INFRINGEMENT ON THE RIGHT TO FREEDOM OF MOVEMENT AND TRAVEL IN THE DRAFT CRIMINAL PROCEDURES LAW

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Introduction:

Travel bans are a significant legal issue that sparks considerable controversy, raising jurisprudential and legal questions about the legitimacy of this grave measure in the Egyptian legal system. This is particularly relevant as travel bans directly affect a fundamental human right—the right to freedom of movement and travel. Despite the critical nature of this measure, which involves restricting an individual's freedom during the investigation phase, the Egyptian legislature has not addressed the regulation of travel bans for decades. The current Criminal Procedures Law No. 150 of 1950 contains no provisions governing this practice, which the authorities frequently adopts to restrict the freedom of the defendants, especially in political cases.

As a result, travel bans occupy a unique and problematic position within the Egyptian legislative framework. The absence of a law regulating travel bans has left a legislative vacuum. The executive authority has bridged this gap by giving the power to impose travel bans to the Ministry of Interior, which is regulated by Minister of Interior Decision No. 812 of 1969, which has been amended multiple times, most recently by Minister of Interior Decision No. 54 of 2013.

Regulating travel bans through ministerial decisions, rather than formal legislation, has subjected these decisions to significant jurisprudential and judicial criticism, raising serious concerns about their legitimacy, especially as they clearly contravene the Constitution, as will be discussed. In recent years, the state has regulated travel bans through various laws passed during the "fight against terrorism" phase, such as the Anti-Terrorism Law, the Law Regulating the Lists of Terrorist Entities, the Anti-Cybercrime Law, and amendments to the Illicit Gains Law. However, rather than resolving the issue, these laws have further complicated the situation. They contain provisions for travel bans and appeal procedures that differ from those outlined in Minister of Interior Decision No. 54 of 2013, thereby undermining the legal standing of the defendant.

This complex legal landscape surrounding travel bans has led the state to finally attempt to address the issue more comprehensively by incorporating travel ban provisions into the draft Criminal Procedures Law, in Articles 147, 148, and 149. Nonetheless, important questions remain: Does this attempt adequately safeguard the rights and guarantees of the defendants? Do the provisions related to travel bans in the draft law offer sufficient protections to prevent the abuse of this serious measure by the authorities? And, are these provisions in line with the Constitution and the foundational legal principles that govern criminal justice?

This paper seeks to address these critical questions by analyzing the current legal status of travel bans, beginning with their constitutional basis, followed by an examination of the relevant decisions and laws governing travel bans, and concluding with an analysis of the articles related to travel bans in the draft Criminal Procedures Law. This analysis is conducted in light of the Constitution, the principles of criminal justice, and the standards and guarantees of a fair trial—the only framework that upholds human rights, particularly for individuals facing accusations.

The Constitutional Status of Travel Bans

The right to travel is a natural right embedded in Egyptian constitutional history. The 1971 Constitution addressed the right to movement in Articles 50 to 53, while the 2014 Constitution enshrined this right in Article 62, which states:

"Freedom of movement, residence and emigration is guaranteed.

No citizen may be expelled from state territory or banned from returning thereto.

No citizen may be banned from leaving state territory placed under house arrest or banned from residing in a certain area except by a causal judicial order for a specified period of time, and in cases specified by the law."

This constitutional provision clearly mandates that the legislative authority enact a law regulating travel bans, ensuring that such a law upholds the constitutional right to travel. The key requirements are:

- The travel ban must take the form of a judicial order, meaning that only the judiciary is empowered to issue such a decision.
- The travel ban must be based on substantial reasons, ensuring that the decision is grounded in objectivity and necessity.
- The travel ban must be limited to a specified period of time.

