



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

Legal Guarantees For The Accused In The Stage Of Investigation

CONCLUSIONS & RECOMMENDATIONS

In conclusion, the existing Egyptian constitution is full of many legal guarantees that guarantee the freedom, safety and right of the accused during the preliminary investigation stage, including the new text on the right of the accused to remain silent, thus being the first Egyptian legislation stipulating this right. In addition, it included special guarantees regarding the sanctity of homes and the inviolability of searching them except with a reasoned judicial permission, prohibiting searching the accused, except in cases of flagrancy and urgency, if strong and sufficient evidence to the accusation against him/her exists. In case that the evidence is insufficient, the judicial police officer may not search the accused. The constitution also approved a set of constitutional guarantees for the accused in case of arrest, interrogation and remand, the guarantees that was regulated by the Criminal Procedure Law in the previously explained way. However, the expansion of the exceptional powers granted to the Public Prosecution during its investigations into some crimes- including terrorism crimes- has detracted from the legal remand guarantees of those accused of these crimes. It became the authority of the Public Prosecution to detain in remand those accused with it for a period that exceeds five months so that the one-time does not exceed fifteen days, and then the matter is brought after that before the competent court. The Criminal Procedure Law also detracted from the guarantees of the right to defense during the investigation phase, as previously Explained.

- Amending the Criminal Procedure Law to comply with the provisions of the existing constitution regarding legal guarantees for the accused during the investigation phase, and in line with the Supreme Constitutional Court's judiciary stating the guarantee of the right of defense and the necessity of withdrawing all legal procedures in the pre-trial phase, starting with the evidence collection phase.
- The right of the accused to remain silent before the investigation authority must be included in the Criminal Procedure Law, bearing in mind that both silence - whenever he wants- or refusing to answer the investigator's questions cannot be considered a legal presumption against him/her. The accused has the right to remain silent or to express his defense at the time he deems appropriate for himself and his cause.



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- Abolishing the text of Article 206 bis of the Criminal Procedure Law, as it is an article found in an exceptional law - the Law for the Establishment of State Security Courts No. 105 of 1980 - and it crept into the Criminal Procedure Law during the discussion of Law No. 95 of 2003 regarding the abolition of the Law of State Security Courts, which means that the legislator has empowered public prosecution with exceptional powers in a permanent law, citing an exceptional and repealed law.
- If the aforementioned article must remain due to a necessity assessed by the legislator, then public prosecution must be liberated from its hierarchal subsidiarity, granting it an independence equivalent to the independence of the investigating judge, as a case should not be withdrawn from the prosecutor who is investigating it. We mean here that the prosecution should be an independent authority regarding investigations, not bound by anything other than the law and the conscience of the investigator, without a hierarchy and without instructions from the prosecution. The same thing applies to its accusatory role.
- Amending the text for the attorney's access to the case file on the day prior to the investigations, unless the investigator sees otherwise, so that the period is at least 48 hours and without subjecting this to the investigator's decision, so that the defense has sufficient time to prepare his defense. Whereas, the phrase (unless the investigator sees otherwise) opens the door wide to diminishing the guarantee of the right of defense and makes it nominal and useless to the defendant.
- Amending the article on the defense's speech, which prohibits the defense to speak except with the permission of the investigator, so as If he does not authorize the defense speech, this must be proven in the record, as it is an arbitrary ruling that makes the defense's presence nominal.
- The necessity to expand alternatives to pretrial/remand detention, given that it has transformed over time in the Egyptian practical reality into a punishment, in violation to the criminal legitimacy that requires no punishment except by a legal text. Some are imprisoned for about two years without considering their case objectively in a fair trial.