



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

The Expanding Use of Pretrial Detention & Constitutional Guarantees

SUMMARY & CONCLUSIONS

- The broad, exceptional powers the Public Prosecution Apparatus had, through Emergency Law or the State Security Courts Law, have been transferred to Egypt code of criminal procedures.

You may kindly review the provisions of "Establishing State Security Courts" law no# 105 of 1980, that was abolished by law no# 95 of 2003, especially Article No. 7 of it. Likewise, you may also review article no# 10 of Emergency Law No. 162 of 1958, which states that: "With the exception of the procedures and rules stipulated in the following articles or in the decisions taken by the president of the republic, the provisions of the applicable laws shall be applied to the investigation of cases of which the State Security Courts are concerned with adjudication, procedures of its consideration, judgment and execution of the prescribed penalties. Upon investigation, the Public Prosecution, the investigative judge, and the Indictment Chamber (referral judge) shall have all the powers conferred upon it under these laws".

- Permissibility of pre-trial detention in misdemeanors that are punishable by imprisonment for a period of no less than one year. In the Civil Criminal Investigation Law issued in 1904, the penalty period was at least two years, then the Egyptian legislator amended it to three months and then to a year in the current legislative situation, which opens the door wide for the Public Prosecution to expand the use of (abuse) pretrial detention, whatever the crime allegedly committed. It would have been more appropriate for the legislator to limit pretrial detention to felonies only and to replace it with alternative measures in misdemeanors.



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- The maximum limit for pre-trial detention stipulated in Article 143 of the Code of Criminal Procedure is often exceeded, and the law does not impose a penalty for this violation. Rather, the legislator does not bother to implement the constitutional provision regarding the entitlement to compensation for pre-trial detention if the accused were subsequently acquitted, considering that publishing the acquittal judgment in two widely circulated daily newspapers sufficient .
- The practical reality testifies that in some cases of exceeding the maximum periods of pretrial detention and once the court issues an order for the release of the pretrial detainee, the authorities subject the detainee to investigation in a new case and sentence him/her again to pretrial detention pending this case , which is quite known among lawyers as “revolving door” cases to ensure the continuation Pre-trial detention, or a ruling against him/her in an old or new case, with continued pretrial detention pending the previous case .
- Some say that the period prior to 2011 relied on the emergency law and the arrest warrants it contained, which requires a complaint for once in monthly basis, while the current system relies on the mechanism of pretrial detention, taking into account that the first (emergency law) is an exceptional law that has been subjected to many criticisms at the national and international levels. Here, the pretrial detention system depends on an ordinary law that may be criticized at the national level for its shortcomings or expansion abuse, however, it will not be subjected to international criticism, and perhaps this is a reason for transferring the broad powers of the Public Prosecution from exceptional laws to general legislation

1 - See the text of Article 312 bis of Criminal Procedures code, which states the following: The Public Prosecution is obligated to publish every final judgment acquitting a person who has been previously detained, as well as every order issued that there is no reason to file a criminal case before it in two widely circulated daily newspapers at the government's expense. That's to be upon the request of the Public Prosecution, the accused, or one of his heirs, and with the approval of the Public Prosecution in case of an issued decree that there is no reason to file a lawsuit.

2 - As in Mrs. Ola El Qaradawy's case

3 - As in Ziad Al Oleimy's case



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RECOMMENDATIONS

- The necessity of amending Article no# 134 of the Code of Criminal Procedure so that pretrial detention is limited to only felonies, and rather replacing it with alternative precautionary measures in misdemeanors punishable by imprisonment for a period of no less than two years.
- The necessity of amending Article no# 143 of the Code of Criminal Procedure by reducing the maximum limit of pretrial detention to six months only, which is the period stipulated by Article no# 74 for the investigative judge to complete his investigation, as well as equalizing this regard between the investigative judge and the Public Prosecution.
- The necessity of repealing the last paragraph of Article no# 143 (Criminal Procedures) regarding the authority of the Referral Court and the Court of Cassation to detain the accused without being bound by the maximum periods of pretrial detention.
- The necessity of amending Article no# 380 (Criminal Procedures) so that the Criminal Court adheres to the maximum limits for pretrial detention. And the necessity of declaring the invalidity for exceeding that limit, imposing penalties for this violation.
- The necessity of the legislator intervention with a special law or an article in the Code of Criminal Procedures law that includes material compensation for those who have been arbitrarily detained and were acquitted by judiciary, in accordance with the provisions of the 2104 Constitution.
- Finally, we see a great necessity carrying out a thorough review to the code of criminal procedures by the House of Representatives in order to achieve an effective and fair balance between the public right and citizens freedom.