases are distributed to hearings and all matters related to his evaluation during the exercise of his work. All these observations are then placed in the judge's file, along with the complaints filed against him and the decisions issued against him, all to assess his adequacy in accordance with the text of the article in preparation for his promotion by the Minister of Justice. Therefore, the fate of judges is in the hands of the executive authority, contrary to the consequent competence of the Minister of Justice to supervise the courts and impose penalties on judges in accordance with the provisions of Articles 93 and 94 [78]of the Judicial Authority Law.[79]

[78] Article 93 of the Judicial Authority Law stipulates that "the Minister of Justice has the right of administrative supervision of the courts, the president of each court and the general assembly have the right to supervise the judges subordinate to them."
Article 94 also stipulates that "The President of the Court - on his own initiative or based on the decision of the General Assembly - has the right to alert the judges of what is contrary to their duties or the requirements of their functions after hearing their statements. The warning shall be verbal or in writing, and in the latter case, his copy shall be communicated to the Minister of Justice.
The judge may object to the notice issued to him in writing by a request submitted within two weeks from the date he is notified of it to the Supreme Judicial Council.
The council may conduct an investigation into the incident that was the subject of the warning or delegate one of its members to do so after hearing the statements of the judge. It may endorse the warning or consider it as if it had not been and communicate its decision to the Minister of Justice. It is not permitted for the person who issued the warning to participate in the consideration of the objection and be replaced by his successor in seniority.
The director of the Judicial Inspection Department has the right to alert the presidents of the primary courts and their judges after hearing their statements, provided that if the warning is in writing, they have the right to object before the aforementioned council. If the same violation is repeated or continues after the warning becomes final, the disciplinary lawsuit shall be filed.
[79] Obstacles to Judicial Justice in Egypt Dr. Safaa Youssef Sedky, p. 18.

The decisions of the Judicial Inspection Department also affect the movement of judges [80] – without specific or clear criteria – to other chambers or courts according to the will of the executive authority. This is in contrast to the assignment of judges[81] to exceptional courts and the Office of the Minister of Justice, which have a large financial return, as well as the secondment of judges[82] to governments or international bodies, which are by the decision of the President of the Republic. Thus, the executive authority is able to favor some judges over others whose loyalty to them is guaranteed. On the other hand, the will of some judges themselves to approach the executive authority to receive these benefits and higher positions, which makes the judge, while exercising his function - which must only affect his conscience - fragmented between satisfying the executive authority and committing to justice.[83]

It is worth mentioning that the judges have for many years demanded financial and administrative independence from the Ministry of Justice. The Judges Club has played an important role in these claims, as it has already submitted more than one draft law to amend the Judicial Authority Law to achieve this independence. In 2008 and at the end of the era of deposed President Mohamed Hosni Mubarak, the Judges Club submitted a draft law that frees the judiciary from the financial and administrative control of the Ministry of Justice, allocates an independent budget for the judiciary, and grants the Supreme Judicial Council, which is composed of senior judges, instead of the Ministry of Justice, which is part of the executive branch, the right to appoint, supervise and hold judges accountable.[84]

Also, in the wake of the revolution of January 25, 2011, the Judges Club submitted another project that includes transferring the subordination of judicial inspection to the Supreme Judicial Council so that the Minister of Justice (representative of the executive authority) does not have

[80] Article 53 of the Judicial Authority Law stipulates that "the transfer of presidents and judges of the courts of first instance shall be by a decision of the President of the Republic after the approval of the Supreme Judicial Council, in which the courts to which they are attached shall be determined. The date of transfer shall be considered from the date of notification of the decision."

[81] Article 58 of the Judicial Authority Law stipulates that "the Minister of Justice may, when necessary, assign presidents and judges of courts of first instance to courts other than their own for a period not exceeding six months, renewable for another period after the approval of the Supreme Judicial Council."

Article 62 also stipulates that "A judge may be temporarily assigned to carry out judicial or legal work other than his work or in addition to his work by a decision of the Minister of Justice after taking the opinion of the general assembly to which he belongs and the approval of the Supreme Judicial Council, provided that the said council alone determines the remuneration to which the judge is entitled for these works after their completion."

[82] Article 65 of the Judicial Authority Law stipulates that "Judges may be seconded to foreign governments or international bodies by a decision of the President of the Republic, after taking the opinion of the general assembly of the court to which the judge or prosecutor belongs, as the case may be, and with the approval of the Supreme Judicial Council. The period of secondment may not exceed four consecutive years. However, the period may exceed this amount if required by a national interest determined by the President of the Republic."

[83] Independence of the Judiciary – Sherif Younis – Cairo Institute for Human Rights Studies, p. 30.

[84]Carnegie Foundation website (Echo) - The Judges Club challenges the system of government - to view https://n9.cl/90tl6.

jurisdiction over judges out of respect for the principle of separation of powers, the rule of law and the independence of the judiciary**.** Because of the functions of the Judicial Inspection Department that directly affect the work of judges, the legislator did not pay attention to such demands of the judiciary, but in every amendment to the Judicial Authority Law, the legislator is entrenched for more aggression against the judiciary and the infiltration of the executive authority in its competencies, and attacks on any independence of the judiciary.[85]

Perhaps the most prominent who can talk about the problems of the independence of the judiciary in Egypt are the judges themselves, headed by Mr. Yahya Al-Rifai, founder of the Independence Movement, who graduated in the judiciary, until he occupied the highest positions, as Vice-President of the Court of Cassation, and then was separated by a Republican decision from the judiciary during the era of former President Gamal Abdel Nasser in what is known as the "massacre of judges" that took place in 1969, and after he was removed from the judiciary, he joined the Bar Association and continued to practice the profession of lawyers and then resigned. He wrote in the text of this resignation very important words that highlight the problems in the judiciary facility and hinder the achievement of the desired justice, and the most important thing in the text of his resignation is what he wrote about the lack of administrative and financial independence of judges and the extent of its impact on the fair trial guarantees guaranteed to citizens in the Constitution, and the most important things he said: [86]

[85] Obstacles to Judicial Justice in Egypt Dr. Safaa Youssef Sedky, p. 18,
Day 7 - Judges Club The powers of the Minister of Justice must be referred to the Supreme Judicial Council - for more information, click https://n9.cl/z7c8k.

[86] The seventh day, the obituary of Counselor Yahya Al-Rifai and an overview of his career entitled "The Death of Yahya Al-Rifai, Founder of the Independence Movement.. And the judge who confronted the three presidents of Egypt. " For more information, please visit https://n9.cl/6g7unx.

"That is because the successive governments of our Republic, although they have set in their constitutions basic provisions of the principles of the rule of law and the independence and immunity of the judiciary, and prohibit and criminalize interference in any issue or any of their affairs by any authority or any person - these same governments have not stopped – throughout these years – stipulating in the laws regulating the judiciary and others on what completely strips these texts of their content, and even contradicts them with explicit texts, by which they confiscate for the executive authority most of the assets, rules and guarantees of this independence, as well as assigning some of the competencies of the natural judiciary to others, and issuing other realistic decisions and actions through the Ministry of Justice – a branch of the executive authority – controlling the will of the men of the judiciary and their affairs, and even their judicial rulings!".[87]

[87] **To view the full text of Counselor Yahya Al-Rifai's resignation, please click on https://n9.cl/k74im.**

Section Three: Removing the jurisdiction of the ordinary judiciary and excluding it from hearing some cases

Since July 1952, the ruling regimes - the military - wanted to remove some cases of a political nature from the ordinary judiciary, and therefore successive regimes established some "exceptional" courts and gave them jurisdiction over some crimes, such as the establishment of the Treachery Court, the Revolutionary Court, the Values Court, the Parties Court, and the Supreme State Security Court.

It is no secret that these courts are not held by natural judges chosen in accordance with the terms of the Judicial Authority Law, but are shared by other members, whether military officers or civilians who are confident and whose loyalty to the authority is biased to ensure that judgments are issued in accordance with the will of the authority and not the law according to the prevailing political trend at the time. Although the executive authority controls the inputs of the judiciary and controls the judicial authority with the laws it issues and interferes in the work of judges and the possession of their destinies, as we have already explained, this was not enough - for the ruling authorities - especially in some political cases. Therefore, these exceptional courts were established and expanded in their jurisdiction to fully control the judgments issued by these courts, which are often to get rid of political opponents with quick judgments and escape from the control of the Court of Cassation by appealing before them, as these courts did not entitle the accused before them the right to appeal judgments such as the State Security Emergency Court, as well as the military courts until recently.

Of course, we cannot talk about any independence of the judiciary. There are many laws that remove the natural judiciary and deprive it of some of the cases that are already within its jurisdiction. These laws that remove the jurisdiction of the ordinary judiciary in jurisdiction include the Emergency Law, the Military Justice Law, and the Law on the Protection of Public Facilities and Facilities. These laws affect the independence of the judiciary and the disqualification of the natural judiciary, before which the defendant has the right to a fair trial in which he has fair and equitable trial guarantees and standards.

Paradoxically, the state has so far maintained the transfer of jurisdiction to military courts and expanded the issuance of decisions and laws that extract some crimes and cases from the natural judiciary, despite the clear constitutional violation of these courts in accordance with the Constitution, which prohibited the establishment of exceptional courts in Article 97, 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. "

This text is clear and unambiguous and recognizes the right of citizens to appear before their natural judge in order to achieve the principle of equality before the law and the judiciary, especially since the trial procedures before these courts are different from the procedures before the ordinary judiciary, and this is evident, for example, and not limited to the inability of the judgments issued by the Supreme State Security Emergency Court to be challenged, which represents a serious violation of the guarantees of a fair trial, as well as the speedy adjudication of judgments by military courts without the defendants before them obtaining their constitutionally guaranteed rights such as the right to defense and access to the case file, in contrast to the legal and constitutional violations faced by the formation of the court, which is controlled by military officers.

It is worth mentioning that there are many judicial precedents that emphasize the principle of the right to resort to the natural judge and not to expand the exceptional judiciary, as the Egyptian Supreme Courts ruled that:

"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, as 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 the procedural or financial obstacles that surround them, to be a burden on them, preventing them from requiring the rights they claim, and they establish judicial litigation to request it, 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 whom they dispute, and without regard to 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. "[88]

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

It also ruled in another precedent 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 their requirement according to unified standards when the conditions of their request are met, nor in the methods of appeal that regulate them, but the same rights must have unified rules, whether in the field of litigation, defense, performance, or appeal against the provisions that relate to them.[89]

The right to have recourse to a natural judge in the International Bill of Human Rights.