The provisions outlined in Article 62 of the 2014 Constitution closely mirror those of Articles 50, 51, 52, and 53 of the 1971 Constitution. These provisions impose an obligation on the legislative authority to enact a law regulating travel bans as part of investigative procedures. The Constitution explicitly sets forth the governing standards for such decisions, which must be judicial in nature, reasoned, and temporary. Despite this, the current legislature, much like its counterpart under the 1971 Constitution, has ignored for an extended period to fulfill this obligation, perpetuating a legislative vacuum. This vacuum has, in turn, given rise to multiple interpretations and legal opinions. What is particularly relevant here is how judicial

jurisprudence has responded to this legislative gap, especially in terms of how Egyptian courts have interpreted travel bans.

Travel Bans in Supreme Court Rulings

Judicial jurisprudence has addressed two critical legal dimensions of travel bans. The first aspect pertains to the legality of travel ban decisions within the current legal framework. Legitimacy refers to whether the authority issuing the travel ban adheres to constitutional and legal mandates. The second dimension concerns the classification of the travel ban within the judicial system. If a travel ban is classified as an administrative decision, disputes over it fall under the jurisdiction of the administrative courts. However, if the travel ban is considered an administrative procedure, jurisdiction would then lie with the general jurisdiction.

First: The Legitimacy Aspect

Judicial jurisprudence consistently holds that travel ban decisions issued under Interior Minister Decision No. 54 of 2013, regarding inclusion on travel ban lists, are illegal because they are not based on a proper law, as required by the Constitution. The Constitution explicitly mandates that the legislative authority issue a law to regulate travel bans, and since such a law has not been enacted, all decisions made under the Minister of Interior's directive lack a legal foundation.

The decision by the Minister of Interior is considered subordinate to the law within the hierarchy of Egyptian legislation. Furthermore, as the decision was issued by the executive branch, it encroaches on the legislative authority's exclusive right to pass laws that regulate restrictions on natural freedoms, such as the freedom of movement. Established legal principles dictate that any restriction on public freedoms must be enacted through a law issued by the legislative authority.

Supreme Court rulings unanimously affirm the illegitimacy of travel bans imposed in this manner. One of the key rulings addressing this issue is the 2000 judgment by the Supreme Constitutional Court in Appeal No. 243 of the 21st Judicial Year. The court ruled that Articles 8 and 11 of the Presidential Decree of Law 97 of 1995 concerning passports were unconstitutional. The court stated that travel bans cannot be imposed based on the Interior Minister's decision; such restrictions must be governed by a law passed by the legislative authority.

The Supreme Constitutional Court, in Appeal No. 40 of the 27th Judicial Year, ruled that "the protection of freedom of movement is a fundamental public freedom. Any restriction on this right must be based on legitimate grounds. Imposing such restrictions without proper

justification undermines personal liberty and its foundational principles. All Egyptian constitutions have recognized the right to movement, stipulating that citizens cannot be forced to reside in specific locations or be barred from certain areas except as provided by law, and prohibit the deportation of citizens or preventing them from returning to their homeland and guarantee the right to temporary or permanent emigration. As per the amended 2014 Constitution, issued in January 2014, no citizen may be barred from leaving Egyptian territory except through a reasoned judicial order for a limited time and in cases explicitly defined by law."

This ruling declared that travel bans imposed without a law passed by the legislative authority are unconstitutional. It further established that travel bans must meet specific constitutional criteria: they must be issued by a judicial order and be temporary. This inherently means that indefinite travel bans are invalid.

The administrative judiciary echoed this constitutional principle of the illegitimacy of travel bans. In 2005, the Supreme Administrative Court, in Appeal No. 7711 of the 47th Judicial Year, ruled that "only a judge or a member of the Public Prosecution, as authorized by law, has the right to impose a travel ban. Any travel ban not issued in accordance with legal provisions regulating its issuance is illegitimate, regardless of the authority imposing it."

