

# JUDICIAL CONTROL IN THE DRAFT CRIMINAL PROCEDURES LAW



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## **Judicial control in the draft Criminal Procedures Law**

### **Introduction**

Judicial control, as a procedural mechanism after a crime is committed, grants legally designated parties the authority to undertake grave investigative actions that impact citizens' freedoms and rights. Those entrusted with this authority may carry out various actions, including arresting suspects—even using force—detaining, and searching them—measures that infringe on individual rights such as freedom and mobility. Consequently, judicial control officers in democratic systems are bound by stringent safeguards and standards to minimize potential abuses of this power and to protect citizens' interests.

In many legal systems, a specialized police force, known as the judicial control officers, is established under the judiciary's direct oversight. This body's primary function is to enforce the directives of the investigative authority, whether an investigating judge or public prosecutor, as the judiciary holds primary jurisdiction over criminal investigations. Accordingly, individuals vested with judicial control—whether police officers or public officials—operate under the direction of the primary investigative authority and are subject to both technical oversight, which mandates adherence to legal standards, and administrative oversight, imposing disciplinary measures for professional misconduct.

The Egyptian Criminal Procedures Law No. 155, when issued in 1950, structured the framework of judicial control and established standards to regulate this authority, ensuring its adherence to defined objectives. The law explicitly provided that any procedural action taken by a judicial control officer in violation of these standards would be deemed invalid, effectively penalizing the officer for legal breaches. However, in 1957, the law was swiftly amended, broadening the status of judicial control officers to encompass a wider array of police officers and public employees.

Further expansions were introduced in the recent draft of the Criminal Procedures Law, which not only extended the categories of judicial control officers but also widened the scope of preliminary investigative procedures, including the potential delegation of certain investigative functions within the purview of the Public Prosecution.

This paper seeks to critically examine whether the new draft aligns with international and comparative standards regarding judicial control. To address this central question, the paper will first outline the legal concept of judicial control and the international standards that govern it, followed by an analysis of judicial control provisions within the current law compared to those proposed in the new draft.

## **The concept of judicial control**

The state holds a fundamental obligation to uphold public security and confront crimes that threaten the rights and freedoms of its citizens. Achieving security entails two complementary processes. The first is crime prevention, an administrative control function that involves preemptive measures by state agencies, including police forces. These agencies deploy preventive tools such as patrols, facility security, and other strategies aimed at deterring crime before it occurs.

The second process is initiated once a crime has been committed and involves identifying the offense, the perpetrator, and gathering the requisite evidence for judicial investigation. This process necessitates the involvement of a specialized judicial police force, which supports the judicial authority in conducting investigations. Here, the judiciary assumes responsibility for this aspect of public security, commencing its role immediately after a crime is reported and overseeing investigation procedures through to the criminal trial.

Due to the complexity of this process, the judiciary relies on cooperation from specialized personnel, particularly police officers, to execute urgent actions in the immediate aftermath of a crime. These actions may include high-speed pursuits or the use of necessary force, requiring the intervention of judicial control officers who undertake police-specific tasks, such as evidence collection, suspect apprehension, and scene analysis. These preliminary investigative procedures are crucial in the early stages of the judicial process, providing vital support to the judicial authority's investigative mandate and facilitating the successful implementation of orders from the judiciary.

Given the critical role of judicial control officers in combating crime, ensuring public security, and its intrinsic connection to human rights—especially in cases involving the rights of the defendant—lawmakers must clearly delineate the categories granted judicial control authority. Legislation should explicitly define the duties that judicial control officers are authorized to perform, as well as the legal safeguards ensuring these duties are exercised without infringing upon human rights.

Additionally, the law must distinguish between police officers and certain civil public employees who are granted judicial control authority, ensuring that the scope of actions available to civil employees remains highly restricted. Their role should focus solely on providing supplementary protection to specific public institutions.

