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The approach of the Egyptian Constitution of 2014 related to the rules of pretrial detention has been criticized for lack of clear guarantees in this regard, including the need to state that the pretrial detention order should be issued by a judge, not by the Public Prosecution; that the pretrial detention order should be written, not oral, where the reasons shall be clearly stated; that the pretrial detention should be limited to charges related to grave and dangerous crimes; and that there should be a proportionality in this matter.

According to the Egyptian legislator, the Public Prosecution Office in Egypt combines the power of investigation, accusation and referral, on the one hand, and the power of initiation of the case, the appeal and implementation, on the other, which means that the Public Prosecution Office has the right to undertake all measures related to personal freedom; and in a wide range of crimes, it has the power to order pretrial detention of the accused for a period of up to five months without the need to submit the matter to a judge, taking into account that all members of the Public Prosecution Office are subordinate to their superiors and to the Public Prosecutor, administratively and judicially.

The Egyptian constitution also neglected the fact that the Public Prosecution has the authority of the Appeal Court of Misdemeanors held in the Consultation Room to order pretrial detention and the renewal of its term for multiple crimes, and that it also has the power to order pretrial detention for periods up to five full months when it comes under the authority of the Appeals Court of Misdemeanors, without the need to refer the matter to a judge to renew detention.

On the other hand, the corpus delicti or the material element of many crimes in which the legislator expanded the authority of the prosecution, with respect to pretrial detention, is largely unspecified; and the provisions related to them are flexible, which allow expansion of application, which may make pretrial detention a punishment, as it depends on the prosecution's view and interpretation of the incriminating provisions.

Therefore, all guarantees stipulated in the constitution in this regard are considered insignificant, as the real problem lies in the authority that has the right to issue and renew this order as well as the scope of its issuance, which is not addressed by the constitution.

It is worth noting that many of the comparative criminal procedure laws do not grant the Public Prosecution the power of pretrial detention, but they entrust this power to a judge who has judicial guarantees and independence, as in the French, German, English, Belgian, and American laws, and others.

Expansion of the role and power of the prosecution

The powers granted to the Egyptian prosecution with respect to imposition of the pretrial detention has been expanded, especially in crimes related to the state security, explosives, and public funds, where:

- Article 206 bis of the Criminal Procedure Code grants members of the Public Prosecution of at least the rank of Prosecution director all the powers given to the investigative judge, including the power to extend the preventive detention up to 150 days, with respect to the crimes stipulated in Chapters I, II, II/bis and IV of the second book of the Penal Code.

The felonies stipulated in these chapters are crimes that affect the internal and external state security, explosives felonies, and felonies related to embezzlement and seizure of public funds.

- The Code of Criminal Procedure grants the Public Prosecution the exceptional powers stipulated in the Emergency Law, deviates the legislation's discretionary power, because a general law may not include such exceptional powers.

- In Law 143 of 2006, the legislator was limited to amending the articles related to pretrial detention. Meanwhile, there are many other investigation procedures that the Public Prosecution assumes as investigative judge in a significant number of crimes, including terrorism crimes, but the legislator did not interfere to limit the broad authority of the Public Prosecution in them.

- The fact that the authority of the Misdemeanors Court of Appeal sitting in the counseling room, with respect to the maximum period of pre-trial detention, has been reduced to become five months instead of six months - according to the amendment - does not provide a great guarantee for the accused, if the prosecution still has the custody of the accused for five full months, which is a long period in all standards.

- Granting the accused the right to appeal the order issued for his pre-trial detention will not provide a great guarantee in the crimes of terrorism, since in practice the arrest orders based on the emergency law do not give the accused the right to appeal them based on the amendments brought by Law 145 of 2006.

- Article 10, Paragraph 2 of the Emergency Law No. 162 of 1958 states that during investigation of the crimes that fall within the jurisdiction of the state security courts, members of the Public Prosecution office have all the powers stipulated to it, as well as those stipulated to the investigative judge and the accusation chamber, which was replaced by the consultation chamber, under the provisions of this law.

- Although the legislator according to the amendments issued in 2006 to the Criminal Code of Procedure permitted challenging the order to extend pretrial detention, there is no judicial oversight over the rest of procedures affecting defendants' freedom, which the prosecution owns under its authority as investigative judge, as the provisions of the Egyptian law are devoid of any stipulation of any kind of oversight of the prosecution in the event of its abuse of authority in the preliminary investigation.

Also, there is no restriction on the prosecution in finishing the investigation in a reasonable time, which makes the provisions of this law in dire need of amendment.

- Also, under the Emergency Law, Prime Minister Dr. Mostafa Madbouly had issued a decision to refer a large number of crimes from the Public Prosecution to the emergency state security prosecution and courts by Decree No. 187 of 2021, based on the state of emergency that had been imposed since 2017, before it was abolished last October.