

SEARCHING PEOPLE AND HOMES IN THE DRAFT CRIMINAL PROCEDURES LAW: ESCALATING OPPRESSION AND ARBITRARINESS



المركز العربي لاستقلال القضاء والمحاماة
THE ARAB CENTER FOR THE INDEPENDENCE OF
THE JUDICIARY AND THE LEGAL PROFESSION
(ACIJP)



مؤسسة دعم العدالة
JUSTICE SUPPORT FOUNDATION (JSF)

Searching people and homes in the draft Criminal Procedures Law: Escalating oppression and arbitrariness

Introduction

Criminal investigation procedures differ depending on their ultimate purpose, yet certain measures within these procedures significantly impact fundamental rights and freedoms. Among these are four measures classified by legal scholars as "precautionary investigation procedures." A key precautionary procedure is searching, which may involve the search of an individual (the suspect) or others, depending on the circumstances and facts of the alleged crime. It may also extend to the search of their residence, possessions, vehicles, phones, or other related items. From this perspective, a search constitutes an intrusion upon an individual's rights to security, privacy, and the sanctity of their home.

Consequently, under the provisions of the Constitution, international conventions, and the Criminal Procedures Law, strict safeguards have been established to regulate such procedures. These safeguards aim to maintain a delicate balance between the protection of individual rights and society's interest in administering justice. They ensure that the power to conduct searches is limited to the investigating authority and, even then, only in cases of necessity expressly stipulated by law. This is to prevent the misuse of such powers, which could otherwise become instruments of arbitrariness and violations of citizens' rights.

Searches are categorized by location into personal searches and home searches. They are also distinguished by the authority responsible for carrying them out: searches conducted by judicial police officers versus those carried out by the investigating authority.

The significance of this analysis lies in examining the legislative framework governing the search as an investigative procedure and evaluating its role in uncovering the truth. Key questions arise: Did the legislator in the draft Criminal Procedures Law appropriately balance the rights of suspects with the state's right to administer justice? Did the draft conform to the rigorous standards governing investigative procedures, or did it circumvent and violate these standards along with the requisite guarantees they entail? To what extent did it introduce substantive innovations within this framework, while adhering to constitutional principles and the benchmarks of contemporary criminal justice? Furthermore, a practical response to a hypothetical inquiry arises: Did the legal regulation of the search procedure embody the implementation of constitutional provisions, or did it merely perpetuate the same

constitutional and legal deficiencies that Egyptian legal jurisprudence has consistently critiqued?

First: Understanding search and its scope:

1. Definition of search

A search constitutes “a criminal procedure inherently involving an infringement upon an individual's right to privacy and the sanctity of their home. It is a process governed by legal regulations, aiming to balance the societal interest in uncovering evidence of a crime, or, more precisely, in establishing the truth. Through this process, the objective is to determine the guilt or innocence of the defendant.”¹

It is also “fundamentally an investigative measure, initiated solely by authorized entities, and predicated on the occurrence of a crime—whether a felony or misdemeanor—that is credibly attributed to a specific individual. Such a measure must be underpinned by sufficient grounds to justify the encroachment on personal liberty or the sanctity of a private residence.”²

Search is classified as “one of the investigative procedures designed to procure evidence pertinent to the crime under investigation, or any material that contributes to uncovering the truth.”³

The draft Criminal Procedures Law defines the search of homes and their annexes as: an investigative act that may only be conducted pursuant to a reasoned order issued by a member of the Public Prosecution and based on specific allegations against an individual residing in the property subject to the search, accusing them of committing or participating in the commission of a felony or misdemeanor (Article 75, Paragraph 1).⁴

Accordingly, a search, whether pertaining to an individual, their residence, or its annexes, can be defined as “a legal investigative procedure conducted by authorized authorities to seize material evidence of a crime and uncover the truth. This procedure

^{1/} Dr. Sami Hosni Al-Husseini, *The General Theory of Searching in Egyptian and Comparative Law*, Dar Al-Nahda Al-Arabiya, 1972, p. 56.

^{2/} Cassation 8/1/1960, Cassation Rulings, Vol. 11, No. 12, p. 70.

^{3/} Dr. Ahmed Fathi Sorour, *The Mediator in the Criminal Procedure Law*, Cairo University Press and University Book, 1985, p. 343.

