

Amending Military Judiciary Law: a Violation of the Right to Trial before a Natural Judge



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Abstract of the paper:

The legal paper discussed the concept of the right to trial before a natural judge as one of the standards of criminal justice. It clarified the legal and jurisprudential differences between ordinary, exceptional, and special judiciary systems. Specifically, it highlighted the explicit constitutional provisions in Egypt that affirm the right to a natural judge and prohibit the trial of civilians before military courts.

The paper then addressed the concept of the natural judge in comparative law, particularly the laws of countries that have endeavored to limit military courts to the maximum extent possible. It highlighted the limited jurisdiction of military justice in cases of military crimes during wartime or crimes committed by military forces outside the state's territory. Additionally, it analyzed the definition of the natural judge in international law jurisprudence and its relation to military courts.

Afterwards, the paper addressed the concept of the natural judge according to human rights instruments, especially the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, notably Article no. 14 which establishes standards for fair trial and the interpretations of the Human Rights Committee. It also discussed the fundamental principles regarding the independence of the judiciary, particularly Article no. 5 which asserts the right to trial before regular courts.

The paper then dealt with a legal analysis of the extent to which criminal justice standards apply to military justice, especially the importance of adhering to the standards of justice set by human rights charters at various stages, whether before appearing in court during the accusation and arrest stage or while the case is being considered before the competent court.

The paper discussed the constitutional basis for trying civilians militarily in the Egyptian Constitution 2014, and the amendments that occurred in 2019. These amendments expanded the jurisdiction of the military judiciary to try civilians in many cases, in violation of the general principle that it is not permissible to try civilians militarily.

The paper then dealt with a legal analysis of the amendment to the Military Judiciary Law No. 25 of 1966, which included an expansion of the jurisdiction of the military judiciary, as well as an analysis of the new Public Facilities Protection Law No. 3 of 2014, which transformed the military trial of civilians into a permanent situation and

not restricted to a specific period of time like previous laws. The paper revealed the legal duality regarding the protection of public facilities, especially since the Penal Code included the criminalization of crimes of assault on public facilities.

Finally, the paper reviewed the impact of amending the Military Justice Law and the issuance of the new Facilities Protection Law on the right to a fair trial. The paper concluded that this violates criminal justice standards and violates the right to trial before a natural judge. The paper concluded with the following recommendations:

1. Immediately cease the implementation of the amendments made to the Military Judiciary Law, which may result in civilians being tried before a non-specialized judiciary, thereby depriving them of their right to trial before a natural judge.
2. Repeal Article 1, Paragraph 5, Clause H and Article 7, Paragraph 2 of the Military Judiciary Law, which grant the military judiciary the right to try civilians, in violation of the provisions of the constitution and international human rights treaties.
3. Repeal Law No. 3 of 2024 concerning the protection of civil facilities, which allows the military judiciary to try civilians in military courts for crimes falling under the jurisdiction of the ordinary criminal judiciary, and revert to the provisions of the general penal law regarding crimes related to attacks on public facilities.