The Court of Cassation's rulings aligned with the principles established by both the Constitutional Court and the Supreme Administrative Court. In Appeal No. 48117 of Judicial Year 74, the Court of Cassation reiterated that "the citizen's right to movement is an essential aspect of personal freedom, which the Constitution enshrines. Freedom of movement is a public freedom, and any restriction on it without a legitimate reason erodes personal liberty and weakens its foundational structure. The Constitution entrusted the legislative authority, and no other, with the responsibility to regulate this right. This principle asserts that the default is freedom of movement, with restrictions being the exception, and only a judge or a member of the Public Prosecution, as designated by law, may impose such restrictions. The executive authority has no jurisdiction over regulating or interfering with this fundamental right. The Constitution's Article 50 prohibits obliging a citizen to reside in a specific place or preventing them from residing in any area unless stipulated by law. Article 51 prohibits deporting a citizen from the country or denying them the right to return, while Article 52 affirms the citizen's right to emigrate and leave the country. This means that the Constitution did not give the executive authority the power to regulate any aspect of the rights protected by the Constitution, and that any regulation of travel bans or restrictions on movement must be carried out by the legislative authority through laws."

This judicial consensus across the Supreme Courts is grounded in a clear constitutional mandate: that travel bans must be regulated by legislation from the executive authority, and that such legislation must comply with constitutional standards concerning the form,

justification, and timeframe of the travel ban. However, for decades, this requirement was overlooked, and the disregard persisted even after the 2014 Constitution.

Second: The Judicial Classification of Travel Ban Decisions

Judicial jurisprudence has differed over the legal description of travel ban decisions. Interior Ministerial Decision No. 54 of 2013 grants various entities—many of which are non-judicial—the authority to request the inclusion of individuals on travel ban lists. This inclusion of non-judicial entities has complicated the legal classification of the travel ban decision and led to differences in judicial interpretation and jurisdiction over such cases.

These differences underwent two stages: Before 2015, the State Council viewed the travel ban decision as an administrative decision. Since administrative decisions fall under the purview of the State Council, the Council asserted its jurisdiction to evaluate the legitimacy of such decisions. The General jurisdiction, on the other hand, classified the travel ban as an administrative procedure, which meant that the travel ban was treated as a procedural matter under general law, giving the general jurisdiction the authority to adjudicate cases related to travel bans. This jurisdictional disagreement persisted until 2015, when the Supreme Constitutional Court resolved the matter with its landmark ruling in Appeal No. 40 of the 27th Judicial Year.

The First Stage: Pre-2015

Before 2015, the State Council treated the travel ban decision as an administrative decision, a perspective that is clearly reflected in the ruling of the Supreme Administrative Court in Appeal No. 12251 of Judicial Year 57, delivered on April 6, 2013.

In this ruling, the court stated "Describing the contested decision as a judicial decision contradicts the nature of things; the criminal court's involvement in a criminal case only occurs after the Public Prosecution has taken action during the investigation phase. It is practically impossible to equate a travel ban decision made by the Public Prosecution (which is **a purely administrative act**) with the pretrial detention orders issued by the court, for which the legislator has organized clear procedures and methods of appeal. Therefore, given **the administrative nature of the Public Prosecutor's decisions on travel bans and listings**, it is within the jurisdiction of the administrative judiciary to review their legitimacy. Moreover, the legislative vacuum concerning the regulation of travel bans has persisted since the Supreme Constitutional Court's ruling on November 4, 2000, in Case No. 243 of Judicial Year 21. Thus, all travel ban decisions—regardless of the issuing authority—are subject to legality control by the administrative judiciary, which balances the public interest with individual

freedoms until a law is enacted to regulate travel bans, specifying their conditions and procedures."

According to this ruling, the Supreme Administrative Court rejected the classification of the travel ban as a judicial decision, because a decision can only be considered judicial if it is issued by a court and not by the Public Prosecution, which functions as the investigating authority. The court also dismissed any comparisons between the travel ban decision and pretrial detention decisions, noting that the Criminal Procedures Law has regulated the provisions surrounding pretrial detention. The Supreme Administrative Court adopted the view that the travel ban decision is an administrative decision, irrespective of which authority issued it. Consequently, the Council of State is concerned with assessing the legitimacy of the travel ban decision.

