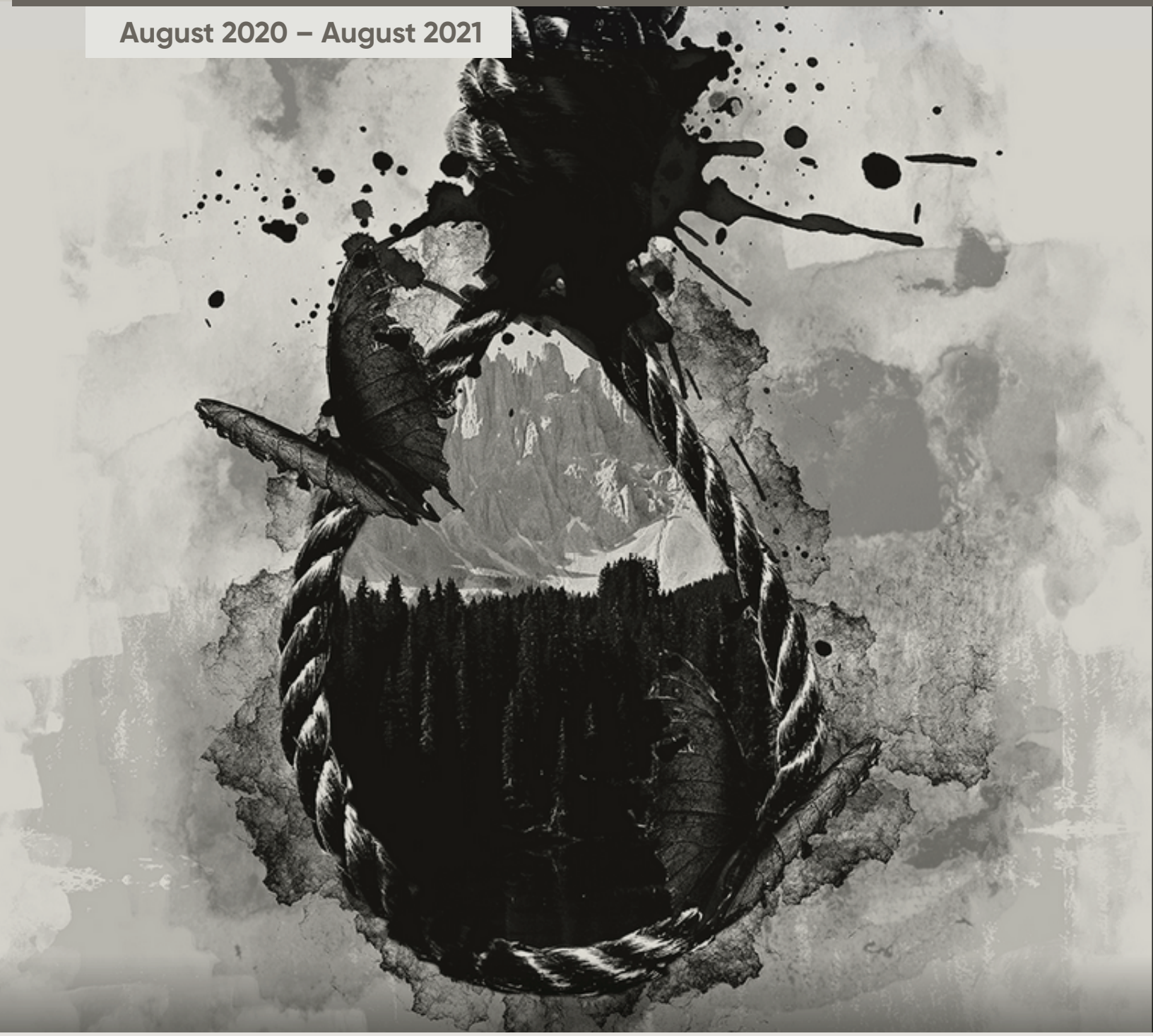
Irreversible Punishment!
The crisis of the death penalty in Egypt