We have already mentioned that the right of habeas corpus before the ordinary or natural judiciary is a right that stems from the right to equality before the law and the judiciary, which requires that people be represented in the same way and judicial procedures before the same courts so that litigants achieve judicial satisfaction and a general sense of justice, and then citizens have confidence in the justice system, which leads them to resort to it and trust in the rulings issued by it, which ultimately affects the reduction of the spread of crime, and the confidence of the General Assembly in the justice facility.

[89] Judgment of the Court of Cassation for Appeal No. 15329 of the judicial year 79 - 28/10/2017 session.

International law has singled out several provisions that emphasize these rights, as Article 14 of the International Covenant on Civil and Political Rights 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 any civil action, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law …..”.

Article 5 of the **Guidelines on** the **Independence of** the Judiciary states 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. ”

The Justice Conference held in April 1986 noted in its recommendations that:

"Any law that deprives a citizen of the right to have recourse to their natural judge by creating an exceptional judiciary to replace – for them – the natural judiciary, is necessarily unconstitutional."

The Arab Charter on Human Rights stipulates in Article 4 that:

"1. In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States Parties to the present Charter may take measures derogating from their obligations under the present Charter to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin.

2- In time of public emergency, the provisions of article 5, article 8, article 9, article 10, article 13, article 14, paragraph 6, article 15, article 18, article 19, article 20, article 22, article 27, article 28, article 29 and article 30 shall not be derogated from, nor shall judicial guarantees necessary for the protection of those rights be suspended. "

In the following, we will talk about the exceptional judiciary, which is represented in the existence of the Supreme State Security Emergency Court, and the military judiciary as exceptional courts that affect the functioning of criminal justice and violate the Constitution and international law. Then, we will discuss and analyze the terrorism circuits that consider the crimes that occur in violation of the Anti-Terrorism Law as being, although they do not represent an exceptional judiciary, but by following the judgments issued by them and the procedures that take place before them, there are many serious violations that violate the guarantees of a fair trial.

The first topic: Supreme State Security Courts Emergency

The jurisdiction of the Supreme State Security Courts is linked to the existence and non-existence of the declaration of the state of emergency, as once it is declared, jurisdiction is held over it in crimes and cases that are determined by a decision of the President of the Republic. Despite the termination of the state of emergency on October 25, 2021, the Supreme State Security Court, according to the decision of the President of the Republic issued to cancel it, will still have jurisdiction in the consideration of cases that have already been referred to it before the issuance of the decision to cancel the extension of the state of emergency. Before talking about what affects the independence of the judiciary in this court, we will address the extent of the constitutionality of the formation of the Supreme State Security Court of Emergency and its impact on fair trial guarantees.

The constitutionality of the formation of emergency state security courts

Article 7 of the Emergency Law No. 162 of 1958 states that:

The subordinate (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 substitute.

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 penalty of 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.

If the President of the Republic is authorized to issue decisions to appoint judges of the ordinary judiciary, but this appointment is based on the nomination of the Supreme Judicial Council, and therefore the President of the Republic is not free to choose judges, but his role depends only on the issuance of the decision to appoint, in accordance with the text of Article 44[90] of the Judicial Authority Law. However, in the event of the formation of an emergency state security court, the President of the Republic intervenes directly in the selection and appointment of judges after taking the opinion of the Minister of Justice, who is also affiliated to the executive authority, which undermines any independence of this court from the executive authority and its will, and makes the President of the Republic dominate the judicial platform and thus dominate the judgments issued by it.

This is not only what is wrong with the formation of the Emergency State Security Court, but the most irregular is the possibility of including military officers in the formation of the court, after taking the opinion of the Minister of Defense, which completely violates the principle of appearing before the natural judge on the one hand, and on the other hand, appointing military officers who are strict and comply with military orders and placing them side by side with civilian judges is a violation of the criteria for selecting the judge, which must be flexible, broad-minded and wise in balancing the rigid legal rules and taking into account the spirit of the law according to the case papers before him, which is contrary to logic, as the officers are raised in a rigid manner and follow military orders, otherwise the law does not require the need for legal knowledge or the study of the law in those who are chosen as judges.

More seriously, Article 8 of the Emergency Law has allowed the court to be composed of military officers only, that is, the possibility of the absence of any judge of the ordinary courts in the formation of the chambers of these courts, as it stipulates that:

"In areas subject to a special judicial system or in certain cases, the President of the Republic may order the formation of the State Security Services provided for in the preceding article by officers, in which case the court shall apply the procedures stipulated by the President of the

[90] Article 44 of the Judicial Authority Law stipulates that "Judicial posts shall be filled either by appointment or by promotion by a decision of the President of the Republic.
The President of the Court of Cassation shall be appointed by a decision of the President of the Republic from among the seven most senior Vice-Presidents of the Court, for a period of four years or for the remaining period until he reaches retirement age, whichever is earlier, and for one time throughout his term of office. The Vice-Presidents of the Court of Cassation shall be appointed with the approval of the Supreme Judicial Council based on the nomination of the General Assembly of the Court of Cassation. The Chancellor of the Court of Cassation shall be appointed with the approval of the Supreme Judicial Council from among two candidates, one of whom shall be nominated by the General Assembly of the Court of Cassation and the other shall be nominated by the Minister of Justice. The presidents, vice-presidents, and advisers of the Courts of Appeal, the presidents of the Courts of First Instance, and the judges shall be appointed with the approval of the Supreme The date of appointment or promotion shall be deemed from the date of approval or taking the opinion of the Supreme Judicial Council, as the case may be. "

Republic in the order of their formation. In this case, the Supreme State Security Department shall be composed of three commanding officers, and one of the officers or a member of the Public Prosecution shall perform the function of the Public Prosecution. "

Thus, the formation of the State Security Services involves major constitutional and international violations that undermine the principle of the independence of the judiciary as well as the right of the accused to appear before his natural judge, as the Constitution stipulates in Article 97 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. "

However, the State Security Courts, in addition to being exceptional courts, include in the formation of their chambers officers who are not chosen in the normal way stipulated in the Judicial Authority Law in Article 38 [91]and do not meet the conditions of appointment that make the person appearing before them, whether the accused or the defense assigned to him, unsure of the extent of their legal knowledge and, of course, the impartiality and independence of the judgments issued by them.

What increases the suspicion of unconstitutionality that haunts the State Security Emergency Courts and the Emergency Law in its entirety is that these rulings - issued by these officers who have become judicial and do not have a strong knowledge of the law - are not subject to appeal in any way, and are not subject to the control of the Court of Cassation, as Article 12 of the Emergency Law stipulates that:

"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."

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[91] Article 38 of the Judicial Authority Law stipulates, with regard to the conditions of appointment of judges, that "Those who are assigned to the judiciary are required to:
(1) To have the nationality of the Arab Republic of Egypt and full civil capacity.
(2) Not less than thirty years of age if the appointment is in the courts of first instance, not less than thirty-eight years of age if the appointment is in the courts of appeal, and not less than forty-one years of age if the appointment is in the court of cassation.
(3) To hold a law degree from one of the faculties of law in the universities of the Arab Republic of Egypt or an equivalent foreign certificate and in the latter case to pass the equivalence exam in accordance with the relevant laws and regulations.
(4) He must not have been sentenced by the courts or disciplinary boards for a dishonourable order, even if he has been rehabilitated.
(5) To be of good conduct and reputation. "

This is a clear violation of the provisions of the Constitution that guarantee litigation in two degrees, which is stipulated in Article 96 of the Constitution:

"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 where appropriate, in accordance with the law. ”

In a case law, the Supreme Constitutional Court affirmed the right of the accused to appeal against the judgment issued against him and the need for litigation to be in two degrees, as it ruled 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 to litigation in matters that adjudicate in a single 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 curvature or as a means of transferring the dispute in its entirety, and in full the elements contained in it to the appellate court, to postpone its consideration again, as a single judgment on this dispute does not provide a sufficient guarantee that takes into account justice, and ensures the effectiveness of its management in accordance with the levels committed by civilized countries[92]."

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

In addition to the inadmissibility of the civil claim before these courts, as stipulated in Article 11 of the Emergency Law, which stipulates that:

"A civil action shall not be admissible before the State Security Courts."

The violation of the right to litigation and its restriction and the loss of the right of the victim to compensation for the damage caused by the crimes that have become the jurisdiction of the State Security Courts, which violates the principle of equality before the litigation authorities.

This is contrary to what is stipulated in Article 9 of giving the executive authority the power to determine the competencies of the State Security Courts by an administrative decision and not by a law, as it states:

"The President of the Republic or his substitute may refer to the State Security Courts the offences punishable by public law."

This violates the principle of the mandatory nature of the rules of judicial jurisdiction, which are jus cogens rules related to public order, as well as the principle of equality before the law and the judiciary guaranteed by Article 53 of the Constitution, which states that:

“Citizens are equal before the law in public rights, freedoms and duties, without discrimination on the grounds of religion, creed, sex, origin, race, colour, language, disability, social level, political or geographical affiliation, or any other reason.”

Thus, political affiliation should not be a reason for discrimination among citizens before the law, and since most cases of a political nature are those in which jurisdiction is held for emergency state security courts, leaving the political opponents of the state to be tried before these courts in these procedures that are unfair to the standards of justice is tantamount to abuse and liquidation of everyone who is begged by himself and led by his misfortune to oppose the public policy of the state and disagree with the ruling authority.[93]

[93] A memorandum of the legal arguments to challenge the unconstitutionality of the Supreme State Security Courts submitted by Hisham Mubarak Law Center in Case No. 670 of 2008 Emergency State Security Crimes. To view the memorandum, please click on the link https://qadaya.net/?p=4638.

The matter does not end with these serious violations of the independence of the judiciary and the rights of the accused in the Emergency Law. Even the outputs of the State Security Judiciary are emergencies that do not escape the intervention of the executive authority, do not enjoy any independence, and do not have the force of res judicata. The judgments issued by these courts are also fully subject to the President of the Republic, who has the right to file the case before submitting it to the court, as well as ordering the release of the accused in accordance with Article 13 of the Emergency Law, in addition to the possibility of commutation, replacement, or revocation of the judgment by the President of the Republic under Article 14. The judgment is not considered final until it is also ratified by the President of the Republic, who can revoke it even after it has been ratified in accordance with the text of Article 15 of the Law. [94]

What is also contrary to the logic and legal principles stipulated in the Constitution is that at the end of the state of emergency, the State Security Emergency Court remains competent in the cases that are already referred to it, which was faced by a number of defendants in connection with cases referred to the Supreme State Security Court during the continuation of the state of emergency and before the declaration by the President of the Republic to cancel the state of emergency on October 25, 2021. Thus, despite the termination of the state of emergency, the cases referred to it - before the termination of the state of emergency - remained pending before it, according to the text of Article 19 of the State of Emergency Law, which stipulates that:

[94] Article 13 of the Emergency Law 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." Article 14 also stipulates that "the President of the Republic may, when presenting the verdict 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 verdict 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.
Article 15 also stipulates that "the President of the Republic, after ratifying the guilty verdict, may annul the verdict with the dismissal of the case or reduce the penalty or suspend its execution as indicated in the previous article, all of this unless the crime for which the verdict was issued is a felony of murder or participation in it."