Judicial control officers' work begins after a crime has been committed and is ultimately accountable to the judicial authority, which bears the primary responsibility for justice and adherence to fair trial standards. While there is broad consensus among legal scholars on the definition of judicial control, some nuances exist. Judicial control can be defined as "the authority designated by procedural legislation to conduct preliminary investigations, gather information and clarifications that shed light on the crime's context

and details, and identify the perpetrator or suspects. This preparatory work is then presented to the investigative authority, enabling it to understand the crime's nature, fulfill its role, and make the appropriate judicial decisions."

This definition captures the essential elements of judicial control authority: it encompasses the power to collect evidence through preliminary actions, it serves as an auxiliary to the judicial investigation authority, and its mandate is to gather information and expose the circumstances surrounding a crime.

Judicial control can thus be defined as "an authority granted by law to specific categories to carry out preliminary criminal procedures after a crime has been committed, including actions such as detention, inspection, evidence collection, and implementing orders from the investigative authority, whether the prosecution or the investigating judge. This authority is subject to oversight and supervision by the judicial authority."

From these consistent definitions, the core elements of judicial control can be identified as:

1. A judicial act that operates under the authority of the judiciary.
2. Its source lies in the law, which specifies the categories authorized to exercise this power and establishes the rules governing its use.
3. Its purpose is to apprehend perpetrators of crimes, gather evidence, and facilitate the prosecution of offenders.
4. It functions as an auxiliary to the judiciary, which holds original jurisdiction in criminal investigations.

It is important to highlight the relationship between judicial control officers, granted to police officers and certain public employees, and the judiciary. While judicial control officers assist the judiciary in its investigative functions, they remain administratively under the executive branch. This arrangement often presents a potential conflict of powers, as the executive may attempt to overstep judicial authority, particularly in areas such as investigation procedures, oversight, and the evaluation or punishment of judicial control officers. Therefore, the safeguards and controls governing judicial control officers are crucial for maintaining judicial independence.



## **Regulations of judicial control in international law**

Judicial control, as an authority vested with exceptional powers directly impacting citizens' freedoms and rights, inherently presents opportunities for abuse and deviation. Consequently, there is a strong consensus among legal scholars on the need for judicial control to be surrounded by strict guarantees and limitations, which must be explicitly outlined in criminal procedural laws.

Given its direct connection to human rights and fundamental freedoms, judicial control carries the obligation of adherence to human rights principles, particularly those recognized in the Universal Declaration of Human Rights and articulated in the International Covenant on Civil and Political Rights. These rights are understood in both a "negative" and "positive" context: negatively, in that judicial control authorities must refrain from infringing on these rights; and positively, in that authorities are obligated to safeguard the material and procedural rights of the defendant. This includes ensuring access to healthcare, legal representation, and other basic protections that require resources from the state.

Judicial control must uphold the following principles established in the Universal Declaration of Human Rights:

1. **Respect for the Right to Liberty and Security:** Article 3 of the Covenant emphasizes that measures restricting individual liberty should be applied sparingly, in strict accordance with the law, and without arbitrariness.
2. **Prohibition of Torture and Degrading Treatment:** Under Article 5 of the Covenant, judicial control authorities are prohibited from engaging in any act that would undermine the dignity of the defendant.
3. **Presumption of Innocence:** Article 11(1) of the Declaration underscores the presumption of innocence, a foundational legal principle enshrined in the constitutions of nations, including Egypt's successive constitutions.

The International Covenant on Civil and Political Rights (ICCPR), particularly Article 9, establishes binding legal obligations on states to safeguard the human rights of the defendant, placing clear restrictions on judicial control officers to prevent any violation of these rights in the course of their duties.

