

Recommendations

Requirements for Judicial Reform in Egypt (Amending Criminal Procedure Law)

Justice Support Foundation affiliated to ACIJLP (The Arab Center for the Independence of the Judiciary and Legal Profession) has organized a round table, Tuesday evening, the 10th of January, 2023, to discuss the amendments to be made to the Egyptian Criminal Procedure Law while concurrently being discussed at the parliament. Thirty people, including members of the National Dialogue Committee, former ministers, members of the Senate, and a number of independent lawyers and workers in civil society institutions, as well as some legal researchers have attended the round table.

Initiating the round table, Mr. **Nasser Amin** has welcomed the participants and reviewed the draft law of the new Criminal Procedures Law regarding its most important provisions. He explained that the project is being considered in the Parliament since 2017, and that circumstances has been changed a lot since then which demands a new approach in the philosophy and principles of law so that it precisely and strictly balances between the requirements of society's right and the rights and freedoms of individuals, without overriding each other.

Mr. **Essam Al-Islambouli**, a lawyer in cassation and the main speaker at the table, in turn, focused on his perspective of the ruling articles of the Pre-Trial detention, stressing on the need to amend them completely in order to comply with the provisions of the new constitution, and to provide real guarantees in protecting the freedoms of individuals. The thing that requires reducing the periods of pretrial detention so that it does not exceed one year, as well as applying a precise and strict time limit for the duration of investigating the accused.

Over the course of two hours, the attendees have exchanged their viewpoints, comments and recommendations while concluding a number of recommendations that can be summarized as follows:

First: General Recommendations:

1. The necessity of presenting the draft law of criminal procedures for societal dialogue, involving all parties of legal work, including lawyers (mainly the Bar Association), law professors in Egyptian universities, civil society leaders working in the same field, judges, members of the Public Prosecution Office, police officers, etc., before approving it to benefit from experiences, opinions and points of view in all the details and provisions of the law.
2. The need to consider all laws governing the rights and freedoms of individuals, such as the Criminal Procedure Law, the Anti-Terrorism Law, the Terrorist Organizations Law, the Communications Law, the Information Technology Crimes Law...etc. so as to unify all procedural rules, making sure there is no law that may carry exceptions that overrides any procedural guarantees stipulated in Criminal Procedures Law.
3. Working on finding a legislative section in any criminal procedure law that provides protection for whistleblowers, informants, witnesses, and victims of crimes until a special law for these categories is enacted.
4. Working on a comprehensive critical study of the current draft Criminal Procedure Law.
5. Expedite work on finding an alternative, a new draft law for criminal procedures in which civil institutions and legal experts contribute to and discuss in parallel with the current draft, in order to rectify aspects of its criticism.

Second: Special Recommendations:

1. enacting an inadmissibility of moving between judicial positions and those of the Public Prosecution, which means that a member of the Public Prosecution office remains a member of the Public Prosecution office throughout his career, and likewise a judge cannot not be transferred to a job in the Public Prosecution office even if that is at his request.
2. It must be stipulated that any investigation that does not end with the referral of the accused to the court must be issued with the decision of "there is no basis for the prosecution of the case"; so that the accusations do not remain a sword on the necks of citizens. In addition, its prolongation for long periods threatens rights and freedoms.
3. Establishing specific time periods not exceeding one year in precautionary detention decisions, whatever the type of crime committed, after which the accused is referred to trial or released by force of law.

4. Stipulating that decisions to ban travel and money disposition should be based on a criminal investigation, and that they should not last more than one year with the reduction of the grievance period to one month instead of three months.
5. Some texts in the new draft should be canceled immediately, such as the text in Article 125 of the draft, which legalizes the issue of solitary confinement, as well as the fourth paragraph of the text of Article 116, which opens the door wide, with its undisciplined and vague wording, to preventive detention.
6. Stressing on the necessity of judicial inspection of prisons and places of detention, and the prohibition of limiting this right to members of the Public Prosecution office alone, as is the case in the new draft.
7. The draft should stipulate a maximum period for any criminal investigation, after which a decision should be issued that there is no basis for filing a criminal case. This does not prevent the Public Prosecution from returning to investigate again if new evidence appears in accordance with general rules.
8. Considering the jurisdictions of the Public Prosecution, where it is granted the authority of the partial judge, investigating judge, the counseling room in some crimes. Rather, maintaining the general principle, not reducing the authority of the investigating judge.
9. Implementing the constitutional guarantee prohibiting the issuance of pretrial detention decisions for crimes of opinion, regardless of the method or medium of publication, paper or electronic.