^{4/} It corresponds to Article 91 of the current Criminal Procedure Law, Paragraph 1, which states that: “Searching homes is an investigative act and may not be resorted to except by order of the investigating judge based on an accusation directed at a person residing in the house to be searched of committing a felony or misdemeanor or of participating in committing it or if there is evidence indicating that he is in possession of items related to the crime.”

is typically undertaken when a felony or misdemeanor punishable by imprisonment has occurred, and there is strong evidence suggesting the involvement of the individual or their property.”

2. Search scope and regulations:

Given the aforementioned definitions of search, its scope and regulations necessitate: the perpetration of a crime and the existence of compelling evidence or demonstrative proof linking said crime to a specific individual. A search may only be executed pursuant to a directive or “authorized warrant” issued by a competent investigative authority. Any search conducted in contravention of these strictures is deemed null and void.

There are exceptions—subject to strict interpretation and precluding analogical extension—permitting the search of individuals (excluding places of residence). These exceptional circumstances pertain solely to instances of *flagrante delicto*, wherein the suspect is apprehended in the very act of committing a crime. In such cases, a search of the suspect's person is permissible, as long as it is permissible to arrest him.⁵

Second: Searching people and homes in the Constitution:

1. Searching people:

Personal freedom is a natural right that is safeguarded and inviolable. As stipulated in Article 54, Paragraph 1, of the Constitution, no individual may be arrested, searched, detained, or subjected to any form of restriction on their liberty except under the circumstances of being caught in the act of committing a crime. Outside this singular exception, any such action must be authorized by a reasoned judicial order necessitated by an ongoing investigation.

⁵/ This may explain the Supreme Constitutional Court's ruling in Case No. 5 of Judicial Year 4 (session of June 2, 1984), which declared Article 47 of the Criminal Procedures Law unconstitutional. That article had permitted judicial control officers to search a suspect's residence if they were caught in the act of committing a felony or misdemeanor. The Court reasoned that “comparing Articles 41 and 44 of the Constitution it turns out that the constitutional drafters intentionally distinguished between searches of persons and searches of residences. Both, as a fundamental safeguard, generally require a judicial order from the investigating authority or competent judge, ensuring prior judicial oversight. Article 41 exempts the apprehension and search of a person caught *in flagrante delicto* from this requirement, and does not mandate stating the grounds for a search order issued by the competent judge or Public Prosecution. However, Article 44 does not exempt instances of *flagrante delicto* from the requirement of a reasoned judicial order issued by the investigating authority or competent judge for a residential search. Whether the order is executed directly or delegated to a judicial control officer, Article 44 is general and absolute, containing no qualifying or restricting provisions. This implies that the Constitution mandates a reasoned judicial order in all cases of home searches to protect the sanctity of the home, which is intrinsically linked to personal freedom, private life, and the individual's refuge—a place of privacy and tranquility.”

The constitutional framework thus establishes strict boundaries and criteria for measures such as arrest and search, given their profound impact on personal freedom. These measures are permissible only in the instance of *flagrante delicto* or, alternatively, under the explicit authorization of a judicial body within the scope of an investigation into a committed offense.

“Article 41, Paragraph 1, of the Constitution reinforces this principle, stating that personal freedom is a protected natural right. The article explicitly prohibits arrest, search, detention, or restrictions on movement except in cases of *flagrante delicto* or by order of a competent judicial authority, issued in accordance with the requirements of the investigation and societal security. Such orders must be issued by either a competent judge or the Public Prosecution and must align with the provisions of the law.

This constitutional provision underscores that any limitation on personal freedom—whether through arrest, search, detention, prevention of movement, or other forms of restriction—may only be imposed in cases of *flagrante delicto*, as defined by law, or with the explicit authorization of the competent judicial authorities. The phrase “according to the provisions of the law,” which appears at the conclusion of the article after outlining the two permissible cases for arrest and search, does not empower the ordinary legislator to introduce additional exceptions for such measures. To interpret otherwise would allow the legal legislator to amend a provision established by the constitutional legislator.”⁶

The sole exception permitted by the Constitution remains the case of *flagrante delicto*, as previously stated.