Monitoring report and a case study

August 2020 – August 2021



أوقفوا عقوبة
الإعدام في مصر
STOP DEATH PENALTY IN EGYPT

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List of contents

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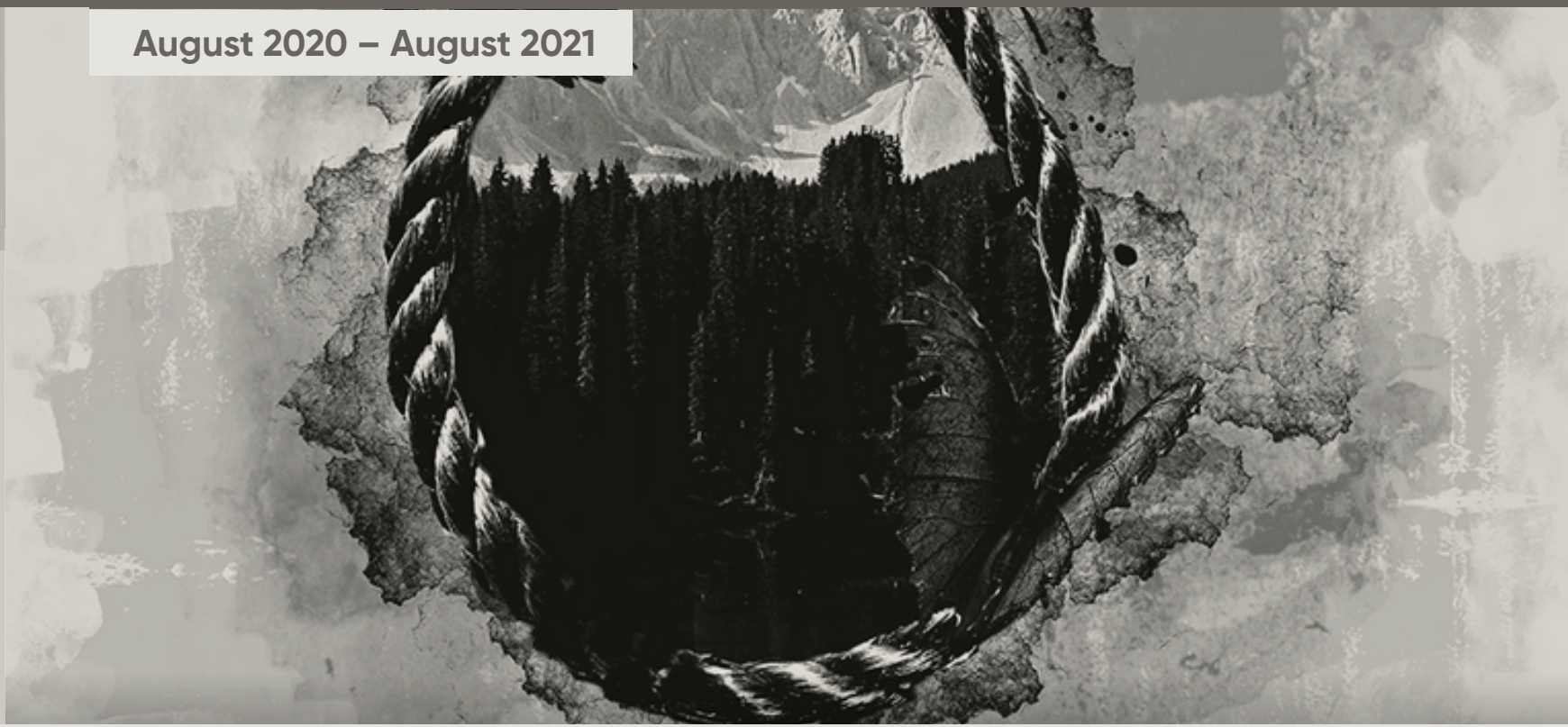


Executive Summary

This report deals with the death penalty in Egypt in detail through four main axes. The **first axis** relates to the compilation and analysis of data on death sentences issued by criminal departments of different legal jurisdictions (judgments of criminal courts), the judgments supported by the Court of Cassation, and finally the death sentences that were carried out on those convicted with this cruel punishment, and this axis is limited to the time period from August 2020 to August 2021.