"At the end of the state of emergency, the State Security Courts shall remain competent to hear cases referred to them and follow up on them in accordance with the procedures followed before them. As for crimes in which the accused have not been brought before the courts, they shall be referred to the competent ordinary courts and the procedures in force before them shall be followed."

This means that all unjust articles in the Emergency Law remain a sword over the defendants referred to the Supreme State Security Court, even after the end of the state of emergency, foremost of which is the inability to appeal its rulings in any way, the denial of civil prosecution, and the survival of all the powers granted to the President of the Republic to ratify the rulings issued by it.

It is noted that cases have been under investigation before the State Security Prosecution for years and are being remanded in custody, accused in cases of a political nature. These cases were referred to the court despite the many and urgent demands of the defense body only a few days before the announcement of the end of the emergency, which means that these cases continue to be considered before the State Security Court.

For example, Case No. 1228 of 2021, an emergency state security misdemeanor, in which both lawyer Muhammad al-Baqir and activists Alaa 'Abd al-Fattah and blogger Muhammad Radwan are accused. Although this case remained under investigation before the Public Prosecution for nearly two years, the State Security Prosecution referred it to the court only a few days before the announcement of the end of the state of emergency, which reflects the extent of the control and control of the political leadership in these state security courts and prosecutors and the extent of the insistence on the appearance of these defendants even after the end of the state of emergency before the State Security Court and the deliberate closure of any opportunity for them to receive a fair and equitable trial before the natural judiciary. The ruling in this case was issued by the State Security Court on December 20, 2021, 5 years in prison for activist Alaa' Abd al-Fattah, and 4 years for human rights lawyer Muhammad al-Baqir and blogger Muhammad Radwan (Oxygen).[95]

[95] **A statement of civil society organizations published on the website of the Egyptian Initiative for Personal Rights entitled - We reject the disgraceful ruling against activists Muhammad al-Baqir, Alaa Abdel Fattah and Muhammad Radwan and call on the President of the Republic to cancel the ruling - For more information, click https://n9.cl/dnyzui.**

The Constitutional Court had an important ruling that defines the controls and features that must be available in the judicial authority to grant it judicial status, as it ruled that:

"The jurisdiction of this court has been based on the distinction between judicial acts and other acts that are ambiguous, 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 the 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 litigation by decisive decisions that are not subject to review by any non-judicative 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 legal 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." [96]

The formation of the Supreme State Security Courts violates international law:

International law rejects the establishment of exceptional courts for violating the principle of equality before the law and the judiciary, as well as the principle of recourse to the natural judge

Article 8 of the Universal Declaration of Human Rights states 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.”**

Likewise, Article 10 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."**

Also, the International Covenant on Civil and Political Rights, with regard to exceptional circumstances that require States to declare a state of emergency and to take exceptional measures, stressed that such measures should not affect the obligations of States under the

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

Covenant, and that such measures should not entail inequality and discrimination, as article 4 of it stipulates that:

"In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States Parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin.

2. This provision does not allow any violation of the provisions of Articles 6, 7, 8 (paragraphs 1 and 2), 11, 15, 16 and 18.

3. Any State Party to the present Covenant availing itself of the right of derogation shall immediately inform the other States Parties, through the intermediary of the Secretary-General of the United Nations, of the provisions from which it has derogated and of the reasons therefor. It shall, on the date on which it terminates the derogation, inform it of this again and in the same way. "

Also, with regard to the right of the accused to appeal judgments and litigate in two degrees, the International Covenant on Civil and Political Rights - which Egypt signed on January 14, 1982, and which was published in the Official Gazette on April 14, 1982- stipulated in Article 14/5 that **"every person convicted of a crime shall have 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 by 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:**

A- The right to have recourse 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/military justice, the violation of fair trial guarantees, and the expansion of the trial of civilians before it

Military justice is an exceptional and special judiciary that is competent to try members of the armed forces as well as the crimes related to them. The procedures followed before these courts and their formation are governed by the Military Justice Law No. 25 of 1966.

However, the authority in Egypt always circumvents the law to bring more crimes, complicate the jurisdiction to consider military courts, and expand the appearance of civilians before them because there are greater opportunities for violations of fair trial guarantees before this judiciary to allow political opponents to be eliminated and tried in speedy trials that lack justice.

After the January 2011 revolution, the number of civilians referred to the military judiciary increased according to the decisions of the Military Council, which took over the management of the post-revolution transitional period. However, many citizens, legal practitioners, and a number of civil society organizations objected to the trial of civilians before military courts. The "No to Military Trials for Civilians" campaign was launched, which pressured the Military Council to stop referring civilians before the military judiciary, forcing the Military Council to retreat in referring large numbers to the military judiciary until the investigation papers in the famous case of "Maspero", in which a large number of Egyptians were killed, were referred to the ordinary judiciary to resume investigations.[97]

The ruling regime quickly retreated from this course of action and the situation returned to the increased frequency of trying civilians before the military judiciary, especially after President Abdelfattah ElSisi assumed power, and amended the constitution in 2019 to expand the jurisdiction of the military judiciary, try civilians before it, and even issue laws for some crimes in which the military judiciary has jurisdiction, such as the Law on the Protection of Public Facilities and Facilities.

[97] A position paper prepared by the Hisham Mubarak Law Center on the problem of trying civilians before the military judiciary entitled "How to end the file of military trials for civilians". To view the paper, please click on the link https://cutt.us/ygGgE.

After the end of the state of emergency - which remained for nearly four years - which complicates jurisdiction to the State Security Courts in some crimes, most of which are of a political nature, the authority ended the state of emergency with the transfer of jurisdiction to the military judiciary or terrorism departments, which are not much different from these courts with regard to violations and violations that require a fair trial, despite the abolition of Article 6, [98]which allowed the President of the Republic to refer certain cases to the military judiciary, but this is circumvented by issuing and amending laws that make the military judiciary competent to try those accused of crimes that occur in violation of its provisions, which makes the executive authority control the quality of cases that are considered before the military judiciary.

The military judiciary faces most of the criticisms faced by the State Security Courts as emergencies, as both deprive those who appear before them of the right to resort to their natural judge other than violating the principle of equality before the law and the judiciary, and therefore the contract of jurisdiction should not be expanded to such courts and the need to completely prohibit the trial of civilians before the military judiciary and to remain a special judiciary for cases that are closely related to the armed forces.

[98] Before its repeal by Law 21 of 2012, Article 6 of the Military Provisions Law stipulated that "taking into account the provisions of the previous article, the provisions of this law shall apply to the crimes stipulated in Title I and II of Book II of the General Penal Code, which shall be referred to the military judiciary by a decision of the President of the Republic."

1. Formation of military courts:

The formation of military courts violates the principle of separation of powers and then the independence that must be provided to the judicial authorities. The judges of the military courts are all officers of the armed forces, which also violates the principle of the natural judge. Although Article 2[99] of the Military Justice Law No. 25 of 1966 stated that the appointment is subject to the same conditions for the appointment of judges in accordance with the provisions of Articles 38 and 116 of the Judicial Authority Law, the judges are originally officers of the armed forces affiliated with the Conditions of Service and Promotion of Officers of the Armed Forces Law No. 232 of 1959. Article 44 of the Military Justice Law stipulates that:

> **The Military Criminal Court shall be composed of several Chambers, and each Chamber shall be composed of three military judges presided over by the most senior of them, provided that his rank is not less than a colonel, and in the presence of a representative of the Military Prosecution.**
> **It is competent to hear cases of felonies.**

[99] **Article 2 of the Military Provisions Law No. 25 of 1966 stipulates that "the military judiciary shall consist of a president and a sufficient number of members who meet, in addition to the conditions stipulated in the Law on the Conditions of Service and Promotion of Officers of the Armed Forces promulgated by Law No. 232 of 1959, the conditions stipulated in Article 38 of the Judicial Authority Law promulgated by Law No. 46 of 1972.**
The occupants of the functions of the military judiciary shall be the same as their peers in the judiciary and the Public Prosecution, as shown in the attached table, in the field of application of this law.

Article 45 further states that:

> **The Military Court of Appeal for Misdemeanors shall be composed of several Chambers, and each Chamber shall be composed of three military judges presided over by the most senior of them, provided that his rank is not less than a lieutenant colonel, and in the presence of a representative of the Military Prosecution.**
> **It is competent to consider appeals submitted by the Military Prosecution or those sentenced in the final judgments issued by the Military Court of Misdemeanors.**

This is the case with the formation of the Military Court of Misdemeanors, whose chambers are composed of one judge whose rank is not less than a major, and in the presence of a representative of the Military Prosecution in accordance with the text of Article 46.

Otherwise, the appointment of military judges shall be made through the Minister of Defense in accordance with the provisions of Article 54, which stipulates that:

> "**The appointment of military judges shall be issued by a decision by the Minister of War based on the proposal of the Director of Military Justice**."

As well as the appointment of the head of the military judiciary shall be by the President of the Republic in accordance with the text of Article 55 of the law, which stipulates that:

> **The head of the Military Judiciary shall be appointed by a decision of the President of the Republic from among the seven oldest members of the Military Judiciary, for a period of four years or until his turn to retire, whichever is earlier, and for one time throughout his term of office.**

All of these provisions are incompatible with any independence of the military judiciary from the executive authority, and any independence from the mental education of the officers of the armed forces in following orders and complying with leaders, even if without their will, which are all qualities that contradict and contradict the qualities that the judge must have, and who must not leave room to influence him and his conscience from any party or authority so that his provisions are consistent with the law and the constitution, which seeks the victory of right and justice and the preservation of the confidence of the arbitrators before him and then the confidence of citizens in the justice facility.

Previously, these provisions could be justified when the jurisdiction of the military judiciary was to try only military personnel and specific crimes on an exceptional basis - although the trials of this category must have all fair trial guarantees without derogating any constitutional and international guarantee, the most important of which is the independence of judges from the executive authority - but with the expansion of the appearance of civilians before the military judiciary, as well as the crimes that occur in violation of the provisions of the new laws, especially with the increasing role of officers of the armed forces and giving them the authority of the judicial police established under the Terrorism Law and the Emergency Law as well as the Law on the Protection of Public Facilities and Facilities, the dependence of military judges to the executive authority and the Ministry of Defense is very serious and challenges any independence of the judiciary or the provision of the minimum guarantees of a fair trial, especially the appearance of persons before their natural judge, the ordinary judiciary.