As for the general jurisdiction, it classified the travel ban decision as a criminal decision. In 2009, the Court ruled in Appeal No. 5410 of Judicial Year 66 that the travel ban decision "is one of the criminal procedures undertaken by the Public Prosecution as an investigating authority or the competent judge when a crime is committed. Its aim is to keep the defendant close to the authority conducting the investigation and to preserve the evidence of the accusation. In this regard, it is an investigative work of a judicial nature, and the administrative authority's implementation of it is not viewed in isolation from this matter, nor does it change its classification as an act issued by a judicial authority."

Thus, unlike the administrative judiciary, the Court of Cassation treated the travel ban decision as an act of judicial nature related to investigative work, which means that jurisdiction over travel ban decisions lies with the ordinary judiciary.

The Second Stage: Post-2015

The judicial dispute regarding the legal classification of the travel ban decision has led to a conflict of jurisdiction between the administrative judiciary and the general jurisdiction. This Constitutional Court had to resolve this conflict.

In its ruling issued in 2015, in Appeal No. 40 of the 27th Judicial Year, the Constitutional Court classified the travel ban decision as an investigative procedure, thus subjecting it to the oversight of the ordinary judiciary, based on the premise that the Public Prosecution is one of the branches of the judicial authority authorized to conduct investigative procedures, as stipulated by the 2014 Constitution. Following this ruling, the State Council no longer held the authority to consider travel ban decisions.

The court asserted that the travel ban decision, "issued by the Public Prosecutor to prevent the defendant from traveling during ongoing investigations, is a judicial procedure among the

criminal procedures executed by the Public Prosecution, which is legally entrusted with the task of investigating crimes. The purpose of issuing such a decision is to keep the defendant close to the investigating authority and to preserve the evidence pertinent to the accusation. In this context, the travel ban is characterized as an investigative act with judicial implications. Consequently, the ordinary judiciary, which has been entrusted by the legislator with the jurisdiction to adjudicate criminal cases, is competent to hear disputes arising from these decisions. This is because the decisions in question were issued by the Public Prosecution concerning a criminal matter that falls under the jurisdiction of the ordinary judiciary. Therefore, this authority—being the general jurisdiction for adjudicating all disputes and crimes, except those specifically assigned to the State Council courts—has the competence to consider appeals against these decisions."

Following the issuance of this constitutional ruling, the legal classification of the travel ban decision was established as an investigative procedure. Consequently, the administrative judiciary's authority to assess the legitimacy of such decisions was curtailed, and the general jurisdiction emerged as the competent authority for their consideration. The ruling also affirmed the illegitimacy of travel ban decisions issued in accordance with the Minister of Interior's decision.

Among the recent notable decisions that reinforce this stance is the ruling of the Qasr Al-Nil Criminal Court in case No. 173 of 2011, commonly referred to as the Civil Society Case, which involved accusations against 300 individuals from 85 civil society organizations and spanned 13 years. The court's decision articulated that "Justice is blindfolded and does not differentiate between individuals; anyone who sets foot on the land of the Arab Republic of Egypt possesses the same rights and obligations. Those who arrive should be aware of their rights and duties to foster confidence in the state's justice system, regardless of whether they are citizens or foreigners, and without being subjected to sudden circumstances that are unclear and unregulated, as this enhances their confidence in the state's justice. As it appears from the papers presented, the names of the complainants on the travel ban list were issued by the investigating judge, thereby rendering it devoid of any legal basis. The restriction of their freedom of movement must be governed by a law enacted by the legislative authority. Consequently, the travel ban decision lacked legal foundation, necessitating the annulment of the order in question and the removal of the complainants' names from the travel ban list."

The court explicitly grounded its decision to remove the names on the illegitimacy of the travel ban, citing the absence of a legislative framework regulating such provisions, with Article 62 of the Constitution serving as the pertinent reference.

Current Legal Framework for Travel Bans:

The legal framework governing travel bans in Egypt is complex and multifaceted. The prevailing regulation stems from Interior Minister Decision No. 812 of 1969, which has been amended multiple times, most recently by Interior Minister Decision No. 54 of 2013.