Flagrante delicto refers to “the state in which a crime is being committed, not merely by the person who committed it. For *flagrante delicto* to be present, the law requires that the judicial control officer verify the commission of the crime, either by directly witnessing it or perceiving it through one of their senses. The officer is not absolved of this responsibility by receiving reports or information from witnesses, particularly when the crime has been completed and the traces or evidence of the offense have disappeared. The determination of whether *flagrante delicto* exists is an objective matter, and the court has the discretion to assess it independently.”⁷

“In the event that the two judicial control officers did not ascertain the nature of the contents in the two syringes—one found on the car's dashboard and the other in the hand of one of the appellants intending to inject the other—and were not able to perceive with any of their senses that either syringe contained narcotics, then a crime

⁶/ Cassation Appeal No. 2605 of Judicial Year 62, Session 9/15/1993, Issue 44, Page 703.

⁷/ Cassation Appeal No. 14043 of Judicial Year 88.

would not have been committed in *flagrante delicto*. As such, they would not have the legal right to arrest or search the appellants. If they proceeded with the arrest or search under such circumstances, their actions would be deemed invalid. Given that the only evidence in the case arose from the invalid arrest and search, along with the testimony of the person who conducted them, once these elements are excluded, the case files would be devoid of any substantial evidence of guilt. Therefore, it is necessary to overturn the appealed judgment and acquit the appellants of the charges brought against them.”⁸

2. Searching homes in the Constitution:

Article 58 of the Constitution stipulates that:

“Privacy of homes is inviolable. Except for cases of danger or call for help, homes may not be entered, inspected, monitored or eavesdropped except by a reasoned judicial warrant specifying the place, the time and the purpose thereof. This is to be applied only in the cases and in the manner prescribed by Law. Upon entering or inspection, the residents of houses must be apprised and have access to the warrant issued in this regard.”⁹

Moreover, Article 57, Paragraphs 1 and 2, states that:

“The right to privacy may not be violated, shall be protected and may not be infringed upon.

Postal, telegraphic and electronic correspondences, telephone calls, and other means of communication are inviolable, and their confidentiality is guaranteed. They may not be confiscated, revealed or monitored except by virtue of a reasoned judicial order, for a definite period, and only in the cases defined by Law.”

A. Observations on the constitutional text:

- The constitutional provision here introduces "danger and distress" as exceptions that permit entering homes without a reasoned judicial order. However, it does not provide a clear standard or examples to define what constitutes such cases, thus leaving broad discretion to judicial control officers to assess these situations independently, without judicial oversight.
- The constitutional text does not establish any explicit penalty for violating the safeguards it provides when entering or searching homes. “There is no penalty

⁸/ Cassation Appeal No. 9651 of Judicial Year 71, Session 3/21/2000.

⁹/ Review Article 44 of the 1971 Constitution, which stated that “Homes are inviolable and may not be entered or searched except by a reasoned judicial order in accordance with the provisions of the law.”

for failing to notify those present in the home, nor for not informing them of the judicial order authorizing the search.”

B. Standards and limitations for searching homes in light of the constitution:

- Entry and search of homes are prohibited unless authorized by a reasoned judicial order that specifies the timing and manner of execution.
- Those concerned must be informed of the judicial order prior to the commencement of any entry or search.
- The authorization must be limited to a specific timeframe, prohibiting entry or search after the designated period has elapsed.
- Entry is only permissible in cases of danger or distress. It is important to note that "entry" in this context does not refer to a search in its technical sense, but rather to actions taken to avert a specific danger. (As clarified in Article 45 of the current Criminal Procedures Law, this includes situations such as fire, drowning, or similar circumstances. The Court of Cassation has further expanded these cases to include entering homes in pursuit of an individual wanted for arrest.)¹⁰

Third: Searching people and homes in the draft law:

The draft Criminal Procedures Law has expanded the scope of precautionary investigation procedures, almost entirely delegating them to judicial control officers without adequate judicial oversight. This represents a violation of constitutional provisions, reinforcing a security-focused approach at the expense of the rights of suspects and the accused. It also consolidates certain illegal procedures currently in effect, maintaining the guarantees outlined in the previous law and the constitution, but rendering them ineffective. This is achieved through amendments and rewording that, while not removing the guarantees, make them hollow and devoid of real substance. For example:

1. The draft introduces Article 46¹¹, which combines the provisions of Articles 57 and 58 of the constitution regarding the sanctity of homes and private life, and then

¹⁰/ Appeal No. 71261 of Supreme Court Judicial Year 76, Session of January 13, 1964, referred to in: The Mediator in the Criminal Procedures Law, Dr. Ahmed Fathi Sorour, Volume One, p. 960.