Only the military judiciary determines the issues within its jurisdiction, as Article 1 of the Military Rulings Law stipulates that:

"The military judiciary is an independent judicial body, consisting of military courts and prosecution offices and other branches of the judiciary in accordance with the laws and regulations of the armed forces. The military judiciary shall have exclusive jurisdiction over the crimes within its jurisdiction in accordance with the provisions of this law and other crimes it has jurisdiction over in accordance with any other law. The military judiciary shall be a body affiliated with the Ministry of Defense. "

Articles 4 and 5 dealt with the determination of the jurisdiction of the military judiciary, as Article 4 stipulates that:

"The following persons shall be subject to the provisions of this law:

1- Officers of the main, subsidiary and additional armed forces.

2- Non-commissioned officers and soldiers of the armed forces in general.

3- Students of schools, vocational training centers, institutes and military colleges.

4. Prisoners of war.

5- Any military forces formed by order of the President of the Republic to perform public, private or temporary service.

6- Military personnel of the Allied Forces or their attachés if they reside in the territory of the United Arab Republic, unless there are special or international treaties or agreements stipulating otherwise.

7- Military attachés during field service, namely:

Every civilian who works in the Ministry of War or in the service of the armed forces in any way whatsoever. "

As well as Article 5, which was amended by Law No. 138 of 2010 to expand the trial of civilians before the military judiciary, as it now stipulates that**:**

The provisions of this law apply to anyone who commits one of the following crimes:

(a) Crimes that occur in camps, barracks, institutions, factories, ships, aircraft, vehicles, places or shops occupied by the military for the benefit of the armed forces wherever they are located.

(B) Crimes that occur on equipment, missions, weapons, ammunition, documents, secrets of the armed forces and all their belongings.

(c) Crimes that occur in the areas adjacent to the borders of the Republic, and the delimitation of these areas and the rules regulating them shall be determined by a decision of the President of the Republic.

(d) Crimes stipulated in Chapters I, II, III, IV, and V, as well as in Article 137 bis (a) of Chapter Seven of Book Two of the Penal Code, and in Chapter Fifteen of Book Three of the aforementioned Law, if committed by or against a worker in military factories.

As well as all crimes committed against the installations, machines, equipment, or missions of military factories, their funds, the raw materials they use, their documents, secrets, or any other of their belongings. "

Thus, the article has made the jurisdiction of the military judiciary for civilians working in military factories, as well as for all perpetrators of the crimes mentioned in clauses (c) and (d), even if committed by civilians, in a way that expands the jurisdiction of the military judiciary, especially since the armed forces have become a partner of the police authority in securing facilities and many vital places, which increases the opportunity to try many civilians before it without justification, which violates the right to resort to the natural judge and then violate the guarantees of a fair trial.

It is worth mentioning that the military courts, like the State Security Courts, were emergency courts whose rulings are not challenged in any way. However, the Military Justice Law was amended by Law No. 16 of 2007 issued on 23 April 2014, which allowed the appeal against the rulings issued by the military courts and established the Supreme Court of Military Appeals. Then, in another amendment under Law No. 12 of 2014, the names of the military courts were amended as an attempt to harmonize and give compatibility between the ordinary and military judiciary. [100]

[100] **Article 43 of the Code of Military Justice states: "Military courts are:**
1-The Supreme Military Court of Appeals.
2-The Military Criminal Court.
3-The Military Court of Appeal for Misdemeanors.
4-The Military Court of Misdemeanors.
Each of them shall have exclusive jurisdiction to hear lawsuits and disputes brought before it in accordance with the law. "

2. The inadmissibility of claiming a civil right before military courts:

One of the most prominent disadvantages of the military judiciary - like the Supreme State Security Courts - is the non-acceptance of the civil claim before it by the victim or those who have suffered damage from the criminal crime, in accordance with the text of Article 49 of the Military Justice Law, which stipulates that:

> **The prosecution of civil rights is not admissible before the military courts, except that they shall order restitution and confiscation in accordance with the provisions of this law.**

The Criminal Procedure Law No. 150 of 1950 may, in accordance with the text of Article 251, allow anyone who has suffered damage from a criminal crime the right to claim a civil right before the court before which the lawsuit is pending. The criminal judge may decide on this claim and rule on temporary material compensation for the damage caused to the injured person by the crime committed. However, the military judiciary does not allow this, so the civil rights claim is not accepted before the military courts.

The legislator has decided this right for anyone who has suffered direct personal harm arising from the crime and who has achieved the occurrence as a quick and reparative measure, and therefore this advantage will not be achieved for victims in the crimes that the military judiciary has jurisdiction over, which violates the principle of equality before the law, which requires the hearing of the case for the accused and the victim with the same procedures, subject to the same legal texts, and providing equal protection for all rights, especially since the Code of Criminal Procedure requires the suspension of the adjudication of the civil lawsuit before the civil courts if it has already been established until the adjudication of the original lawsuit before the criminal court and the verdict becomes final, according to the text of Article 265 of the Code of Criminal Procedure. In the case of judgments issued by the military courts, the verdict becomes final only after the ratification of the President of the Republic on the verdict, which represents another form of violation of the principle of equality before the law, other than the fact that the Code of Military Judgments does not require a specific period for the ratification of the judgments issued, and therefore the judgment in the civil compensation case will be suspended indefinitely, which violates the principle of equality before the law and the courts.

Third: The judgments issued by the military judiciary shall not become final until they are ratified by the President of the Republic:

According to the general rules, the present judgments issued against the accused by the courts of first instance of various kinds do not have authority, while the judgments become final when they are issued by the court of second instance and are final when the methods of appeal are exhausted due to the expiration of the legal periods for the dates of appeal, or issued by the Court of Cassation. Whether the judgments are final or final, they require the implementation of the judgment issued immediately after its issuance. These general rules are not applied in the Military Justice Law, as the judgments issued by the military courts do not become final until they are ratified by the President of the Republic, which is considered interference in the work of the judiciary that violates its independence. It also makes the judgments subject to the control of a non-judicial body, which is the President of the Republic subordinate to the executive authority.

Article 84 of the Military Justice Law stipulates that:

> **The judgments shall not become final until they have been ratified in the manner specified in this law.**

Article 97 of the Military Judiciary also stipulates that:

> **The President of the Republic or his delegate shall ratify the rulings of the military courts, and the officer to whom this authority was originally given by the President of the Republic may delegate to any of the officers he deems fit the authority to ratify the rulings of these courts**.

Thus, the Military Justice Law has granted the President of the Republic the right to authorize any officer he deems fit to ratify the judgments. Not only that, the officer authorized by the President of the Republic has the right to authorize other officers to certify the judgments of the military courts. Therefore, this article deviated from the general rules of authorization when it allowed the officer authorized by the President of the Republic to ratify the judgments of the military courts, to authorize others to exercise that authority, as the general rules stipulate that there is no authorization to delegate, which is what the Supreme Administrative Court ruled that:

"It is established in jurisprudence and jurisprudence that the delegation that is permissible in accordance with the general rules is directed to the original competencies that the commissioner derives from the laws and regulations directly. As for the competencies that the administrative head derives from a higher authority based on the rules of delegation, he may not delegate them, but he must exercise these competencies delegated in himself pursuant to the rule that there is no delegation of delegation."[101]

The Military Judiciary Law also made military rulings subject to the control of the executive authority represented by the President of the Republic, which challenges the independence of the military judiciary and represents a serious violation of the principle of separation of powers and the independence of the judiciary, because the President of the Republic or whoever he authorized to ratify the judgment in accordance with the text of Article 99 thereof, may reduce the sentences imposed or replace them with a lesser penalty, cancel all or some of the penalties of any kind, whether original, supplementary or consequential, suspend the execution of all or some of the penalties, and cancel the sentence while keeping the case or ordering a retrial before another court. Article 99 of the Military Justice Law stipulates that:

The officer vested with the certifying authority shall have, when the judgment is presented to him, the following powers:

1- Reducing the sentenced penalties or replacing them with a lesser penalty.
2- Cancellation of all or some of the penalties of any kind, whether original, complementary or consequential.
3- Suspension of the execution of all or part of the penalties.
4- Cancellation of the judgment with the dismissal of the case or ordering a retrial before another court.
In this case, the decision must be reasoned. "

[101], the judgment of the Supreme Administrative Court in Appeal No. 11696 of 50 S issued at the session of July 3, 2007 and published in the first part of the book of the Technical Office No. 52, rule No. 124, page No. 819, and see also its judgment in Appeal No. 1265 of 41 S issued at the session of August 26, 2002 and published in the book of the Technical Office No. 47, rule No. 126, page No. 1150.

Article 100 of the same law also stipulates that:
"If the verdict is issued after a retrial as a judge of acquittal, it must be ratified in all cases. If the verdict is guilty, the certifying officer may commute the sentence, suspend its execution, or notify it in accordance with what is indicated in the previous article. He may also cancel the judgment while filing the lawsuit. "

Thus, the judgments issued by the military judiciary are subject to the control of the executive authority and their implementation depends on the acceptance of this authority, which is categorically contrary to the Constitution, international laws and legal principles followed by the judiciary. Article 94 of the Constitution explicitly stipulates the independence of the judiciary in the second paragraph, which states that:

“The rule of law is the basis of government in the state. The State shall be subject to the law, and the independence, immunity and impartiality of the judiciary shall be fundamental guarantees for the protection of rights and freedoms. "

Article 184 also considers interference in the affairs of justice a crime that does not fall under the statute of limitations, as it 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 statute of limitations."