The **second axis** of the report discusses some of the legal problems that raise a wide legal controversy in terms of application and practice, given that these problems are subject to the interpretations of the Criminal Court of Cassation and criminal law jurists, and there are no legal texts regulating the objective way of dealing with them. These problems affect the integrity of the procedural and substantive rules in the cases, in which death sentences are issued and represent a violation of the guarantees of fair and equitable trials. They relate to the role of the criminal judge in dealing with the following legal issues: evidence of judicial recognition, witness testimony, security investigations, forensic evidence(s) obtained as a result of torture in both its aspects, violation of the right to defense, and finally a simplified summary of the limits of authority of the discretion of the criminal court judges, in order to determine the extent to which these problems relate to the legal reality. In this axis, the report deals in all its details with a case study of the monks of the Abu Makar Monastery, which is the case known in the media by the killing of the deceased Anba Epiphanius, Bishop and Head of the Anba Makari Monastery in Wadi al-Natrun.

As for the **third axis** of this report, it deals with three reasons why the criminal justice system continues to issue and carry out executions in the same manner. These reasons are the 2017 amendments to the Law on Cases and Procedures of Appeals in Cassation, the persistence of the emergency status, and the failure to form criminal appeals courts.

Finally, the **fourth axis** lists the recommendations that the Campaign to Stop the Death Penalty in Egypt concluded as a result of its legal and research work regarding the death penalty. These recommendations are represented in three aspects. The first is the general recommendations related to punishment, such as stopping its implementation, and the second are concerned with the development of some special legal texts regarding guarantees of a fair and just trial in cases of executions, such as excluding the evidence of judicial recognition from the evidence of criminal evidence in crimes punishable by death.

As for the last aspect of the report's recommendations, it deals with recommendations related to the legislative environment of the criminal justice system in Egypt, which certainly affects death sentences, such as stopping the emergency law and the formation of appeal circuits for criminal court rulings.

Report Methodology

The methodology of the report "The Crisis of the Death Penalty in Egypt" issued by the Campaign to Stop the Death Penalty in Egypt launched by the Egyptian Commission for Rights and Freedoms (ECRF) is based on the compilation and audit of data on the death penalty during the period from August 2020 to August 2021. Through digital and graphic analysis, the report addresses three aspects; The first is the death sentences issued by criminal courts of all kinds and legal jurisdictions, and the second aspect is the final and cassation-confirmed death sentences (judgments of the criminal cassation circuits), and finally the death sentences carried out over the previous year. The data on death sentences were collected, scrutinized and analyzed during the aforementioned period by the Stop the Death Penalty Campaign working inside the Arab Republic of Egypt. In its comprehensive and aggregated inventory of death sentences, the campaign relied on several monitoring and research tools. These included follow up of court sessions likely to issue the death sentence based on the indictments contained in the order to refer those present to various criminal trials (civilian/military/emergency). The campaign also monitored daily media news and press releases issued by various media platforms dealing with death sentences. The campaign collected and archived hard copies of some of the rulings as well as digital copies through several websites, including the American University in Cairo Legal Publications website, the official website of the Egyptian Court of Cassation, as well as the legal documents website “East Laws Network” of the International Group of Lawyers and Legal Consultations.

The report reviews, through research tools, a legal analysis of some examples of cases in which death sentences were issued and with which the campaign directly interacted, in order to determine the extent to which the standards of fair and just trials were observed and applied, including the case known in the media by the killing of the late Anba Epiphanius, bishop and head of the monastery of Anba Makari in Wadi al-Natrun. The comprehensive numerical analysis of death sentences is a serious indication of the decline in the justice index in the judicial facility, given the huge number of cases covered by the death penalty in the past year, which led to a steady and unprecedented increase in the number of the executed and upheld judgments issued by criminal courts.