¹¹/ Article 46 of the draft law stipulates that: “Homes are inviolable and may not be entered, searched, monitored or eavesdropped on except by a reasoned judicial order specifying the place, time and purpose thereof. Those in the home must be notified when it is entered or searched and informed of the order issued in this regard, all in the manner specified in the law.”

tailored Article 47¹², which permits public authority personnel to enter homes in cases of danger and distress.

- The term "public authority personnel" in Article 47 of the draft law lacks constitutional basis. It is broader than the concept of judicial control officers, as it extends to anyone tasked with maintaining security, even if they are not judicial control officers as defined in the Criminal Procedures Law.
- Furthermore, the text fails to define the nature of the danger or distress situations it refers to, nor does it set clear boundaries or standards for their application. In contrast, the current Criminal Procedures Law (Article 45) specifies such conditions. By merely repeating the constitutional language, the draft law's silence on these matters significantly broadens the scope of intervention, infringing on the rights of suspects and citizens. This omission introduces constitutional defects due to its vague and expansive nature, leaving it open to multiple interpretations that undermine rights enshrined in the constitution. "It was therefore essential that the text not be burdened with multiple interpretations or excessive flexibility, which, in its vague formulation, could encroach upon the rights established by the constitution. The looseness of its expressions leaves room for arbitrary application, undermining the constitutional safeguards meant to protect those rights."¹³

2. Expanding the authority of judicial control officers based on Article 49 of the draft law:¹⁴

- The aforementioned article expanded the powers and authorities of judicial control officers. It allows them, during an authorized house search, to take precautionary measures if they observe compelling evidence suggesting that the accused or another individual present may be concealing information that could aid in uncovering the truth. This grants the judicial control officer broad discretionary authority to implement necessary actions, such as restricting the freedom of the defendant or others, conducting searches, or taking other precautionary measures on their own initiative. The only requirement is to inform the Public Prosecution of the actions taken for further guidance. In contrast, the current law, under the corresponding Article 49, permits only the search of an individual.¹⁵

¹²/ Article 47 of the draft law articulates that: "As an exception to the provisions of Article 46 of this law, public authority personnel may enter homes and other inhabited premises in cases of danger or distress."

¹³/ Case No. 25 of Constitutional Judicial Year 16, Session of July 3, 1995.

¹⁴/ Article 49 of the draft law stipulates that "if, during the search of the defendant's home, there is strong evidence that the defendant or any person present in the home is concealing something that is useful in revealing the truth, **the judicial control officer may take appropriate precautionary measures and immediately notify the Public Prosecution to adopt what it deems appropriate.**"

¹⁵/ Article 49 of the current Criminal Procedures Law states that: "If, during the search of the defendant's home, strong evidence is established against the defendant or a person present therein

- The text fails to specify the nature of the precautionary measures granted to judicial control officers, rendering it vague and susceptible to multiple interpretations. This ambiguity introduces a constitutional flaw, as it empowers judicial control officers with expansive authority without adequate oversight from investigating authorities.¹⁶

3. Expanding the authority of judicial control officers based on Article 63 of the draft law:

- One of the critical guarantees in the realm of precautionary investigation procedures is that such measures must be carried out under the supervision and authority of the competent investigating body. Any deviation from this principle renders these guarantees superficial and constitutes a blatant violation of the rights of accused persons and suspects. It disrupts the delicate balance legally required between the rights of the defendant and those of society, tipping it disproportionately in favor of society. Moreover, it undermines the powers that the constitutional legislator originally conferred upon the investigative authorities.
- Article 63 of the draft Criminal Procedures Law, in our view, is fundamentally flawed. Its third paragraph grants judicial police officers the authority to carry out "any other investigative work and to interrogate the defendant in cases where there is a fear of losing time, provided the actions are related to their assigned duties and are deemed necessary to uncover the truth."¹⁷ This provision effectively authorizes judicial control officers, when tasked with an investigative duty, such as arresting a suspect, to unilaterally take additional measures—including conducting searches, interrogations, and seizures—without prior authorization from the Public Prosecution or judiciary. This is based solely on their personal discretion, with the only stipulated condition being that such measures are necessary to reveal the truth.
- The criterion of "fear of losing time" is neither well-defined nor objectively measurable, making it legally ambiguous and open to misuse. This vagueness appears to provide a loophole for judicial control officers to bypass the established rules of the Criminal Procedures Law, which are designed to ensure

that he is hiding something that is useful in revealing the truth, **the judicial control officer may search him.**"