In response to ongoing human rights abuses—especially during phases of accusation and investigation—many United Nations directives reinforce specific standards for judicial control officers. Key among these is the Code of Conduct for Law Enforcement Officials, adopted under General Assembly Resolution 34/169 in 1979, which mandates adherence to the following principles:

1. **Respect for Human Dignity and Protection of Rights:** Article 2 requires that law enforcement officials, in executing their duties, uphold and protect human dignity and the human rights of all individuals.
2. **Limited Use of Force:** Article 3 stipulates that law enforcement officials may only resort to force when it is strictly necessary and solely to the extent required for their duties.
3. **Prohibition of Torture and Degrading Treatment:** Article 5 strictly prohibits any act of torture or cruel, inhuman, or degrading treatment or punishment by law enforcement officials. This article further asserts that no official may invoke orders from superiors or exceptional circumstances—such as wartime conditions, national security threats, political instability, or other public emergencies—as a justification for engaging in such degrading or inhumane treatment.

These regulations outlined in the Code of Conduct underscore the essential obligation to uphold human rights during the performance of law enforcement duties and explicitly reject any justification for infringing on these rights, notably prohibiting appeals to following orders or exceptional circumstances as defenses. Such pretexts are commonly employed by authoritarian regimes to justify the violation of human rights.

Moreover, the Sixth International Conference on Criminal Law, held in Rome in 1953 with the theme "Criminal Protection in International Conventions on Humanitarian Law," addressed standards for judicial control. The conference stressed the need for a balanced approach in criminal procedure, ensuring that criminal prosecution and judicial processes serve the public interest while respecting the defendant's rights to personal freedom and human dignity. Among the principles established by the conference regarding police functions were the following:

- The judicial police have a critical role in crime investigation, evidence gathering, and fact-finding. This role, however, must be conducted under the oversight of the judicial authority to ensure compliance with legal and ethical standards.
- The authority to interrogate the defendant is vested in the judge. Consequently, the judicial police are restricted to conducting preliminary inquiries immediately following a crime.
- Proper organization and recruitment within the police force are essential to safeguarding individual rights during the initial phases of investigation. While the necessity of judicial police functions is undisputed, ongoing debate surrounds the extent of judicial powers that should be delegated to the police.

According to the specifications endorsed by the conference, the procedures undertaken by judicial control officers must be conducted under the direct oversight of the judicial authority. Interrogation—a fundamental investigation procedure—remains exclusively within the jurisdiction of the judicial authority, and judicial control officers lack the mandate to perform this task.

A key directive from these standards concerns the selection of individuals granted judicial control authority: they must be chosen based on personal qualifications that guarantee adherence to legal and human rights standards. Additionally, in the broader sense, the law must define with precision the specific judicial actions permitted to judicial control officers. These standards are established to ensure not only the protection of human rights but also the integrity of investigation procedures. Non-compliance with these preliminary investigation protocols may result in procedural invalidity, jeopardizing justice.

Article 16 of the Guidelines on Public Prosecutions reinforces this principle, stipulating that “members of the Public Prosecution must reject the use of any evidence obtained through illegal means, especially where such methods constitute severe human rights violations, including torture, or cruel, inhuman, or degrading treatment. If such evidence is presented, the prosecution is required to either refuse its use or alert the court and pursue accountability measures against those responsible for the unlawful acts, ensuring they face appropriate legal consequences.”

The directive requires the Public Prosecution to reject any evidence obtained by judicial control officers through methods that violate human rights and to investigate such violations, ensuring that those responsible are prosecuted and brought to justice.

### **Judicial control in Criminal Procedures Law No. 150 of 1950**

In the Egyptian legal system, the structural organization of judicial control aligns closely with the structure found in French law, a key reference for the Egyptian legal system. Egyptian law applies a judicial control officer model, conferring judicial police authority on specified categories of police and certain public employees who work under the guidance of the judicial investigation authority. The 1950 Criminal Procedures Law was grounded in a liberal philosophy designed to safeguard public rights and freedoms, strictly limiting the judicial control authority to those officers and policemen directly engaged in criminal tasks. It confined their powers to preliminary investigation procedures, focusing solely on evidence-gathering.

