



The Arab Center For The Independence Of
The Judiciary And The Legal Profession

Constitutional Amendments Impact on the Penal Code & its Complementary Laws

CONCLUSION

Most of the amendments that affected the Constitution, the Penal Code and the laws complementing it (specific criminal legislations) came without an urgent social necessity, and without taking into account the foundations and philosophy of comparative criminal laws. This does not discredit the argument that it came in exceptional circumstances, nor in a dynamic reality in which the good and the bad ripple, threatening state structure. Even in those exceptional cases, there are constitutional rules and provisions that must be adhered to and implemented. There are rights and freedoms that should not be violated nor imposed with restrictions that afflict them, emptying them of their content and undermining its essence. Most of the changes were as follows:

- Inaccurate wording, permeated with ambiguity and verbal flexibility that expands to include cases that the constitution prohibits criminalizing. This also increases the potentials of selective implementation in a way that violates the equal legal protection of those addressed with its provisions.
- The amendments brought some articles of laws that the Supreme Constitutional Court ruled unconstitutional, re-drafted and merged them again into the legislation in force at the present time.
- The amendments also brought the provisions of exceptional laws and planted them in the heart of ordinary ones; the thing that curtail the rights and freedoms of those who are addressed by these provisions and ought to obey rules and orders.
- Most of the amendments aimed at imposing the executive authority's control over every opinion (said or written) and action made by opinion makers through words or formulations that expand to include all permissible things that can be interpreted broadly and flexibly to be subject to criminalization cycle despite the clarity of a legal rule that the exceptions interpretation may should not be expanded. Rather, its interpretation must be narrowed whenever it is in the interest of the accused.



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RECOMMENDATIONS

- Calling on the Egyptian legislator to consider the entire Penal Code, or at least the amendments that have been made to it since 2011 until today, to amend or abolish them, and to find alternative texts that are accurate and consistent with the modern criminal philosophy that tends to reduce the severity of penalties, narrow criminalization, definitions control, including crimes definitions in order to evade ambiguity, and determine punishments to be compatible with each crime and its circumstances.
- The necessity of reviewing the Code of Criminal Procedure, its amendments, and other procedures introduced in view of the fact that the Code of Procedure is the law of freedom. The legislator must also establish the rule of equality in arms between the prosecution authority and the accused so that each suspect is assured of the justice of the law and of his ability to defend himself. The legislator must also limit long-term pretrial detention and what is called unnecessarily detention/reservation.
- The same applies to laws of combating terrorism and terrorist entities, public meetings and processions, and peaceful demonstrations. All of these laws did not receive sufficient review in line with the restrictions stated in them. Rather, they came in exceptional circumstances and in the absence of the Parliament; which necessitates reviewing and drafting them in a way that balances the authority of the state in maintaining its order and the rights and freedoms of citizens.
- The legislator must also, in the light of his powers and role, remove any exceptional text pushed or inserted into law core, keeping the circle of exceptional texts bounded to the emergency law alone. The legislator must also consider the application of the permanent state of emergency imposed since 2017 until today, putting into account that continuing this implementation results in permeating its texts and rules into the regular legislative structure, detracting from the rights and freedoms of citizens.