^{16/} Review the Fatwa and Legislation Department's notes on the draft Criminal Procedures Law circulated in 2017, which contained the same text with the same numbering, and excerpts from which were published on the Youm7 website <https://2u.pw/mlQr2JRN>

^{17/} Article 63 of the draft Criminal Procedures Law stipulates: "A Public Prosecution assistant may be assigned to investigate an entire case. Additionally, a Public Prosecution member of at least the rank of Public Prosecution Assistant may delegate a judicial control officer to perform one or more specific investigative tasks, excluding the interrogation of the defendant. The delegated judicial control officer shall, within the scope of the assignment, possess all the powers granted to the delegating authority. Furthermore, the judicial control officer may undertake any other investigative task, including interrogating the defendant, in cases where there is a risk of running out of time, provided the task is connected to the assigned duties and is deemed necessary to uncover the truth."

sufficient safeguards for the defendant. Such a provision risks enabling the abuse of authority, undermining the established limits on the powers of judicial control officers, and stripping the defendant of essential legal protections.

- Granting judicial control officers all the powers of the investigative authority, including actions that infringe upon personal freedoms, the sanctity of homes, and the privacy of individuals, effectively strips accused persons or suspects of their constitutional rights. It denies them the ability to defend themselves, including the right to legal counsel at this critical stage. This approach undermines the authority of the Public Prosecution and the investigative judge, removing essential legal and judicial oversight over the actions of judicial control officers. Once delegated, judicial control officers¹⁸ can carry out all investigative procedures without checks or balances.
- The article allows the assistant prosecutor, the lowest rank within the Public Prosecution, to investigate entire cases. It further permits a Public Prosecution member of slightly higher rank, equivalent to that of a trainee lawyer, to delegate investigative tasks to judicial police officers. These roles, held by individuals lacking sufficient experience and expertise, are not adequately equipped to handle complex investigations or ensure procedural safeguards. To uphold justice and protect the rights of the defendant, investigative powers should be limited to those holding the rank of deputy prosecutor at minimum. The roles of assistant prosecutors should be confined to assisting in investigations or handling misdemeanors, explicitly prohibiting them from delegating authority to judicial police officers for tasks involving arrests, searches, or other significant procedures.

4. Undermining the procedural guarantees in the draft law through the promulgation articles:

A. The issue is not confined to the substantive articles of the draft Criminal Procedures Law, which already contain provisions expanding the scope of searching as an investigative procedure and thereby diminishing the guarantees afforded to the defendants and suspects under the previous constitution and the current Criminal Procedures Law. Rather, this erosion is exacerbated by Article 1 of the promulgation articles. This article surpasses even the limited protections approved by the draft itself by referring certain crimes to special laws and procedures, such as the Emergency Law No. 162 of 1958 (currently in effect), Illicit Gains Law No. 62 of 1975, Anti-Cyber and Information Technology Crimes Law No. 175 of 2018, Law on Combating Terrorism No. 94 of 2015, Terrorist Entities Law No. 8 of 2015, and other special legislation.

¹⁸/ Review Dr. Fathi Sorour, *The Mediator in Criminal Procedures*, ibid, pp. 925-926.

Article (1) of the draft states: “Without prejudice to the provisions of the procedures stipulated in other laws, the provisions of this law and the accompanying law regarding criminal procedures shall apply.”