However, the scope of this authority was notably expanded with the 1957 amendment to the Law of Criminal Procedure No. 37. The amendment significantly broadened the pool of individuals granted judicial control officer status and extended their jurisdiction. It also introduced a provision allowing the Minister of Justice to confer judicial police status by executive decision on any public employees deemed suitable. This adjustment has raised



concerns regarding executive overreach, as it encroaches upon the legislative authority's jurisdiction over matters affecting public freedoms. Traditionally, the legislative branch determines the scope, categories, and oversight mechanisms related to judicial control officers. The Minister of Justice represents the executive authority, and the law defines the categories of judicial control officers, their jurisdiction, and technical subordination.

The Criminal Procedures Law categorizes judicial control officers based on their territorial jurisdiction, distinguishing between those with local jurisdiction—confined to specific areas like a governorate or police district—and those with general jurisdiction, which spans the entire republic. Article 23 defines these categories as follows:

A. Special Judicial control officers (Local Jurisdiction): This category includes police officers, their administrative assistants, constables, heads of police stations, mayors, and guard sheikhs. Additionally, certain public employees outside the police force, such as railway supervisors and agents, prison inspectors, and security directors, are granted judicial control authority but only within their designated areas.

B. General Judicial control officers (National Jurisdiction): These officers possess jurisdiction at the republic level and include high-ranking officials such as general investigation officers, department and section heads, inspectors, officers, and police secretaries. This group also extends to employees in criminal investigation departments within security directorates and officers in the prison services.

Article 23 further authorizes the Minister of Justice, following consultation with the relevant ministry, to confer judicial police status on specific employees, limited to crimes directly related to their job responsibilities. Laws and decisions establishing judicial police authority are to be regarded as having been issued directly by the Ministry of Justice.

### **Powers of judicial control officers:**

Article 21 of the Criminal Procedures Law outlines the general jurisdiction of judicial control officers, specifying that they are tasked with “identifying crimes, locating perpetrators, and gathering evidence needed for investigation and prosecution.”

Pursuant to the provisions of this article, the general jurisdiction of judicial control officers is confined to preliminary investigation procedures, encompassing the collection of evidence and the pursuit of suspects. Consequently, their primary role is to function as auxiliaries to the judicial investigation authority, represented by the Public Prosecution or the investigating judge.

Article 24 specifies the investigatory actions permitted for judicial control officers. These include receiving crime reports and complaints, gathering relevant information, conducting necessary inspections, and implementing precautionary measures to safeguard evidence. Judicial control officers are required to promptly inform the Public



Prosecution upon receiving a report, document all actions taken, and submit this report along with any seized evidence to the Public Prosecution.

Article 29 permits judicial control officers to conduct certain preliminary procedures, such as interviewing witnesses, questioning the defendant, and consulting experts for their professional opinions. However, they are not authorized to administer oaths to witnesses and experts unless there is a risk that testimony will not later be taken under oath by the judicial investigation authority.

Article 34 broadens the powers of judicial control officers in cases of flagrante delicto, allowing measures that impact individual freedoms, such as the arrest and search of suspects. Article 36 imposes strict time limits on detention following arrest, stipulating that a detainee must be presented to the Public Prosecution within 24 hours to ensure that detention does not exceed this period without judicial review.

### **Subordination of judicial control officers**

Judicial control officers operate under the authority of the judiciary, specifically the Public Prosecutor, as stipulated in Article (22) of the Criminal Procedures Law. The article provides that “Judicial control officers are subordinate to the Public Prosecutor and subject to his supervision concerning their professional duties. The Public Prosecutor may request the competent authority to address any violations of duty or negligence in their work. He may request the initiation of disciplinary proceedings against them, without prejudice to the initiation of criminal proceedings.”

According to this article, judicial control officers are under the oversight and supervision of the judiciary, as represented by the Public Prosecutor. However, it also establishes that the Public Prosecutor is not empowered to directly impose disciplinary measures in cases of negligence or dereliction of duty. Instead, the Public Prosecutor may only request the competent administrative authority overseeing the judicial control officer to initiate disciplinary proceedings.