This regulation grants nine entities the authority to request the inclusion of individuals on travel ban lists: the courts (via rulings or orders), the Public Prosecutor, the investigating judge, the Assistant Minister of Justice for Illicit Gains, the Head of General Intelligence, the Head of Administrative Control, the Director of Military Intelligence, the Director of Personal Affairs and Social Services for the Armed Forces, the Assistant Minister of Interior for the National Security Sector, and the Assistant Minister of Interior for Public Security.

Out of these nine entities, seven are non-judicial bodies. The rulings of Egypt's Supreme Courts have confirmed that this is unconstitutional. In an attempt to address the "illegitimacy" of such decisions, the government introduced to parliament a draft law in 2015 aimed at regulating travel ban procedures. The draft law was forwarded to the Fatwa and Legislation Department of the State Council for review.

The draft proposes the addition of a new article (No. 208 bis) to the Criminal Procedures Law that would empower the Public Prosecutor and investigating authorities to impose travel bans on individuals accused of felonies or misdemeanors carrying a prison sentence of more than one year. It also includes provisions for appealing travel bans, which are as follows:

- An appeal must be filed with the competent criminal court within 15 days.

- The appeal must be submitted through the court clerk's office, and the court is required to issue a reasoned ruling within 15 days of submission.

- If the appeal is rejected, it can be refiled every three months.

The provisions outlined in the 2015 draft law, though not enacted, clearly reflect the philosophy of the present legislator regarding fair trial guarantees, particularly concerning travel bans. Despite the draft law remaining unissued, several other laws have since been passed that incorporate provisions regulating travel bans as part of investigative procedures outside the scope of the Criminal Procedures Law. These laws have adopted many of the same provisions as the old draft, which are the Anti-Terrorism Law, the Anti-Cybercrime Law, and the amended Illicit Gains Law.

First: Travel Ban in the Anti-Terrorism Law

Law No. 94 of 2015 on Combating Terrorism introduced special provisions related to travel bans in Article 47, which states: "The provisions of Articles 208 bis (a), 208 bis (b), 208 bis (c), and 208 bis (d) of the Criminal Procedures Law shall apply in cases where sufficient evidence arises from investigations or inquiries supporting the accusation of involvement in any terrorist crime. The competent authorities may take necessary precautionary measures, including freezing funds or other assets, preventing their disposal or management, or imposing travel bans, provided they adhere to the provisions and procedures set out in the aforementioned articles."

The article references the provisions of Articles 208 bis (a), 208 bis (b), 208 bis (c), and 208 bis (d) of the Criminal Procedures Law. Interestingly, these articles include provisions that address the freezing of assets and do not explicitly mention travel bans. As a result, the travel ban provisions are applied by analogy to the asset-freezing procedures. The procedures are as follows:

First: According to Articles 208 bis (a) and 208 bis (b), the Public Prosecution must submit a request to the competent criminal court to issue a ruling on the travel ban. When necessary, the Public Prosecutor may issue a temporary order. However, this temporary order must be submitted to the competent court within seven days, a mandatory deadline after which the order expires if not referred to the court.

Second: The court is required to hear the statements of the affected parties within 15 days. It must also review the Public Prosecutor's temporary order and may postpone the decision if necessary. The court's ruling must be well-reasoned.

Third: A person affected by the travel ban may appeal the decision before the competent criminal court once three months have passed. The appeal must be filed with the court clerk's office, and the court must issue a ruling within 15 days. If the appeal is rejected, a new appeal may be submitted every three months.

Fourth: The travel ban is lifted if a decision is issued stating that there are no grounds for filing charges, or if the defendant is acquitted.

The previous provisions were designed to regulate decisions preventing the disposal of funds, and applying them to travel bans is a flawed comparison. There is a significant difference between the two measures. The restriction on the disposal of funds pertains to property, while the travel ban directly affects human freedom and the fundamental right to movement. The most perplexing aspect is that some of the articles of the Criminal Procedures Law referenced in the Anti-Terrorism Law do not apply to the restriction on the disposal of funds. For example, Article 208 bis (c) governs the return of financial assets subject to criminal proceedings from the funds of the defendant's spouse and minor children, and Article 208 bis

(d) states that a criminal case does not expire upon the death of the defendant without a ruling on the return of funds. This provision cannot possibly be applied to a travel ban.