In addition to the fact that the ratification of judgments and that the judgment does not become final until it is ratified violates the principle of the independence of the judiciary, it also violates the principle of equality before the law, which requires that persons be subject to the same procedures and penalties and that the punishment not be applied selectively, especially since the law did not place any restrictions on the authority of the ratifier and thus the application of judgments according to the political will and whims of authority.[102]

The jurisprudence of the Egyptian courts has linked the independence of the judiciary with the right to judicial satisfaction and recourse to the judiciary and considered that non-compliance and the implementation of its rulings wastes the judicial authority and loses its value and represents interference in its most special affairs, and an aggression against its jurisdiction, as it ruled that:

[102] **The Legal Agenda is an article entitled “Civilians before the Egyptian Military Judiciary: Is there a margin for a fair trial? "For more information, please click on the link https://cutt.us/kubXg.**

"Judicial satisfaction, which is not accompanied by the means of its implementation, to make those bound to it to submit to it, becomes an illusion and a mirage, and loses its value by action, which leads to depriving it of its force of enforcement, wasting the rights that it has guaranteed, disrupting the role of the judiciary in the field of securing it, and depriving it of the right to resort to it of all content. It is also an interference in its most special affairs, and an aggression against its mandate, in a way that reduces its role, and affects the borders that separate it from the legislative and executive authorities. This is supported by the fact that the judicial protection of the right or freedom - on the basis of the rule of law and subject to its provisions - is necessary to enable it to be required, and to work for its implementation, even by the use of force when necessary. "[103]

[103] **Supreme Constitutional Court - Case No. 15 of 17 Judicial - Constitutional - dated 1995-12-02.**

Fourth - Expanding the trial of civilians before the military judiciary:

In the last ten years, some laws have been issued that complicate jurisdiction for crimes that occur in violation of their provisions to the military judiciary in order to consolidate the removal of the jurisdiction of the ordinary judiciary from some cases, especially those of a political nature, in conjunction with the end of the state of emergency, which led to the removal of the jurisdiction of the emergency state security courts – except in cases already referred by the State Security Prosecution to the Emergency State Security Court, which the latter will continue to initiate and then issue judgments in them – but the ruling authority and the legislator replaced the state of emergency with laws through which the authority continues to take the same measures it takes by declaring a state of emergency such as what is stipulated in Article 53 of the Anti-Terrorism Law, as well as issuing laws such as the Law on the Protection of Public Facilities and Facilities, in addition to amending the Egyptian Constitution in 2019 to give constitutional legitimacy to the trial of civilians before the military judiciary. [104]

Article 204 of the 2014 Constitution states that:

[104] **Article 53 of the Anti-Terrorism Law 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 evacuating, isolating or curfewing some areas, provided that the decision includes the designation of the area applicable to it for a period not exceeding six months, as well as the designation of the competent authority to issue decisions implementing these measures.**
This decision must be submitted to the House of Representatives within the following seven days to decide what it deems appropriate. If the House is not in the ordinary session, it must be invited to convene immediately. If the House does not exist, the approval of the Council of Ministers must be obtained, provided that it is submitted to the new House of Representatives at its first meeting. The decision shall be issued with the approval of the majority of the members of the House. If the decision is not submitted within the aforementioned date or presented and not approved by the House, the decision shall be deemed null and void unless the House deems otherwise.
The President of the Republic may extend the duration of the measure referred to in the first paragraph of this article after the approval of a majority of the members of the Chamber of Deputies.
In urgent cases, the measures referred to in this article shall be taken by oral orders and shall be reinforced in writing within eight days. "

"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 conscription, or crimes that represent a direct assault on their officers or personnel 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, and shall have all the guarantees, rights, and duties prescribed for members of the judiciary. "

This article was amended by the constitutional amendments made to the Constitution in 2019. The amendment included the contents of the second paragraph of the article, which placed a condition on the trial of civilians before the military judiciary. The paragraph before the amendment stipulated that **"a civilian may not be tried before the military judiciary, except for crimes that represent** a **direct attack on military installations or camps of the armed forces and the like"to the end of the paragraph.**

The amendment came by removing the word "direct", which was followed by the word "aggression" as a crime that allows the trial of civilians before the military judiciary, as after the direct attack on military installations should have been a condition for the trial of civilians before the military judiciary, any attack, even if it was not direct, on military installations by any civilian capable of being tried militarily, was added, as well as the phrase **"or installations that protect them"**, which is not a minor amendment, according to which many laws were issued that introduce the army into civilian life and thus expand the trial of civilians before the military judiciary and give constitutional legitimacy to that, which led to an increase in the number of civilians being tried before the military judiciary, especially after the security of public installations and facilities was assigned to the armed forces with the participation of the police under the Law on Securing and Protecting Public and Vital Facilities in the State No. 3 of 2024, and thus this amendment to Article 203 of the Constitution was fortified from challenging any laws before the Supreme Constitutional Court regarding the trial of civilians before the military judiciary.

Law of Insurance and Protection of Public and Vital Facilities in the State No. 3 of 2024

Law No. 136 of 2024 on the protection of public facilities and utilities was not the first law of its kind issued by Parliament related to the intervention of the armed forces in civilian life and the participation of the police in the protection of public facilities and utilities. Rather, before this law, each of the decisions were issued by Law No. 1 of 2013 on the participation of the armed forces in the tasks of preserving and protecting vital facilities in the state - which gave judicial control to officers of the armed forces, with the jurisdiction of the ordinary judiciary in crimes that occur in violation of its provisions - as well as Law No. 136 of 2014 on securing and protecting public and vital facilities.

However, the last law issued in 2014 included Article 3, which stipulates that the law shall be applied temporarily only for two years, as it stipulates that:

"The provisions of this Decree-Law shall apply for a period of two years from the date of its entry into force."

This is due to the fact that the task of protecting public facilities is entrusted to the Police Authority, as well as because the law refers crimes committed in violation of its provisions to the Military Prosecution and then the Military Judiciary, which faced a constitutional problem because the Constitution at the time of the issuance of this law stipulated that civilians may not be tried before the military judiciary except in the case of direct attack on military installations or camps of the armed forces and the like - to the end of the paragraph - the decision by law was a clear violation of the Constitution, so it set a specific period for its application as an exception, but after amending Article 204 of the Constitution and allowing the trial of civilians before the military judiciary without setting the condition of direct aggression, as well as adding the phrase of attack on installations protected by the armed forces, the Constitution gave the military trials of civilians constitutional legitimacy, and the ruling regime finally promulgated the Law on the Protection of Public Facilities and Facilities without a specific period for the application of the law, andits application on a permanent basis, which undermines all the guarantees of a fair and equitable trial, foremost of which guarantees the right of the accused to appear before his normal judge and not the military judiciary.

Article 1 of Law No. 3 of 2024 on Securing and Protecting Public and Vital Facilities and Facilities in the State.

> **Without prejudice to the role of the armed forces in protecting the basic elements of the state, its security, the integrity of its territory, and the gains and rights of the people, the armed forces shall assist and fully coordinate with the police services in securing and protecting public and vital installations and facilities, including stations and networks of electricity towers, gas lines, oil fields, railway lines, road and bridge networks, and other public and vital installations and facilities, public property, and what is deemed equivalent thereto**.

Of course, according to the text of Article 4 of the Law, the military judiciary is competent to hear crimes that occur in violation of the provisions of the Law on the Protection of Public Establishments, as it states that:

> **Crimes committed against public and vital facilities and services to which the provisions of this law apply are subject to the jurisdiction of the military judiciary**.

These provisions are anchored to the incursion of the armed forces into civilian life, and the militarization of all facilities and installations of the Egyptian state. Of course, this incursion under Article 4 will be reflected in the ordinary judiciary, which is already competent in all crimes and violations, which in practice goes to the inevitability of bringing all Egyptian citizens before the military judiciary on charges that are not originally related to the armed forces and the army. There is no doubt that this expansion in the trial of civilians before the military judiciary violates the guarantees of a fair trial because it is an exceptional judiciary originally established to try military personnel and crimes that represent a direct attack on military installations. Therefore, it must not be expanded to ensure a fair trial with normal procedures for civilians in compliance with the principle of equality before the law and the judiciary, as well as the principle of appearing before a natural judge.

The Egyptian Supreme Courts have many case law that confirms that the military judiciary is an exceptional judiciary that should not encroach on the natural judiciary and take away its general jurisdiction over cases, as the Supreme Constitutional Court ruled that:

"It is established - pursuant to Article 15 of the Judicial Authority Law No. 46 of 1972 - that the ordinary judiciary is the origin and the ordinary courts are competent to hear all cases arising from acts constituting a crime in accordance with the Penal Code, which is the common law, whatever the person committing them, while the military courts are only special courts with exceptional jurisdiction entrusted with either the person committing them on the basis of a specific capacity that was available in the cases set out in Article 4 of the Military Judgements Law promulgated by Law No. 25 of 1966 or the specificity of the crimes in the cases set out in Article 5 of the same law. However, Article 7 of the same law in its second paragraph excludes from the jurisdiction of the military judiciary crimes committed by a person subject to the provisions of this law when he is with a partner or shareholder who is not subject to it. Whereas, it was established from the papers that although the defendant was one of the persons subject to the provisions of the Military Provisions Law as a first sergeant in the armed forces, the accusation attributed in Public Prosecution Case No. 3265 of 1987 was not limited to him, but with another who is not subject to the provisions of the Military Provisions Law, pursuant to Article "2/7" of the last law, the military judiciary is not competent to hear that lawsuit, and therefore jurisdiction over it is held by the ordinary judiciary, which has general jurisdiction. " [105]

It also ruled that the entry of the criminal case into the possession of a common law court prevented the jurisdiction of the military judiciary, as it ruled that:

"Emphasizing the origin of the jurisdiction of the ordinary judiciary, Article (4) of Law No. 25 of 1966 (the Issuing Law) was keen to exclude from the jurisdiction of the military judiciary all cases within its jurisdiction if they have been submitted to the competent judicial authorities, to the effect that the entry of the criminal case into the possession of a court of common law is a bar to the jurisdiction of the military judiciary. This rule, which is guaranteed by all legal systems and formulated by international charters." [106]

[105] **Judgment of the Supreme Constitutional Court - Case No. 11 of 11 Judicial Year - Dispute - dated 04/05/1991.**
[106] **Judgment of the Supreme Constitutional Court - Case No. 9 of 25 Judicial Year - Dispute - dated 04/04/2004.**

In addition, the Law on the Insurance and Protection of Public and Vital Facilities includes many general and broad terms that contradict the principles of the rules of criminalization and punishment that the terms must be specific and clear, as Article 2 stipulates that:

> **"The judicial officers of the armed forces shall cooperate in all the procedures prescribed by law for the judicial officers of the police to confront acts or infringements that would prejudice the functioning of public and vital facilities in the state or the services they perform, especially crimes that harm the basic needs of society in terms of goods and supply products, all in a manner that preserves the basic elements of the state, the gains and rights of the people, or the requirements of national security, which are issued by a decision of the President of the Republic or whoever he delegates after consulting the National Defense Council."**

Of course, this is the problem of all the new texts, including the provisions of the Anti-Terrorism Law, and we have discussed this in detail in the commentary on the Anti-Terrorism Law in the first part of this study, which relates to fair trial guarantees and the laws that violate them.