### **Judicial control in the draft Criminal Procedures Law**

The provisions regulating judicial control in the draft Criminal Procedures Law are detailed in Articles 25 to 27, as well as Articles 39, 47, and 63. These articles largely mirror the framework established in the current Criminal Procedures Law. Article (25) of the draft identifies the categories of individuals granted judicial control authority under the law, while also delineating their powers and establishing the scope of their subordination.

## **Expansion of categories granted judicial control authority**

Article 25 of the draft law broadened the categories of individuals granted judicial control authority. Key additions include:

- Police delegates, assistants, supervisors, and personnel within their respective geographical jurisdictions.
- Officers, constables, delegates, and assistants of the National Security Agency, as well as officers from the Community Protection Sector, were incorporated as judicial control officers with authority at the national level.

This expansion lacks a compelling legal or practical justification, as the draft law does not establish clear criteria for granting judicial control authority. This contrasts with the current Criminal Procedures Law issued in 1950, which conferred judicial control powers only to officers from specialized criminal sectors, such as general investigation and public security officers.

According to the joint report of the Constitutional and Legislative Committee and the Human Rights Office, a proposal to exclude “police monitors, delegates, and security assistants” from the list was rejected. The committee justified this inclusion by referencing the organizational structure of security personnel outlined in Law 109 of 1971. This justification is problematic, as the article in question pertains specifically to categories entrusted with assisting the judiciary in criminal investigations. Granting such a critical and sensitive authority, closely tied to public freedoms, requires strict selection criteria, such as rank, length of service, and proven expertise in criminal work. It is unreasonable and potentially harmful to extend this authority to lower-ranking personnel, such as assistants, aides, and delegates.

The second paragraph of this article grants the Minister of Justice the power to authorize certain public office holders to act as judicial control officers concerning crimes that occur within their jurisdiction and are related to their official duties. This provision raises significant concerns, as it effectively bypasses the legislative authority, which traditionally enacts laws safeguarding public freedoms. This delegation of power follows an already extensive and unwarranted expansion of judicial control authority to various police categories, such as officers, constables, delegates, and assistants in the National Security Police. This sector, primarily tied to intelligence and information gathering, has no connection with criminal investigations.

Article 27 introduces obligations for judicial control officers, their subordinates, and public authority personnel to provide proof of identity and credentials when performing legal duties or procedures. However, the failure to comply with this requirement does not invalidate the procedures conducted, which is a glaring omission. This is particularly troubling given that many judicial control officers do not wear distinctive uniforms, creating potential risks to citizens' freedoms.

Additionally, the draft expands judicial control powers to include public authority officers, who oversee administrative aspects of public security. Article 27 merges their crime prevention and control duties with their public authority responsibilities. Moreover, it authorizes them to execute arrest warrants issued by the Public Prosecution. This is a grave procedure given that arrest warrants should be carried out exclusively by judicial control officers under the supervision of the Public Prosecution.

### **Powers of judicial control officers in the draft law**

Article 26 of the draft law outlines the preliminary investigation procedures that judicial control officers may undertake following the receipt of reports, which must be promptly forwarded to the Public Prosecution. These procedures include conducting inspections, gathering clarifications, and implementing precautionary measures to preserve evidence related to the crime. Judicial control officers are also empowered to hear witnesses and experts and seize documents and objects connected to the crime, and they should document all actions in a comprehensive report, signed and submitted to the Public Prosecution. These are the same provisions in the current Criminal Procedures Law.

According to this article, the judicial control officer is tasked with conducting preliminary investigation procedures only. Furthermore, the officer is obligated to promptly notify the Public Prosecution upon receiving a report of a crime. This stipulation ensures that such procedures remain under the direct supervision and oversight of the judicial investigation authority, reflecting the provisions outlined in the current Criminal Procedures Law.