Moreover, these provisions contain an unmistakable constitutional violation: these travel bans are open-ended, with no clear time limits. The individual subject to the travel ban is only entitled to appeal every three months. However, these provisions do not include an important safeguard: the decision must be issued by the competent court rather than the investigating authority. Even in cases of urgency, when the Public Prosecutor issues the travel ban, the decision must be submitted to the court for review within seven days.

Second: Travel Ban under the Law Regulating the Lists of Terrorist Entities and Terrorists

The travel ban is among the consequences resulting from the inclusion of individuals on terrorist lists, as specified in Article 3 of Law No. 8 of 2015. It is further outlined in Article 7, Section 2, Clauses 1 and 2, which state:

"1. Inclusion on the travel ban and arrival watch lists, or preventing a foreign national from entering the country;

2. Withdrawing or canceling the passport, or preventing the issuance or renewal of a new passport."

The travel ban is directly linked to the inclusion of a person on terrorist lists, both in terms of timing and the grievance procedures. The travel ban exists as long as the decision to include an individual on the terrorist lists remains in effect. According to Article 4 of the law, the duration of the travel ban is five years, which may be extended if the decision to include the person on the terrorist lists is renewed. Therefore, the procedures for appealing a travel ban decision are as follows:

- Appeals must be submitted to the Criminal Court of the Court of Cassation, which is designated annually by the General Assembly of the Court.

- The appeal must be filed within 60 days of the decision's publication in the Official Gazette.

The law does not specify a timeframe within which the court must rule on the appeal, nor does it limit the number of times an individual can be re-listed on the terrorist lists. Additionally, the initial five-year inclusion period is already excessively long, which effectively makes the travel ban indefinite. This lack of time limitation constitutes a clear violation of Article 62 of the Constitution.

Third: Travel Ban under the Anti-Cyber and Information Technology Crimes Law

Article 9 of the Anti-Cyber and Information Technology Crimes Law No. 157 of 2018 addresses the issue of travel bans, granting investigative authorities the power to impose a travel ban as one of the investigation procedures, with the condition that the decision be reasoned. The article outlines the procedures for appealing such decisions, which include:

- The appeal must be filed to the competent criminal court within 15 days from the date the aggrieved is informed of the decision. If the appeal is rejected, the aggrieved party has the right to file another appeal every three months from the date of the rejection.

- The appeal is submitted as a report to the clerk of the competent criminal court. The court is required to decide on the appeal within 15 days of submission, and the ruling must be reasoned.

- The travel ban expires after one year from the date it was issued, or earlier if a decision is made that there is no reason to proceed with a criminal case, or if an acquittal is granted—whichever comes first.

This article introduces a key provision absent from the Anti-Terrorism Law, by imposing a time limit on the travel ban. The one-year expiration limit aligns with Article 62 of the Constitution.

Fourth: Travel Ban under the Illicit Gains Law (Law No. 62 of 1975)

The Illicit Gains Law regulates travel ban provisions in Article 13, which are:

- The travel ban is issued by the Public Prosecution based on a request from the inspection and auditing authorities.

- The individual subjected to the travel ban has the right to appeal the decision within 15 days of being informed of it. The appeal is submitted before the competent criminal court.

- If the appeal is rejected, the individual may file another appeal every three months, starting from the date the appeal was rejected.

- The appeal is filed as a report with the clerk of the competent criminal court. The court must deliver a ruling within 15 days of the report being submitted, and the ruling must be reasoned.

- The travel ban ends when a decision is made to not pursue a criminal case, or if a judgment of acquittal or reconciliation is issued.