- This provision creates a significant legal dilemma on multiple fronts. The first concerns the legislator's intent behind the article: Does it imply repealing the procedural provisions outlined in other laws in favor of those in the draft? Or does it signify that the application of these laws constitutes an exception to the draft's provisions?
- The phrase is marked by imprecision and a lack of clarity, rendering its purpose and application ambiguous. “The ambiguity of the penal text has far-reaching consequences: it obscures its scope and intent, leaving individuals uncertain about the acts it prohibits; it fails to provide a definitive framework for prohibited actions, leading to confusion and disputes over its interpretation; its enforcement is then subject to subjective judgments, potentially influenced by personal biases or arbitrary discretion. Such ambiguity paves the way for abuses, as enforcement relies on the subjective interpretations of officials tasked with applying it, who may distort or misuse its provisions to the detriment of innocent individuals.”¹⁹
- The ambiguity in the wording and scope of this article notwithstanding, the philosophy underpinning the draft Criminal Procedures Law reveals its intent to prioritize the application of special procedural provisions as exceptions to the articles and guarantees provided within the draft. This approach significantly diminishes the protections afforded to the accused and suspects, shifting the balance in favor of judicial control officers and the Public Prosecution during investigative procedures, including arrest, detention, and search, particularly in cases related to terrorism, cybercrimes, illicit gains, emergency laws, and others.

B. Search under the Emergency Law

- The Emergency Law No. 162 of 1958 governed Egypt for an extended period, encompassing exceptional criminal procedures that often disregarded fundamental rights and freedoms. This law enabled security authorities to act beyond the constraints of established laws or procedures, particularly concerning arrest warrants (referred to as "arrest orders"), searches, and trials. Under this regime, trials bypassed appeal processes and awaited the military governor's ratification to become final. This state of emergency officially ended in October 2021.

¹⁹/ Case No. 105 of Constitutional Judicial Year 12, Session of February 12, 1994.

- Article 3, Paragraph (1) of the Emergency Law stated that: “The President of the Republic, upon declaring a state of emergency, may take appropriate measures to maintain security and public order, including imposing restrictions on the freedom of individuals to assemble, move, or pass through certain places at specific times; arresting suspects or those deemed a threat to security and public order; detaining them; and authorizing the search of individuals and places without adhering to the provisions of the Criminal Procedure Law.”

This text was deemed unconstitutional by the Supreme Constitutional Court²⁰ for violating the 2012 Constitution. Subsequently, Law No. 12 of 2017 replaced this provision. The new text²¹ came as follows²²: “Judicial control officers, upon the declaration of a state of emergency, may detain individuals against whom there is evidence of committing a felony or misdemeanor. They may seize dangerous or explosive materials, weapons, ammunition, or other incriminating evidence found in the individuals' possession, residence, or other suspected hiding places, as an exception to the provisions of other laws. The Public Prosecution must be notified within 24 hours of the detention. With the Public Prosecution's permission, the detention may be extended for up to seven days to complete evidence collection, provided that the investigation begins during this period.”

- The revised text, while altering terminology, effectively maintains the same substantive authority as the provision ruled unconstitutional. The term “arrest and search” has been replaced with the phrase “detaining anyone in whose possession there is evidence of committing a felony or misdemeanor, and what he may possess on his person, in his home, or in all places.” Despite this linguistic shift, the practical implications remain unchanged. Judicial control officers are now vested with the authority to arrest suspects, conduct personal and residential searches, and inspect other locations without adhering to the procedural safeguards outlined in other laws. In other words, the text granted judicial control officers absolute powers without being subject to any laws, including criminal procedure laws, and without being bound by the provisions of special laws such as the Anti-Terrorism Law, despite its severity and violation of all the rights and freedoms of the defendants and suspects.²³

²⁰/ Case No. 17 of Constitutional Judicial Year 17, Session of June 2, 2013, Official Gazette No. 22 bis, dated June 3, 2013.

²¹/ Article 3 bis B.

²²/ Published in the Official Gazette No. 17, continued, dated April 27, 2017.

²³/ The Supreme Constitutional Court, in building its ruling on the unconstitutionality of Article 3, Paragraph 1 of the Emergency Law, relied on the text of Article 39 of the 2012 Constitution, which the 2014 Constitution repeated by stating “Homes are inviolable, and except in cases of danger and distress, they may not be entered or searched.....except by virtue of a reasoned judicial order”.... The corresponding article in the 2014 Constitution came under No. 58 with the same text and words, which means that the text of Article 3 bis B, introduced into the Emergency Law pursuant to the provisions of Law No. 12 of 2017, is unconstitutional.