### **Expansion of powers of judicial control officers**

While Article 31 delineates the general jurisdiction of judicial control officers, including hearing witnesses, questioning the defendant, and consulting experts (e.g., medical professionals), it stipulates that oaths may not be administered unless there is a risk of losing the testimony. However, the new draft introduces a significant expansion of powers to judicial control officers in other articles, such as:

- In cases of flagrante delicto: Judicial control officers are authorized to detain individuals present at the crime scene, preventing them from leaving. They are also granted the power to arrest and search the defendant (Article 38).
- The draft permits judicial control officers to issue arrest orders for an accused individual who is not present at the crime scene, in cases of specific crimes such as theft, fraud, assault, and resistance to public authority officers (Article 39).
- The draft extends the execution of arrest orders and precautionary measures to public authority officers. This provision, again, blends the administrative roles of public authority officers with the judicial functions of judicial control officers,



implicitly granting the former powers of judicial control, such as implementing arrest warrants and taking precautionary measures. Moreover, the article fails to clearly define the nature of these precautionary measures, leaving ambiguity as to whether they are confined to evidence-gathering procedures or extend to encompass additional investigative actions.

- Article 63 allows judicial control officers to interrogate the defendant in situations where there is a risk of losing time. This provision contradicts established criminal jurisprudence and international legal standards, which reserve the interrogation of the defendant as a prerogative of judicial investigative authorities.

### **Subordination of judicial control officers**

Article (24) of the draft stipulates that judicial control officers are subordinate to the Public Prosecutor in matters related to their judicial duties. The Public Prosecutor is empowered to request the competent administrative authority to address violations or instances of negligence by judicial control officers, and request the initiation of a disciplinary trial for such officers.

However, the article reveals a significant limitation in the Public Prosecutor's authority. While judicial control officers are ostensibly subject to the supervision of the Public Prosecutor, the latter lacks the power to impose direct penalties for violations or negligence. Instead, the Public Prosecutor can only recommend disciplinary action to the administrative authority overseeing the judicial control officer.

### **Conclusion**

The draft Criminal Procedures Law reflects a discernible inclination toward a security-centered philosophy, as evidenced by its provisions concerning judicial control. Key points of concern include:

1. The broad and unwarranted expansion in the categories granted judicial control authority, extending it to lower-ranking individuals such as police delegates, assistants, and aides. The draft neglects to establish criteria for appointing judicial control officers, such as rank, tenure, experience, and relevance to criminal investigations. The draft further conflates the roles of judicial control officers and public authority officers (who specialize in administrative tasks), granting public authority officers certain judicial control powers.
2. The unjustified expansion of the powers of judicial control officers, particularly in cases where they act on delegation from the Public Prosecution. This expansion includes allowing judicial control officers to conduct interrogations under certain circumstances, a measure that contravenes international law.

3. The draft diminishes the subordination of judicial control officers to the judicial authority, restricting the Public Prosecutor's ability to directly oversee and penalize officers for misconduct. It also prevents the Public Prosecutor from initiating disciplinary lawsuits against judicial control officers. This provides unwarranted protection to police officers, potentially enabling abuses of power or violations of citizens' rights and freedoms during preliminary investigations or delegated investigative procedures without direct judicial oversight.

## **Recommendations**

1. Articles addressing the judicial control authority must be amended and should align with international standards, particularly the Law Enforcement Code of Conduct, human rights principles enshrined in international conventions, and the Egyptian Constitution.
2. Judicial control officers should be appointed based on clear objective and personal criteria that ensure the utmost protection of citizens' rights and freedoms.
3. The authority of judicial control officers should be confined strictly to preliminary investigation procedures, which must be conducted under the direct supervision and monitoring of the Public Prosecution.
4. Judicial control officers must operate under the jurisdiction of the judicial authority, represented by the Public Prosecutor, who should have full authority to supervise and monitor their actions, impose disciplinary penalties, and initiate disciplinary lawsuits directly in cases of legal violations during the performance of initial investigation duties.
5. Delegation of investigative tasks to judicial control officers should be restricted to cases of absolute necessity and subject to clearly defined criteria. Such delegation should not permit conducting interrogations or administering oaths to witnesses.