When comparing the provisions for travel bans across the three laws and with the 2015 draft law, we observe a consistent legislative approach to regulating travel bans. These laws uniformly grant the authority to issue travel ban decisions to the investigative authorities, such as the Public Prosecutor, his delegate, the Public Prosecution, or the investigating judge. This reflects the legislator's clear vision of the travel ban as an investigative procedure that restricts the defendant's freedom of movement. From a legal perspective, this approach is sound, as it largely resolves the jurisprudential debate regarding the classification of the decision. However, a significant concern is the intentional violation of the time limit on the travel ban decision, except in the case of the Anti-Cyber and Information Technology Crimes Law, which establishes a maximum validity period of one year for the decision.

There is, in fact, no legal or logical justification for the continued insistence on this constitutional violation, particularly when such a violation was avoided in another law enacted by the same legislator. This raises the question: Did the committee that drafted the proposed Criminal Procedures Law, as well as the committees that reviewed and discussed its articles, take steps to eliminate the clear suspicion of unconstitutionality?

Travel Ban in the Draft Criminal Procedures Law:

Travel bans are regulated in Articles 147, 148, and 149 of the draft Criminal Procedures Law. Here is a review of the three articles as they appear in the draft.

Article 147 states: "The Public Prosecutor or his delegate may, on his own initiative or upon the request of the interested parties, and the competent investigating judge, when there is sufficient evidence of the seriousness of the accusation in a felony or misdemeanor punishable by imprisonment, issue a reasoned order to prevent the defendant from traveling outside the country or to place his name on the watch lists for a period of **one year**, **renewable** for a period or other similar periods, for a matter required by the necessities of investigations or the proper conduct of trial procedures, and to ensure the implementation of any penalties that may be decided. The Public Prosecutor or his delegate may, on his own initiative or upon the request of any interested party, issue a reasoned order to include on the lists of those banned from travel or watch lists those convicted, accused, or convicted persons whom the competent foreign judicial authorities request to be extradited or tried."

The article addresses the travel ban as an investigative measure, granting the investigating authorities the power to issue the decision and setting the duration of the decision at one year, renewable for one or more periods. The article considers the order of the investigating authority to be a judicial order, and it does not impose any maximum time limit on the decision, allowing it to be renewed every year without a cap, which clearly violates Article 62

of the Constitution. The wording of the article brings back bitter memories of phrases that deliberately undermine rights, as it employs the phrase “one or more periods,” which legal experts fully understand can be manipulated to benefit specific persons.

Article 148 states that “a person subject to a travel ban, or a person on the watch lists, or their representative, may appeal this order before the competent criminal court sitting in the consultation chamber within 15 days from the date they become informed of it.

A subsequent appeal against the ban or listing order may not be filed until three months have passed since the rejection of the previous appeal.

The appeal must be submitted in writing to the clerk of the competent criminal court. The president of the court shall schedule a session to consider the appeal, notifying both the appellant and the Public Prosecution. The court shall render a decision on the appeal within a period not exceeding 15 days from the date the appeal is filed, issuing a reasoned ruling after hearing the statements of the appellant or their representative and the Public Prosecution. To this end, the court may undertake any measures or investigations it deems necessary.”

The article outlines the provisions for grievances as follows:

- The competent authority is the criminal court convened in the consultation chamber, which must address the grievance within 15 days.

- The court is required to decide on the grievance within 15 days of its submission.

- If the grievance is rejected, the individual subject to the travel ban may file a new grievance every three months.

These provisions mirror those in the three previous laws, with the exception of the Anti-Cyber and Information Technology Crimes Law, which established a time limit for the decision. They are also consistent with the provisions previously presented by the government in the draft law amending criminal procedures in 2015 and reflect the same constitutional violation.

Article 149 serves as a declarative article that grants the investigating authority the right to reverse or amend the decision by lifting the travel ban for specific periods, as well as allowing the Public Prosecutor to permit travel out of necessity.

The primary concern regarding these articles is the clear violation of Article 62 of the Constitution, particularly the absence of a time limit on travel ban decisions. These are serious decisions that impose restrictions on fundamental rights, as established by the Supreme

Constitutional Court. Furthermore, these articles in the draft law also contravene the International Covenant on Civil and Political Rights, especially Article 12, Paragraphs 1, 2, 3, and 4, which represent international obligations since Egypt is a party to the covenant. They also constitute a legal obligation under Egyptian law, as Egypt ratified the covenant, which was published in the Official Gazette in 1981.

