

Studies and Researches

The Public Prosecution and the Protection of Human Rights in Egypt

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On November 5, 2014, Egypt's human rights records were reviewed during the second Universal Periodic Review UPR process of the Human Rights Council. The aforementioned review was an opportunity for Egypt to demonstrate the measures taken to improve the human rights conditions throughout its national territory and to overcome the challenges facing Egyptians from enjoying their human rights.

During the second UPR, Egypt received (300) recommendations, of which 223 recommendations were accepted in total, 24 were partially accepted, 23 were rejected for being in contradiction to the Constitution and the Egyptian laws in force, and 29 recommendations were noted because they are already recognized by the Egyptian law and their application are ensured by the judicial authority in accordance with the international standards. Only one recommendation was stated as inaccurate for claims that has been proven false.

Analyzing the aforementioned recommendations accepted by Egypt, it is clear that the recommendations relating to the mandate of the Egyptian Public Prosecution can be summarized in the following three categories: First, to strengthen the guarantees of the rights of accused persons in the pre-criminal trial; second, to strengthen effective measures to combat torture and detention without due process; third, to effectively monitor the conditions of prisoners and detainees.

The present paper argue that the Egyptian Public Prosecution, in collaboration with relevant national authorities, has contributed to the implementation of the recommendations accepted by the Arab Republic of Egypt as follows:

Under the Egyptian legal system, criminal investigations are mainly performed by the Public Prosecution Authority which forms an integral part of the judiciary in accordance with Article 189 of the current Egyptian Constitution.

⁽¹⁾ In exceptional cases, the criminal investigations can also be performed by the investigative judges.⁽²⁾

The General Prosecutor is the one entrusted with investigating and prosecuting criminal cases, representing the society in initiating criminal actions and pursuing their course in the court system until final judgment is rendered. His jurisdiction is generally consisting of the authority to indict, investigate and prosecute. Such jurisdiction covers the entire Republic and includes all types



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of crimes whatever they are. The General Prosecutor holds judicial and administrative presidency over the members of the Public Prosecution Authority. The General Prosecutor has the right to carry out his functions by himself. Also, he has the right – outside the scope of his exclusive (sole) jurisdiction – to assign any member of the Public Prosecution to assist him or perform these functions on his behalf.⁽³⁾

Criminal investigations usually involve witnesses' examination, crime scene analysis, issuance of search warrants, and all other available evidence such as forensic samples as well as suspect interrogatories. Accordingly, the primary duty of the Public Prosecutor is to seek justice within the bounds of the law, not merely to seek conviction. The public prosecutor serves the public interest and should act with integrity and balanced judgment to increase public safety either by pursuing appropriate criminal charges of proportionate severity⁽⁴⁾, or by exercising discretion.

Indeed, at the end of the primary investigations, the Public Prosecutor decides whether, in the light of the evidenced facts and surrounding circumstances, to refer the case to the competent criminal court or to issue a suspension order (Non-Lieu Order⁽⁵⁾) having as effect the suspension or termination of the criminal proceedings relating to the case. Such decision shall prevent returning to the investigation unless new evidence emerged prior to the elapse of the limitation period of the criminal action.

In accomplishing the above tasks, the Public Prosecution Authority is bound by the general principles stipulated in the Egyptian Constitution issued in 2014. These general principles include, inter alia, the presumption of innocence for any accused person or defendant unless proven guilty in a fair trial, the protection against double jeopardy, the speedy, fair and public trial by an impartial and competent court, and the principle of non-retroactivity of crimes and sanctions.

In addition, the Public Prosecution supervises the enforcement of criminal sentences rendered by the different criminal Courts. In this regard, Article 461 of the criminal procedure code states that the “execution of judgments rendered in criminal cases rests upon the request of the Public Prosecution”.

Parallel to his role in executing the criminal judgments, the Public Prosecution is empowered by law to supervise and inspect all prisons and detention places. This responsibility covers prisoners' affairs while serving their term in prison.

As for the supervision over prisons, Article 56 of the Constitution of 2014 stipulated that prisons and places of detention are under the supervision of the Public Prosecution to assure the dignity, safety and wellbeing of all prisoners and this was reaffirmed by national legislations, for example Article 42 of the criminal procedures code and Article 85 of the prison organization law of 1956, and Article 46 of the judicial authority law of 1972 that give prosecutors the right to supervise prisons and detention centers to make sure that the law is upheld properly.



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Article 27 of the law on the Judicial Authority provides that “the Public Prosecution is authorized to carry out the supervision over prisons and other detention places where the criminal sanctions are executed. The Prosecutor General shall notify the Minister of Justice of any observation in this regard”. This encompasses the supervision over prisoners' affairs and making sure that their living condition in prison meets, at least, the minimum standard requirements for the treatment of prisoners as proclaimed by the United Nations.

Turning to inspection over prisons and detention places, Article 85 of the law no. 396 of the year 1956 concerning the organization of prisons provides that “the prosecutor general and prosecutors have the right to visit prisons and detention places in their districts at any time in order to make sure that laws and regulations are being implemented. They also may receive complaints from prisoners”.

Accordingly, the Prosecutor General has issued instructions and circulars on how to conduct the aforementioned inspection. This include; regular inspection on monthly basis, random (sudden) inspection at any time, and inspection upon a complaint submitted by any concerned person alleging the arbitrary detention of a person or brutal treatment of a prisoner.

Based upon what have been said, we can conclude that the Egyptian Public Prosecution - as an integral part of the judicial branch - is one of the most important authorities guaranteeing the effective enforcement of all international conventions, covenants, instruments and protocols related to the promotion and protection of human rights accepted and ratified by Egypt. The Public Prosecution plays a vital and essential role in taking the necessary criminal procedures regarding facts deemed as crimes, investigating and prosecuting the perpetrators, and taking all necessary measures to assist and protect crimes' victims - Egyptians and foreigners - in accordance with the law and Egypt's international obligations.

In performing its duties and responsibilities, the Public Prosecution establish a proper balance between the requirements of security, public interest and the accountability of crimes' perpetrators on the one hand and human rights, freedoms and the principles of fair trial on the other.

References:

1. Article 189 of the Egyptian Constitution 2014 provides that: "The Public Prosecution is an integral part of the judiciary. It shall carry out the investigation and prosecution of criminal cases, except those excluded by the law. The law shall determine its other jurisdictions. The Prosecutor General shall be in charge of the Public Prosecution. He shall be chosen by the Supreme Council of the Judiciary from among those ranked as Vice presidents of the Court of Cassation, or from those ranked as Presidents of the Courts of Appeal or from the Assistants to the Prosecutor General. He shall be appointed by virtue of a Presidential Decree for four years or for the remaining years until he reaches the age of retirement whichever is earlier, and this appointment shall be only once during his term of service.



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2. The main difference between a public Prosecutor and an investigative judge is that the former serve under the supervision and control of the Prosecutor General, while the latter do not.
3. The public Prosecution Authority is a hierarchical structure under Egyptian law, with assistant General Prosecutors, first attorney-generals, attorney-generals, chief prosecutors, prosecutors, assistant prosecutors and associate prosecutors – all being subject to the supervision of the Prosecutor General, sitting at the top of this pyramid.
4. The public Prosecution Authority has the right to initiate criminal action even if plaintiff has relinquished his right to do so.
5. The terminology of the Non-Lieu Order (al'amr bialawajh) finds its historical origin from French Law