The Supreme Constitutional Court has many case law that confirms the need for penal texts to be drafted in a clear manner, not hidden or ambiguous, in order to implement the principle of the legality of crimes and penalties, as it ruled that:

"**The true scope of the principle of the legality of crimes and punishments is determined in the light of several guarantees, the foremost of which is the need to formulate penal texts in a clear and specific manner that does not hide or ambiguity. These texts are not nets or traps that the legislator casts by trolling for their breadth or concealment of those who fall under them or mistake their positions. These guarantees are intended for the addressees of penal texts to be aware of their truth, so that their behavior is not contrary to them, but rather consistent with them and descending on them.**"[107]

[107] **Supreme Constitutional Court - Case No. 50 of the year 37 Judicial - Constitutional - dated 02-03-2019, as well as Case No. 22 of the year 25 Judicial - Constitutional - dated 14-03-2015.**

This is contrary to what is stipulated in the last paragraph of Article 2 that "All this is in a manner that **preserves the basic components of the state, the gains of the people, their rights, or the requirements of national security, which are issued by a decision of the President of the Republic or whoever he authorizes after taking the opinion of the National Defense Council**."

This means that the acts that represent crimes against the basic elements of the state and national security - which are considered broad and general terms - will be determined by the President of the Republic through presidential decisions, which represents a serious violation of the principle of separation of powers and constitutional principles that represent controls for the legislator himself while he is in the process of issuing texts related to crimes and penalties. The criminal acts must be clear and conclusive so that the enforcement of the text is not linked to personal standards. Thus, one of the jurisprudence of the Supreme Constitutional Court has ruled that:

"**It is decided that the legislator has the discretionary authority in the field of regulating rights and duties - without prejudice to the public interest - to determine, on an objective basis and through the penal systems it approves, the elements of each crime without being imposed by the Constitution on it by its own methods to control them by definition, and without prejudice to the need for the acts criminalized by these systems to be conclusive in indicating the narrow limits of their limits, without ambiguity or overlap with legitimate acts protected by the Constitution. The ambiguity of the penal text - according to what has been done by the judiciary of this court - is intended for the legislator to be ignorant of the acts he has committed, so that their statement is not clear and their determination or understanding is not straightforward, but rather vague and hidden among people, by their disagreement about the content of the criminal penal text, its significance, its scope of application and the truth of what it aims at, so that the enforcement of this text becomes linked to personal standards due to the appreciation of those who implement it for the truth of its content, and to replace its real goals with their own understanding of its purposes and correct content.** [108]"

The same provision also pointed out that the crime in its legal concept is a violation of a penal provision, and its occurrence is by an act or omission by which this violation is achieved, which is confirmed by Article 95 of the Constitution in its text that:

[108] **Supreme Constitutional Court - Case No. 146 of 20 Judicial - Constitutional - dated 2004-02-08.**

"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."

This means that each crime has a material element that has no basis other than an act or omission that occurred in violation of a penal provision.

Therefore, according to the text of Article 101 of the Constitution, the legislative authority - represented by the House of Representatives - is competent to formulate legislative texts according to origin. The President of the Republic has not been given the authority to issue legislation except as an exception, which must not be expanded. One of the ways of this expansion is to grant the legislative authority the powers entrusted to it regarding the approval of laws to the executive authority, as stipulated in a case law of the Supreme Constitutional Court, which ruled that:

"**Whereas the judiciary of this court has established that the legislative authority, in exercising its competences in the field of approving laws, may not itself abandon it in neglect of the text of Article (86) of the Constitution, corresponding to Article (33) of the Constitutional Declaration, which originally entrusted it with legislative functions, and the executive authority is empowered to exercise it only with exception, and within the narrow limits set out exclusively in the provisions of the Constitution."**

Violation of the Military Judiciary and Expansion of the Trial of Civilians of the International Bill of Human Rights:

Article 8 of the Universal Declaration of Human Rights states 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.”**

Likewise, Article 10 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."**

Also, with regard to the principle of equality before the judiciary, which is not available in the appearance of civilians before the military judiciary, because of the legal provisions in the military judiciary that deprive those before it of the inherent rights that constitute the guarantees of a fair trial that cannot be derogated from, such as the right to civil prosecution as

well as to appear before the natural judge, Article 14 of the International Covenant on Civil and Political Rights stipulates 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. "

With regard to the principle of equality before the law, Article 26 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. ”

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.

International human rights organizations have also expressed their refusal not only to try civilians before military justice, but also to include the military themselves and police personnel accused of committing human rights violations and non-military crimes committed by military personnel, and that the use of military courts to try military personnel for common law crimes is contrary to the obligations placed on them by States under the International Covenant on Civil and Political Rights, which relate to ensuring that States provide an effective remedy for everyone whose rights have been violated by persons acting in an official capacity, as well as deciding and investigating through a competent judicial authority, ensuring the enforcement of sentences issued in the interest of the complainants, and ensuring the equality of all people before the judiciary, which must enjoy independence, impartiality and adherence to fair trial

guarantees, as well as that the jurisdiction of military courts should be limited to purely military crimes committed by members of the armed forces in the performance of their duty.[109]

For all this, the military judiciary must be limited and its jurisdiction limited to trying members of the armed forces who commit crimes of a military nature, and not be involved in crimes committed by civilians, as well as military personnel if they are not related to their duties in service, due to the inadequacy of the Military Justice Law and its lack of fair trial guarantees, in addition to fears that include impunity for members of the armed forces for crimes that may be committed by them.

[109] Page 50 of a report issued by the International Commission of Jurists entitled "Military Justice and International Law, Military Courts and Grave Violations of Human Rights Part I" For more information, click https://www.icj.org/wp-content/uploads/2004/01/Military-jurisdiction-pulication-2004.pdf.

The third topic/Terrorism Departments formed under the Anti-Terrorism Law:

Although the terrorism chambers, which are competent to consider crimes that occur in violation of the Anti-Terrorism Law No. 94 of 2015, are considered chambers of the ordinary judiciary and are therefore not exceptional, it is clear from practical reality and the tracking of the cases before them that these chambers waste a lot of fair trial guarantees, and most of their judges do not abide by the fundamental rights of the accused, as well as the penalties issued by these chambers are excessive and exaggerated in the penalties that in many of them have reached the death penalty, in addition to the fact that their places of convening are in police bodies and not in the headquarters of the courts they follow, and thus constitute a burden and difficulty for lawyers and families of the accused, especially since these places require exceptional procedures to enter them that hinder the work of the defense and constitute a violation of the rights of lawyers themselves. Therefore, all this makes it likely that these chambers have been established and their judges selected to be similar to the exceptional judiciary, especially since the Anti-Terrorism Law, which governs procedures for terrorism crimes, also violates fair trial guarantees and its provisions chase the suspicion of unconstitutionality.

Before the issuance of the Anti-Terrorism Law and the formation of terrorism circuits under it, the Cairo Court of Appeal formed circuits from the criminal courts in Cairo and Giza that are competent to consider crimes of terrorism and violent events, after the criminal circuits stepped down from considering some cases related to political events after June 30, 2013. To confront this, these circuits were established with the approval of the Minister of Justice and assigned jurisdiction to them to consider the crimes of terrorism stipulated in Parts I, II, II bis, III and IV of Book II of the Penal Code, and related crimes. The decision clarified that these circuits should be held at the headquarters of the Police Academy in New Cairo, and the Institute of Police Secretaries in Tora, instead of their natural headquarters in the courts of North and South Cairo and Giza. [110]

[110] For news on the formation of terrorism chambers by the Cairo Court of Appeal, please click on https://2u.pw/j9WHmChe andhttps://2u.pw/qHJBWgtt.

Then the Anti-Terrorism Law was issued in August 2015 shortly after the assassination of Attorney General Hisham Barakat. The President of the Republic said at the time that the hand of prompt justice was shackled by the laws that must be amended, under the pretext of issuing more legislation that includes provisions that violate the rights and freedoms guaranteed to citizens under the Constitution, and then the text of Article 50 of the Anti-Terrorism Law, which approved the formation of terrorism chambers in criminal courts and courts of first instance that are competent to consider crimes committed in violation of its provisions, was included in the texts of the Anti-Terrorism Law.[111]

[111] Al-Watan newspaper "ElSisi: The hand of justice is shackled by laws.. It must be modified to meet the developments. "To view it, please click on the link https://2u.pw/qbv3ZWCw.

Article 50 of the Anti-Terrorism Law:

> **One or more circuits of the criminal courts, each of which has the rank of president in the courts of appeal, shall be assigned to hear felonies from terrorist crimes and the crimes associated with these felonies.**
>
> **Chambers in the courts of first instance headed by a president of the court shall be allocated at least to hear misdemeanors from terrorist crimes and the crimes associated with these misdemeanors.**
>
> **Chambers in the courts of first instance headed by a president of the court and at least two members, at least one of whom has the rank of president, are also specialized to consider appeals against judgments issued in these crimes.**
>
> **The cases referred to in this article shall be decided expeditiously and in accordance with the procedures prescribed in this law and the Code of Criminal Procedure.**

Although terrorism chambers are formed under the law and are considered part of the ordinary judiciary, in practice they are considered a form of interference in the work of the judiciary by the executive authority, which is prohibited under the Constitution. Specific judges are selected to hear certain cases, which, according to the follow-up of the provisions of these chambers, has resulted in many violations of the rights of the accused guaranteed under the Constitution, especially since the President of the Republic, as head of judicial bodies, has the authority to appoint and dismiss heads of bodies and courts, which undermines the principle of the independence of the judiciary. Therefore, these chambers are considered a circumvention of the principle of appearing before a natural judge and take an approach that violates fair trial guarantees.

Terrorism departments do not meet at the headquarters of the courts they follow. Initially, they were held at police headquarters such as the Police Academy in New Cairo and the Institute of Police Secretaries in Tora. After that, these departments were transferred to the Badr Courts Complex located inside Badr Prison in the city of 10th of Ramadan, which is about 70 km away from Cairo. It is remarkable that they are remote places that are difficult to reach by lawyers and the families of the accused, especially the Badr Courts Complex, which is located in a remote desert area, which violates the principle of bringing the judicial authorities closer stipulated in Article 97 of the Constitution, which states 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. "

This is in addition to the violations suffered by the defendants and lawyers, which violate all fair trial guarantees, foremost of which is the violation of the rights of the defense. By following up the cases before the terrorism departments, especially the Badr Courts Complex, human rights organizations have monitored many violations, which we highlight in several points:

First - Violation of the right of defense:

There are many forms of violation of the right to defense that have been monitored since the formation of these circles in 2013. Lawyers are subjected to arbitrary security measures during and before entering the venue of the hearings. They are subject to complex search procedures, poor organization, and overcrowding inside the courtrooms, and dealing with them by the security forces in arbitrary ways, which in some cases amounted to preventing them from entering the court. This hinders their performance of their task in defending the defendants and violates the rights of the defense, which is an essential guarantee of a fair trial. This has been monitored by many human rights reports of Egyptian human rights organizations. [112]

In addition to hindering the defendants during the trial sessions from making their statements and deliberately isolating them from their lawyers by placing the defendants in soundproofed glass cages that prevent the defendants from communicating with their lawyers or judges, with the provision of a camera and microphone inside the charge cages that are controlled by the court security, which was present in the headquarters of the Terrorism Departments, whether in the Police Academy and the Institute of Police Secretaries in Tora and more continuously in the Badr Courts Complex.