Conclusion:

Since the issuance of the 2014 Constitution in January 2014, travel bans imposed under Interior Minister Decision No. 54 of 2013 have been deemed illegal due to their lack of a legal basis, as affirmed by the Supreme Constitutional Court. Conversely, the travel ban procedures outlined in the Anti-Terrorism Law, the Terrorist Entities Regulation Law, and the amended Illicit Gains Law carry a clear suspicion of constitutional violation.

The travel ban provisions in the draft Criminal Procedures Law reveal the government's determination to avoid establishing a time limit for the decision, a trend that has persisted since attempts to legalize this issue began in 2015. This approach reflects the broader philosophy of the draft, which prioritizes security over freedoms.

Legally, the formulation of the travel ban provisions has been influenced by procedures for preventing the disposal of funds, particularly regarding jurisdiction, procedural timelines, and related provisions. However, we believe this analogy is flawed due to the inherent differences between the two procedures. The ban on the disposal of funds pertains to a tangible asset—money—while the travel ban addresses a fundamental right: freedom of movement.

A more appropriate analogy would be to pretrial detention, as both impose restrictions on freedom—with pretrial detention being a harsher restriction. However, it is crucial to recognize that while the two may share similarities, they are not identical in nature.

This paper concludes with three recommendations aimed at proposing alternative formulations for the articles included in the draft Criminal Procedures Law. The proposed formulations attempt to align with the Constitution and uphold the principles and standards of criminal justice.

Recommendations:

This is a recommendation of the necessity to amend Articles 147, 148, and 149 of the Draft Criminal Procedures Law as follows:

Proposed Formulation of Article 147:

(The investigation authorities may, on their own initiative or upon the request of interested parties, and when there is sufficient evidence of the seriousness of the accusation in a felony or misdemeanor punishable by imprisonment for a period of not less than one year, issue a reasoned order to ban the defendant from traveling outside the country or to place their name on the watch lists for a period of three months, renewable for similar periods, not to exceed a total of one year. This matter shall be presented to the competent criminal court within a period not exceeding 15 days from the date of the decision. If it is not presented within this period, the order shall lose its effect. This is necessary for the conduct of investigations, the proper administration of trial procedures, and to ensure the implementation of any penalties that may be decided. The investigation authorities may also, on their own initiative or upon the request of interested parties, issue a reasoned order to include on the lists of those banned from traveling or on watch lists individuals who have been convicted or accused and convicted persons whom the competent foreign judicial authorities request to extradite or present to trial.)

Proposed Formulation of Article 147:

(Individuals banned from traveling, on watch lists, or their representatives may present their grievances before the competent criminal court convened in the consultation chamber within 15 days of being informed of the decision.

It is not permissible to re-appeal against the travel ban before one month has passed from the date of rejection of the previous appeal.

The appeal must be submitted through the competent criminal court clerk's office, and the president of the court shall set a session to consider the appeal, of which the appellant and the Public Prosecution shall be notified. The court shall decide on the appeal within a period not exceeding 15 days from the date of filing it, issuing a reasoned order after hearing the statements of the appellant or their representative and the Public Prosecution. For this purpose, the court may take any measures or investigations it deems necessary.)

Proposed Formulation of Article 147:

(The investigating authority that initially issued the order may, at any time, revoke that order and may amend it by removing an individual's name from the travel ban or watch lists for a specific period if deemed necessary.

The Public Prosecutor may, based on considerations he finds appropriate, including health circumstances, grant individuals whose names are listed among those banned from travel—upon their own request, the request of their representative, or that of a relative up to the fourth degree—a travel permit for a specified duration, provided they furnish guarantees ensuring their return to the country upon the expiration of the permit. In all instances, the travel ban shall be lifted upon the issuance of a decision indicating there is no justification for pursuing a criminal case, the rendering of a judgment of acquittal, or the elapse of one year from the date of the decision, whichever occurs first.)