C. Search under the Anti-Terrorism Law:

- It is widely acknowledged that the Anti-Terrorism Law has emerged as the de facto successor to the Emergency Law. Under the regime of former President Mubarak, the Egyptian government consistently justified the extension of the Emergency Law as a necessary measure to combat terrorism and drug-related offenses. However, following the Supreme Constitutional Court's ruling in June 2013, which deemed the provisions permitting arrest and search without adherence to the Criminal Procedure Law (Article 3/1 of the Emergency Law) unconstitutional, the state swiftly enacted the Anti-Terrorism Law in 2015 which incorporated provisions strikingly similar to those of the Emergency Law concerning arrest and search procedures.
- Articles 40, 41, and 42 of the Anti-Terrorism Law empower the detention of suspects—even in the absence of a committed crime—for extended periods of up to 31 days before they are brought before the competent investigative authority. During this period, detainees are subjected to searches without the necessity of a reasoned judicial order. Such detentions, under the authority of judicial control officers, bear a striking resemblance to the arrest orders under the Emergency Law. These detentions are not classified as pretrial detention and often result in the disappearance of suspects for the entirety of the allowed period. It is only at the conclusion of this interval that detainees typically appear before the Public Prosecution.²⁴
- Article 45 of the Anti-Terrorism Law²⁵ grants judicial control officers the authority to secure an order from the Public Prosecution or competent investigative authority to search the residence of a detainee. This provision deviates from established legal norms, which traditionally restrict searches to instances of actual crimes. The law, however, permits searches based solely on the assessments of judicial control officers, even in cases where no crime has occurred.
- Article 48 of the Anti-Terrorism Law confers upon the Public Prosecutor, or any public attorney delegated by them, as well as the competent investigative authority, the power to access or obtain information related to accounts, deposits, trusts, safes, or associated transactions. This provision effectively authorizes the Public Prosecutor, or their delegate, to override the

²⁴/ The maximum period of detention in the UK law is 14 days – seven days with the police that may be extended by seven more days by a court ruling. Dr. Fathi Sorour, *The Mediator in the Criminal Procedure Law*, *ibid*, p. 713.

²⁵/ Article 45 of the Anti-Terrorism Law states that: "In cases where it is permissible to detain or remand a perpetrator of a terrorist crime, and when there is a danger or fear of losing evidence, the judicial police officer may obtain a reasoned permit from the Public Prosecution or the competent investigation authority, as the case may be, to search the residence of the person being detained or remanded in custody, and seize objects and belongings related to the crime for which the search is being conducted."

confidentiality of bank accounts, allowing for the examination of financial data pertaining to suspects or defendants.²⁶

- The Anti-Terrorism Law does not include provisions or promulgation articles that expressly repeal the terrorism-related articles within the existing Penal Code (specifically Articles 86 and subsequent provisions)²⁷. This omission has resulted in the coexistence of two distinct legislations addressing the same subject matter. Such dual legislative frameworks lead to inconsistent legal treatment, undermining the principles of legal clarity and constitutional equality. The legislator, to uphold the principle of equality before the law for individuals in comparable legal situations, should have abrogated one set of provisions to ensure a unified and coherent legal approach to counterterrorism.

D. Search under the Illicit Gains Law:

- The Illicit Gains Law No. 62 of 1975 and its subsequent amendments contain procedural provisions that deviate from the general criminal procedures established in procedural laws, including:
- Article 10 stipulates: (If the examination reveals strong suspicions of illicit gain, the investigation shall be conducted by the bodies specified in clauses A, B, and C of Article 5 of this law. In conducting the investigation, **these bodies are vested with all the powers granted to investigative authorities under the Criminal Procedure Law**. They may also order the prevention of the defendant, his spouse, or his minor children from disposing of some or all of their assets and take the necessary precautionary measures to enforce the order. Furthermore, they may assign the Public Prosecution to investigate specific occurrences.”
- These bodies, formed under the Ministry of Justice, are granted the same powers as those held by investigative authorities, including the Public Prosecution and investigating judges. This encompasses the authority to undertake various investigative actions, such as arrest, search, seizure of assets, and imposing travel bans. This delegation of powers, however, occurs in derogation from established procedural rules, effectively usurping the roles of the Public Prosecution and investigating judges. The law fails to provide any procedural safeguards for the suspects or defendants.