[112] Statement of the Egyptian Front for Human Rights entitled "Violations of the right to defense in the Badr Criminal Court and poor conditions of detention inside the prison" For information, please click https://egyptianfront.org/ar/2022/10/badr-court/.

The accused is also deprived of attending the detention renewal session in person and defending himself, and the investigating judge does not really debate him, as the detention renewal sessions are **held in the pre-trial stage remotely without the actual presence of the accused through the video conference feature, which is held in small rooms that do not accommodate the lawyers present with the accused, which hinders their view of their clients via the screen and communication with them, which is also a form of violation of the right of defense, which assumes direct communication between the lawyer and the accused. Thus, with the defendants in the same places of detention, they are at the disposal of the security forces of the Ministry of Interior, which poses a double danger to these defendants, especially since most of them are subjected to many forms of torture and ill-treatment by those in charge of supervising prisons, which increases the risk of preventing them from talking about these attacks, or constitutes a moral barrier and fear of making such attacks. The Egyptian Front for Human Rights has documented in a report that the voice of the pretrial detainees who were subjected to attacks by the security forces inside their places of detention has been cut off and a problem has been invoked Technique and even disconnection when they talked about the violations practiced against them inside the prison/correctional centers, and about the possibility of deaths among detainees and those who tried to commit suicide, and they were not allowed to speak after that while continuing to ignore their complaint by the judges.**[113]

These practices represent a serious violation of the fair trial guarantees that require the right of the accused to defend himself, especially since the accused in the criminal trial is the main element in this trial. The law and jurisprudence of the Egyptian higher courts have guaranteed the right of the accused to be present in person in his trial. The detention renewal sessions are an integral part of the criminal trial, in which the accused has the right to defend and express himself in a real and decisive expression and all violations or problems that occur in his detention before the investigating judge, which is not achieved through video conference technology.

[113] The Egyptian Front for Human Rights report entitled "Monitoring Report on the Performance of Terrorism Chambers in the Pre-Trial Phase during the First Half of 2023" To view the report, please click on the link https://egyptianfront.org/ar/2023/08/tcc-1st-half2023/.

The placement of the defendants in soundproof glass cages also hinders the defendant's defense of himself, and of course the obstruction of lawyers through security intransigence in the venues of all sessions forms of violation of the right of defense. The Constitution affirmed the need for a minimum of guarantees in the criminal trial in order to be fair and equitable[114], in Article 96. The most prominent of these guarantees is the right of the defendant to defend himself himself, as he is considered the main element in the lawsuit, which is recognized by Article 98, which 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 shall guarantee to those who are financially incapable the means of resorting to the judiciary and defending their rights. ”

Many case law have also affirmed the right to defense, as one case law has ruled that-

"The right of the accused to deny and deny the accusation is the minimum protection that must be guaranteed to his right to defense**."[115]**

It also ruled that:

"The accused has the right to present his defense despite the use of a lawyer. The accused is the original opponent in the criminal lawsuit, but the lawyer is merely his representative. The presence of a lawyer with the opponent does not negate the right of the latter to present his defense or requests, and the court must hear him."[116]

The street aimed from the text of Article 96 of the Constitution to achieve the principles of justice and sanctify the right of defense during investigation and trial and ensure it in both cases in a decisive manner, as the accused is the first concerned in defending himself, and the provision that a lawyer must be appointed for him in the articles of felonies and authorized for him in the articles of misdemeanors and violations was only to assist him and assist him in the defense.[117]

[114] Article 96 "The accused is innocent until proven guilty in a fair legal trial, in which he is guaranteed the guarantees of self-defense. The appeal of sentences handed down in felonies shall be regulated by law. The State shall provide protection for victims, witnesses, defendants and whistleblowers when necessary, in accordance with the law. ”
[115] Appeal No. 15279 of 62 BC issued at the session of March 19, 2001.
[116] Appeal No. 726 of 35 BC issued at the hearing of June 14, 1965.
[117] Appeal No. 29139 of 74 BC issued at the 7th session of October 2004.

The Supreme Constitutional Court also affirmed that the right of defense cannot be considered effective if the accused is isolated from his lawyer directly or indirectly, whether at the stage of judicial adjudication of the accusation or before it, otherwise the right of defense becomes of limited value, because the right of defense is closely related to the criminal case. [118]

Also, the video conference technology will prevent the investigating judge from looking at the accused carefully and discussing his condition, even if there was harm caused to him during his imprisonment. The provisions of the Code of Criminal Procedure affirmed that the accused must be heard during the investigation sessions and before issuing a decision to remand him in custody, in Article 136, which states that:

"Before issuing a detention order, the investigating judge must hear the statements of the Public Prosecution and the defendant's defense."

This is also confirmed by Articles 142 and 143 of the Criminal Procedure Code. [119]

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[118] **Supreme Constitutional Court - Case No. 64 of 17 Judicial - Constitutional - dated 07-02-1998. "It is not conceivable that the defense will be effective without a reasonable period of time to prepare it , nor that it will be isolated from contacting its lawyers directly or indirectly, whether at the stage of judicial adjudication of the accusation, before it, or when contesting its final outcome, otherwise the right of defense will be of limited value. The right of defense is closely related to the criminal lawsuit from the point of view of clarifying its aspects, correcting and following up its procedures, presenting the factual and legal issues that support the position of the accused to ensure its interdependence, responding to what is contrary to it, and showing the face of the right in what is important from its points, especially through the trade-off between multiple alternatives in favor of the deepest connected to it, and the strongest potential in the field of winning it, while supporting it with the necessary papers that document it. The access to justice will not be easy or reach its end, within the framework of a criminal accusation characterized by complexity, or the overlap of the elements on which it is based, if the right to defense is absent, characterized by complexity, or the overlap of the elements on which it is based, if the right to defense is absent, or limited to the accusation stage or how to adjudicate it, without the stages of investigation in which the focus is not on a crime whose facts and motives are still ambiguous, but rather on a specific person suspected of committing it, surrounded by the party that undertakes it with its questions, and reserves it for it. "**

[119] **Article 142 of the Criminal Procedure Law: "Pre-trial detention shall end with the lapse of fifteen days from the detention of the accused. However, before the lapse 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."**

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 Court of Appeal Misdemeanors 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.".

In addition to the fact that international covenants and treaties have also affirmed that States guarantee the right to defense and consider it a major guarantee of a fair trial, we find that the Universal Declaration of Human Rights stipulates in Article 11 that:

1 **Every person accused of a crime shall be presumed innocent until it is legally proven that he committed it in a public trial in which he has been provided with all the guarantees necessary to defend himself… ".**

Article 14 of the International Covenant on Civil and Political Rights states:

"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....

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

(b) To be given adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing

(d) To be tried in his presence and to defend himself in person or by a lawyer of his choice, and 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 the 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,..... "

This is confirmed by the European Convention on Human Rights in Article 6, which states that:

"1. Every person shall, in the determination of his civil rights and obligations, or of a criminal charge against him, have the right to a fair public hearing within a reasonable time before an independent and impartial tribunal constituted in accordance with law.

3. Every person charged with a crime shall have the following rights as a minimum:

(c) Presenting his defence 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. "

The African Charter on Human and Peoples' Rights states in Article 7 that:

"(b) A person is innocent until proven guilty before a competent court,

(c) The right of defence, including the right to choose a defender, "

II. Judgments aggravating the defendants and amounting to execution

By monitoring the sentences issued by the Terrorism Chambers since its inception in 2013, these Chambers have issued many severe penalties against thousands of defendants, which have reached the sentence of collective death sentences for hundreds of defendants in connection with the same case. These sentences were issued without taking into account fair trial guarantees, but according to the statements of many convicts who confirmed that they had been subjected to serious violations that amounted to torture to force them to confess the charges against these defendants. There are many human rights reports issued by human rights organizations, whether Egyptian or international, that monitored these violations and ensured that the judges of the Terrorism Chambers ignored the defendants' statements that they had been subjected to forms of torture and ill-treatment inside places of detention, contrary to what the defendants' lawyers said of the judges of the Terrorism Chambers ignored their requests and defenses, and even did not allow access to the papers of some cases, which represents a serious violation of the right to defense, which is the fundamental criterion of fair trial guarantees.

In the following lines, we mention some of these heavy sentences that were issued without taking into account the fair trial guarantees as documented by Egyptian and international human rights organizations.

- **In the aftermath of 2013, President Morsi was deposed, and acts of violence escalated, especially after the state dispersed the Rabaa and Al-Nahda sit-ins and killed hundreds of people. The Terrorism Chambers issued consecutive death sentences against hundreds of defendants, including those known in the media in the case of "Kerdasa Police Station Intrusion Case" No. 12749 of 2013 Kerdasa Center Felonies, in which a death sentence was issued in May 2015 against 188 people. On 3 February 2016, the Court of Cassation overturned the verdict, and ruled to retry before another chamber after it recognized the invalidity of some trial procedures and the court's violation of the rights of the defense. In the new trial, on 2 July 2017, Chamber 11 sentenced 20 defendants to death, a verdict upheld by the Court of Cassation on 24 September 2018. The human rights organizations confirmed that many violations occurred during the consideration of the case, including the absence of lawyers with the defendants during the investigations, their inability to communicate with their lawyers during the trial, as well as the defendants' statements before the court to force them to make false**

statements, and the prosecution's reliance on anonymous investigations to bring charges.[120]

- Circuit 28 decided terrorism in case No. 34150 of 2015, the felonies of Nasr City First, known in the media as "the events of the dispersal of the Rab 'a al-Adawiya sit-in", in which 739 people (300 detainees 439 in absentia) were charged with executing 75 people, including prominent leaders of the Muslim Brotherhood, in addition to life imprisonment for 47 people, as well as imprisonment for 15 years for 374 others, 10 years for 22 children, and 5 years for 215 people, some of these people are survivors of the dispersal of the sit-in in Rab 'a al-Adawiya Square, which left hundreds The dead, and the trial did not observe the minimum guarantees of a fair trial – according to a statement issued by Egyptian human rights organizations and published by the Cairo Institute for Human Rights Studies - for example, some defendants did not have a lawyer to defend them in most of the trial sessions, and some lawyers present with the defendants also testified that the court confiscated most of the defense's rights to plead, present legal defenses, question witnesses, and allow sufficient time to present oral arguments. For example, during the witness hearings, the defense team asked the court to present 240 witnesses, but the court agreed to question about 60 witnesses, and the lawyers did not take the time to cross-examine them. This is in addition to locking all the defendants in a sound-blocking glass cage, which prevented them from communicating with witnesses or lawyers. Sometimes, with the large number of defendants, the defendant could not see what was happening in the courtroom. [121]

[120] Statement of Egyptian human rights organizations entitled "Political revenge by law: final and enforceable death sentences upheld by the Court of Cassation against 20 Egyptians"For information, please click on https://egyptianfront.org/ar/2018/10/kerdasa-statmenet/. Another statement entitled "Human rights organizations condemn the unprecedented expansion in the implementation of executions after the hanging of 9 prisoners" to see please click on the link https://2u.pw/FNyVrAuR.

