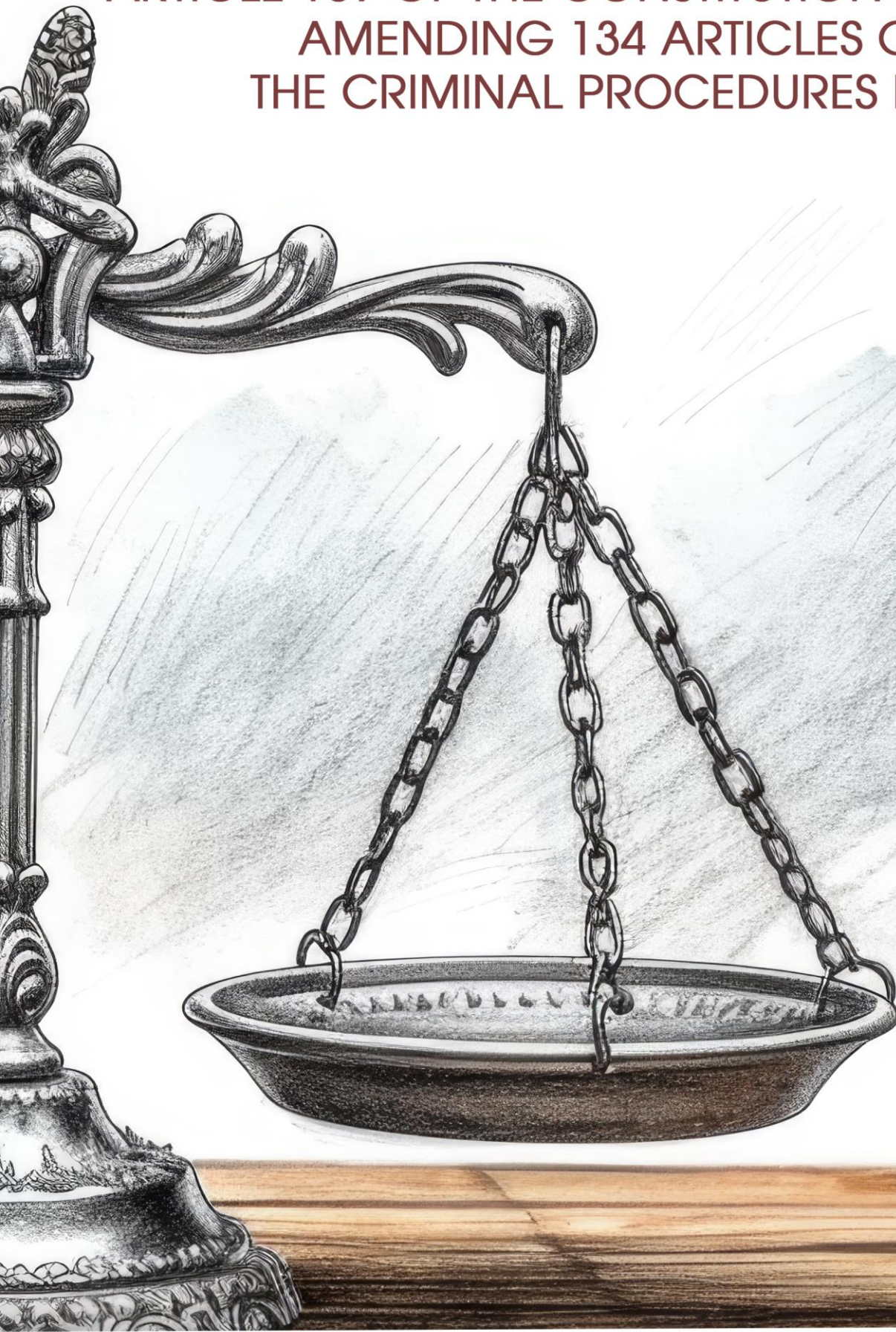


ARTICLE 189 OF THE CONSTITUTION PROHIBITS AMENDING 134 ARTICLES OF THE CRIMINAL PROCEDURES LAW



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



مؤسسة دعم العدالة
JUSTICE SUPPORT FOUNDATION (JSF)

**Article 189 of the Constitution prohibits
amending 134 Articles of the Criminal Procedures Law**

Cairo, 7 October 2024

The Arab Center for the Independence of the Judiciary and the Legal Profession (ACIJLP) expresses its concern and dissatisfaction regarding the claim that the proposed amendments to the Criminal Procedures Law are meant to activate the provisions of the 2014 Constitution, particularly Article 189, which pertains to granting the Public Prosecution the authority to conduct investigations in addition to its prosecutorial powers. This claim contradicts the clear constitutional reality.

The ACIJLP stresses that the minutes from the sessions of the Constitution Committee discussing Article 189, pertaining to granting the Public Prosecution the authority to conduct investigations in addition to its prosecutorial powers, indicated that the provision granting the Public Prosecution the authority to investigate, as mentioned in Paragraph 1, is intrinsically linked to the method of selecting and appointing the Public Prosecutor, as outlined in Paragraph 2, treating Article 189 as a cohesive unit, where the application of one paragraph cannot occur independently of the other.

Paragraph 2 of Article 189 of the Constitution was amended in 2019, transferring the authority to appoint the Public Prosecutor from the Supreme Judicial Council to the President of the Republic alone. This change has undermined the position's intended independence, which the constitutional legislator relied upon when granting the Public Prosecution the authority to investigate in Paragraph 1 of the same article.

It was stated in the minutes from the sessions of the Constitutional Committee that “the investigative judge system has failed in Egypt and leads to the possibility of assigning a judge to a specific case, while the Public Prosecution is specific and present. After appointing the Public Prosecutor in this manner and considering him part of the judiciary, its independence increased. Thank you.”

This underscores that the constitutional legislator aimed, firstly, to address the organizational and financial inability to organize the chapter on the investigative judge due to cost challenges during the drafting of the Constitution. Secondly, the constitutional legislator was reassured of the Public Prosecution's capacity to combine the two powers after reinforcing the independence of the Public Prosecutor's position by stipulating in Paragraph 2 that the appointment be made by the Supreme Judicial Council rather than through a unilateral decision by the President of the Republic.

The ACIJLP is of the view that the amendments made to the Egyptian Constitution in 2019, including the amendment of Paragraph 2 of Article 189, which transferred the authority to appoint the Public Prosecutor from the Supreme Judicial Council to the President of the Republic alone, obstruct the activation of Paragraph 1 of the same article related to granting

the Public Prosecution the right to combine investigative and prosecutorial powers, as it lacks the necessary constitutional condition for such a combination.

Consequently, **the ACIJP** views that activating Paragraph 1 of Article 189, which pertains to granting the Public Prosecution the authority to conduct investigations in addition to its prosecutorial powers, requires maintaining the chapter on the investigative judge in the Criminal Procedures Law without amendment, given that the Public Prosecutor is appointed by the President of the Republic rather than the Supreme Judicial Council.

Since the chapter on the investigative judge in the Criminal Procedures Law is regulated by Articles 64-197, any amendments to these articles would be illegitimate due to their lack of constitutional grounding, according to the minutes from the sessions of the Constitution Drafting Committee, which serve as an integral part of the Constitution and provide interpretation for its texts and provisions.

Meanwhile, since the proposed amendments to the draft of the Criminal Procedures Law seek to revise the 134 articles concerning investigations by the investigative judge, **the ACIJP** calls on the Egyptian Parliament not to approve any amendments to these articles that would enable the Public Prosecution to combine its prosecutorial and investigative powers.