²⁶/ Article 48 of the law provides that: “The Public Prosecutor or their delegate from among public attorneys, at least, or the competent investigation authority, as appropriate, may order the review or acquisition of any data or information related to accounts, deposits, trusts, safes, or transactions associated therewith, if such an action is deemed necessary to uncover the truth in investigations or inquiries regarding the accused’s commission of or participation in any terrorist crime for which sufficient evidence exists of its occurrence.”

²⁷/ These articles were added to the Penal Code pursuant to the provisions of Law No. 97 of 1992 and were known in the media as the Anti-Terrorism Law. State Security Courts are competent to consider them pursuant to this law. The law was published in the Official Gazette, Issue 29, dated July 18, 1992.

- “Article 6 of the Illicit Gains Law stipulates the establishment of a department known as the Illicit Gains Department within the Ministry of Justice. This department is entrusted with, among other responsibilities, assisting the inspection and investigative bodies in performing their duties. Furthermore, Paragraph 2 of Article 10 specifies that the Illicit Gains Department is responsible for submitting the order to prevent the defendant, their spouse, or minor children from disposing of their assets to the competent criminal court, which will then consider whether to confirm, amend, or cancel this order. There is no doubt that the jurisdiction granted to this department in this context—being part of the Ministry of Justice’s organizational structure—undermines judicial guarantees in the investigative procedures concerning this crime. Moreover, the fact that the department is headed by a judge who serves as an assistant to the Minister of Justice—a position that falls under the executive authority—further raises concerns about the independence and impartiality of the process, as it ties judicial functions to the executive branch.”²⁸

Fourth: Conclusion and recommendations

It can be concluded from the foregoing that the draft Criminal Procedures Law, which has been approved in principle by the House of Representatives, harbors a significant legal flaw regarding search guarantees—whether concerning the inspection of individuals, homes, or other premises. It represents a violation of the sanctity of homes and the right to privacy and security of citizens, rights that are guaranteed by the current constitution in several of its articles. The draft law expands the powers of judicial control officers in the realm of searching, either directly through its provisions as discussed above, or by referring to special laws and legislations that incorporate arbitrary and unjust criminal procedures, undermining the rights of suspects or defendants. This expansion involves the usurpation of powers from the Public Prosecution and investigative judges, delegating such authority to committees formed by the Minister of Justice, in clear contravention of the established global constitutional and judicial principle of the separation of powers.

It is clearly evident from these provisions that the legislator’s approach seeks to undermine and circumvent the safeguards established for the defendants and suspects, leaving them vulnerable in the face of state authorities. This renders them defenseless, without legal guarantees or an advocate familiar with the law to shield them from encroachment by the authorities. Such provisions, in their totality, undermine the fundamental principles of criminal justice and fair trial standards, directly contradicting the constitution in this regard.

²⁸/ Dr. Ahmed Fathy Sorour, *The Mediator in the Criminal Procedure Law*, ibid, p. 917.

Based on the foregoing, we recommend:

- Amend the promulgation articles to exclude references to any other laws, ensuring the exclusive application of the provisions of the Criminal Procedures Law to all individuals, without discrimination, thus safeguarding citizens' right to equality before the law.
- If the government insists on advancing the draft Criminal Procedures Law in its current form, the honorable members of the House of Representatives should work diligently to remove any provisions that unjustifiably expand the powers and authorities of security services (judicial control officers).
- The members should, given their responsibility to represent the people, amend any provisions in the draft law that stem from exceptional laws, which are unfair to rights and freedoms. Specifically, provisions related to wiretapping without a time limit and those infringing upon the powers of the judiciary, including the authority of the Attorney-General and the Public Prosecution, should be addressed.
- They should also scrutinize and control vague wording that deliberately obscures the law's provisions while granting excessive discretionary powers to judicial control officers.
- A clear framework should be established for the assignment of judicial control officers, including specifying the responsible authority for such assignments, and prohibiting certain investigative procedures, even in urgent cases, in order to ensure strict judicial oversight. The nature of investigation procedures, particularly those impacting the personal rights of suspects, necessitates that these procedures be conducted under rigorous judicial supervision.
- The government should withdraw the current draft of the law and review it in line with constitutional provisions, comparative laws, and international agreements. Subsequently, the draft should be subject to broad societal discussion, involving experts and stakeholders, to ensure the creation of a law that strikes an appropriate balance between protecting the rights of the accused and suspects, and enabling society to prosecute criminals without infringing upon the rights of either party.