[121] A statement issued by Egyptian human rights organizations published by the Cairo Institute for Human Rights Studies entitled "Stop the mass farce of death sentences immediately". For more information, please click on the link https://2u.pw/kEn0DD34.

- **In the case of the assassination of Attorney General Hisham Barakat No. 1300 of 2013, East Cairo Terrorism District, 28 people were sentenced to death, as well as life imprisonment for 15 people, and rigorous imprisonment for 10 years for 15 people. This case was characterized by conflicting statements of the Egyptian official authorities regarding the persons accused of killing the Attorney General, and the physical liquidation was carried out outside the framework of the law immediately after the assassination of many people whom the security services said were the ones who masterminded and carried out the incident; then the case was referred Dozens of people were brought to trial and charged with the killing of the Public Prosecutor. The death sentence was carried out against nine of the defendants, including the young Mahmoud Al-Ahmadi, who said before the court that he had been subjected to severe torture with electricity to confess this charge. Abu Bakr Al-Sayed, Ahmad, Hadan and Abu Al-Qasim Ahmad also admitted that they were subjected to severe torture, and that their confessions on which the provisions of the case were based were taken under torture. There are also many paradoxes and illogical accusations, such as the accusation of the young Jamal Khairy Mahmoud - who was placed in the case on charges of training the defendants to use Firearms - He is blind and has been sentenced to 10 years' rigorous imprisonment! [122]**
- **There are also many other cases and heavy sentences that have been monitored in the reports and statements of Egyptian and international human rights organizations. The Egyptian Commission for Human Rights has launched many reports in which it documented many death sentences and heavy sentences, whether issued by terrorism departments or issued by state security courts and military courts, all of which lacked fair trial guarantees and included many flagrant violations of the Constitution, the law, and the International Bill of Human Rights that occurred in the sessions of these trials. [123]**

[122] For the death sentence issued in the case of the murder of the Attorney General, please see the link https://manshurat.org/node/20706.
For more news and data, please click on the links https://2u.pw/veKu83T6 and https://2u.pw/iNGYwN8W.
[123] The Egyptian Commission for Rights and Freedoms issued several monitoring reports that documented the high frequency of death sentences issued by terrorism departments as well as state security courts and military courts. Violations that occurred during the trial sessions and lacked minimum fair trial guarantees were monitored https://2u.pw/IqfbkxSI.
There are also many statements and reports issued by international human rights organizations that monitor serious violations of Egyptian criminal trials, especially terrorism departments. For more information, please click on the link https://2u.pw/wLyNDx5Z , https://2u.pw/RITbJNS4

It is worth mentioning that these Chambers also over-renew the pretrial detention of defendants for periods exceeding those stipulated by law, even if its justifications are not available. The number of those released is very scarce compared to the numbers of those detained on remand. There are tens of thousands of persons in pretrial detention for years, and they face flimsy charges. Their lawyers are harassed. According to reports published by the Egyptian Front for Human Rights, in 2022 the Terrorism Chambers ordered the extension of the detention of nearly 25,000 defendants, while they ordered only the release of 1.41% of them. In 2023, the number of pretrial detainees before the Terrorism Chambers reached 19,718 persons and only 0.015% were released. This indicates that these Chambers take pretrial detention as a type of punishment and not as a precautionary measure to preserve the interest of investigations. This constitutes a violation of the principles of fair trial guarantees, foremost of which is the right to be presumed innocent, and the principle of no punishment except on the basis of a judicial ruling. Of course, all these practices violate all international covenants and treaties, especially those ratified by Egypt, such as the International Covenant on Civil and Political Rights, as well as the African Charter on Human Rights. [124]

[124] For more details regarding the terrorism departments and the numbers of those in pretrial detention before them, please see the reports of the Egyptian Front for Human Rights at https://2u.pw/3txnEsot, https://2u.pw/DLLtdo9K and https://2u.pw/QJ7Ys97T.

Conclusion

Through this study, it is clear that the laws that regulate the affairs of law enforcement and justice agencies, represented by the three bodies (the police, the Public Prosecution, and the judiciary) have many legislative flaws that lose their independence and penetrate their control by the executive authority. Therefore, this blatant overlap in the work of both the legislative and judicial authorities by the executive authority, which violates the principle of separation of powers, makes these bodies lose the confidence of citizens in the institutions of justice as a whole, and therefore the legislator must address all these abuses concerning the appointment of the Attorney General and the President of the Court of Cassation by the President of the Republic, and to make judges and members of the Public Prosecution subordinate to the Supreme Judicial Council alone, as well as to abolish the subordination of the Judicial Inspection Department to the Ministry of Justice, and of course not to expand the jurisdiction of exceptional and special courts such as the State Security Courts as well as the military judiciary, which represent a violation of the principles of equality before the law and the judiciary and lack fair trial guarantees and judicial remedy standards, including the content of the texts that refer to them to derogate from the rights and public freedoms guaranteed by the Constitution and international charters, as well as other violations that violate the independence of the judiciary if there is a real intention on the part of Legislator in the advancement of the judiciary and its alignment with the principles and recommendations of international law.

Recommendations:

Because countries are not upright and will not achieve any social and economic prosperity without achieving justice, and the confidence of citizens in the justice system and law enforcement agencies, the legislative authority granted by the Constitution to the House of Representatives must be its inherent right, which has a role in representing the will of the people through the issuance of fair and abstract laws that are fair to the right and justice. The legislator must amend the legislation governing law enforcement agencies - the police, the prosecution and the judiciary - in a way that achieves the required role of them and grants them independence and immunity from the incursion of the executive authority. Therefore, the Egyptian Commission for Rights and Freedoms believes that the legislator must make these amendments:

Recommendations for the Code of Criminal Procedure:

1/ Amending Article 63 of the Criminal Procedure Law to allow a member of the Public Prosecution to initiate criminal proceedings against police officers and public officials in general.

2/ Amending Article 232 of the Criminal Procedure Law to allow the victim to directly prosecute misdemeanors committed by police officers and public officials.

3/ Amending Article 162 of the Procedures Law to ensure that the plaintiff of the civil right can appeal the custody decision issued by the investigating judge if the accusation is against the judicial officers.

4/ Excluding the use of clemency with officers who commit crimes of torture and the use of the cruelty prescribed in Article 17 and considering them crimes against honor. Police officers who are found guilty of committing the crime of torture must be permanently removed from office.

5/ Amend both articles 126 and 129 of the Code of Criminal Procedure in line with the definition of torture provided for in the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

6/ Signing and ratifying the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and lifting the reservation made by Egypt.

Recommendations of the Police Authority Law No. 109 of 1971:

1/ Restrict the authority of the Minister of Interior to refer officers - who are not appointed by the President of the Republic - to the reserve in accordance with Article 67, which allows the referral of officers to the reserve for the public interest without investigation and the need to give the officer the right to file a grievance against the referral decision to the reserve.

2/ Repeal Clause III of Article 102, which allows police officers to use firearms to disperse demonstrations or gatherings.

3/The repeal of Article 102 bis, which was added by virtue of Law No. 4 of 2024, by the forfeiture of the right of police officers to demand the implementation of the judgments issued to them by canceling the decisions to terminate the service after one year from the date of the issuance of the enforceable judgment, and the exception of the rules of suspension and interruption of the statute of limitations established in the Civil Code when executing judgments, due to the waste of the general rules for the implementation of judgments, and discrimination against police officers that affects their role in law enforcement.

Recommendations of the Judicial Authority Law No. 46 of 1972:

1/The independence of the Attorney General in appointment from the executive authority and to be appointed by the Supreme Judicial Council instead of the President of the Republic, which requires the amendment of Article 189 of the Constitution as well as Article 119 of the Judicial Authority Law.

2/ Cancel the subordination of the Attorney General and the members of the Public Prosecution to the Minister of Justice and that the subordination be to the Supreme Judicial Council as the Public Prosecution is a judicial body, thus amending Article 125, which gives the Minister of Justice the right to control and administrative supervision of the prosecution and its members.

4/ Appointing judges and presidents of courts, headed by the Court of Cassation, by the Supreme Judicial Council and repealing all texts that represent interference in their work by the executive authority, thus amending Article 44 of the Judicial Authority Law.

5/ Amending Article 87 and transferring the subordination of the Judicial Inspection Department from the Minister of Justice to the Supreme Judicial Council.

6/The citizen's right to be informed of the course of his complaint against the prosecution and judges, his right to appeal against the decisions issued in it regarding the complaints submitted to the Judicial Inspection Department, and the need to notify the complainant of what was done in his complaint.

7/ Organizing and simplifying procedures for litigating with prosecutors and judges.

The following legislations must also be amended:

1/ Repealing the Anti-Terrorism Law, including provisions that violate fair trial guarantees, ensuring impunity for judicial officers, and encouraging the law to forcibly disappear the accused.

2/ Cancellation of terrorism departments, which are competent to consider cases that occur in violation of the Anti-Terrorism Law.

3/ Repealing the Law of Insurance and Protection of Public and Vital Facilities in the State No. 3 of 2024, which authorizes the armed forces to intervene in civilian life and the participation of the police in the protection of public facilities and facilities, and complicates the jurisdiction of the military judiciary in the consideration of crimes that occur in violation of its provisions, which expands the trial of civilians before the exceptional military judiciary under the text of Article 4.

4/ /**Referring all cases that are still pending before the Supreme State Security Courts on an emergency basis to the ordinary judiciary.**

5/The repeal of Article 12, which makes the judgments issued by the Supreme State Security Courts unappealable by any means of appeal, which violates the principle of litigation at two levels as well as the rules of criminal justice and fair and equitable trial guarantees, as well as acknowledges that the judgments issued by these courts shall not be final until they are 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.

6/ Amending the Constitution to prohibit the trial of civilians before the military judiciary in an absolute manner.