Research Challenges

The research team encountered some challenges during the conduct of this research, the most important of which is the difficulty of monitoring the death sentences that are issued through the various criminal courts at the level of the Republic or that are upheld by the Court of Cassation, especially since there is no governmental or judicial body that issues periodic and detailed data on these sentences. For this reason, the report relied mainly on media monitoring of news of judgments issued during the research period. However, this news usually does not include complete data on the circumstances of the case, the defendants or the victims, which makes building a database for these judgments very difficult and therefore analyzing them may lack much unknown data. This difficulty extends to monitoring the executed death sentences, as the Ministry of Interior does not issue any details regarding the number of executed sentences periodically, but it sometimes announces the total number of executions that took place during the month, without any details of the names of those who were executed, or what the circumstances of the conviction were, or where it was carried out.

Introduction

The Campaign to Stop the Death Penalty in Egypt publishes its first annual report at a time when the criminal justice system in Egypt has witnessed an excessive and steady use of the death penalty in recent years. From August 2014 to August 2021, these sentences amounted to no less than 2,168 criminal judgments[1] from various criminal courts. This is in addition to the verdicts supported by the criminal departments of the Court of Cassation and the executed death sentences, where the criminal courts of different legal jurisdictions between civil and military courts and the terrorism departments issued and implemented a number of judgments in some of the cases that were marred by shortcomings in the trial and investigation procedures, which represent a breach of the guarantees of fair and equitable trials, which are inconsistent with international covenants and standards, since there were allegations in some criminal cases, including cases of political violence, of the existence of incidents of physical and psychological torture that were not investigated throughout the investigation and trial periods, and some defendants, including minors and women, were subjected to enforced disappearance and unlawful detention in security headquarters that are not subject to the supervision and oversight of the Public Prosecution. In addition, some defendants who faced the death penalty were denied legal representation at the preliminary investigation stage. All of these legal and constitutional violations undermine the integrity of the death sentences issued by various criminal courts and contradict international agreements and covenants approved and ratified by successive Egyptian governments since the founding of the United Nations and which have become an integral part of domestic legislation such as the Convention against Torture and other cruel or inhuman or degrading treatment or punishment.

The National Human Rights Strategy (2021-2026) was recently issued by the Permanent Supreme Committee for Human Rights, and that strategy included four main axes, the first of which addressed civil and political rights. In that section the strategy discussed the right to life and

[1] This is according to the "Egypt Death Penalty Index" database and the Campaign to End the Death Penalty in Egypt

physical integrity, and the national strategy emphasized it faced some challenges in order to preserve the right to life, and these challenges are represented in the absence of a framework for reviewing the most serious crimes for which the death penalty is imposed. The other challenge relates to the absence of a legal provision in the law of cases and appeals to the court of cassation that dictates the appointment of a lawyer for defendants sentenced to the death penalty in the event of the financial inability to appoint such a lawyer before the Court of Cassation. It was mentioned that the strategy targets, during its time-course, to remove these challenges, in accordance with international and regional human rights conventions that have been ratified by the Egyptian government and have become an integral part of internal national legislation.[2]

Over the past years, many countries, international bodies and human rights institutions have called for stopping the implementation of the death penalty as a criminal deterrent and replacing it with penalties such as life imprisonment or working for public service and other alternatives, which was confirmed by the United Nations General Assembly in its annual resolution adopted in January 2018, which called for a moratorium on the death penalty all over the world. This decision was supported by 121 countries, which confirms the international trend to stop or suspend the death penalty.

[2]Pages 16, 17 of the National Human Rights Strategy, issued on September 11, 2021, to view the strategy through the following link:https://www.shorouknews.com/news/view.aspx?cdate=11092021&id=88806c01-6524-4d11-9fa8-c3feeeca8c93

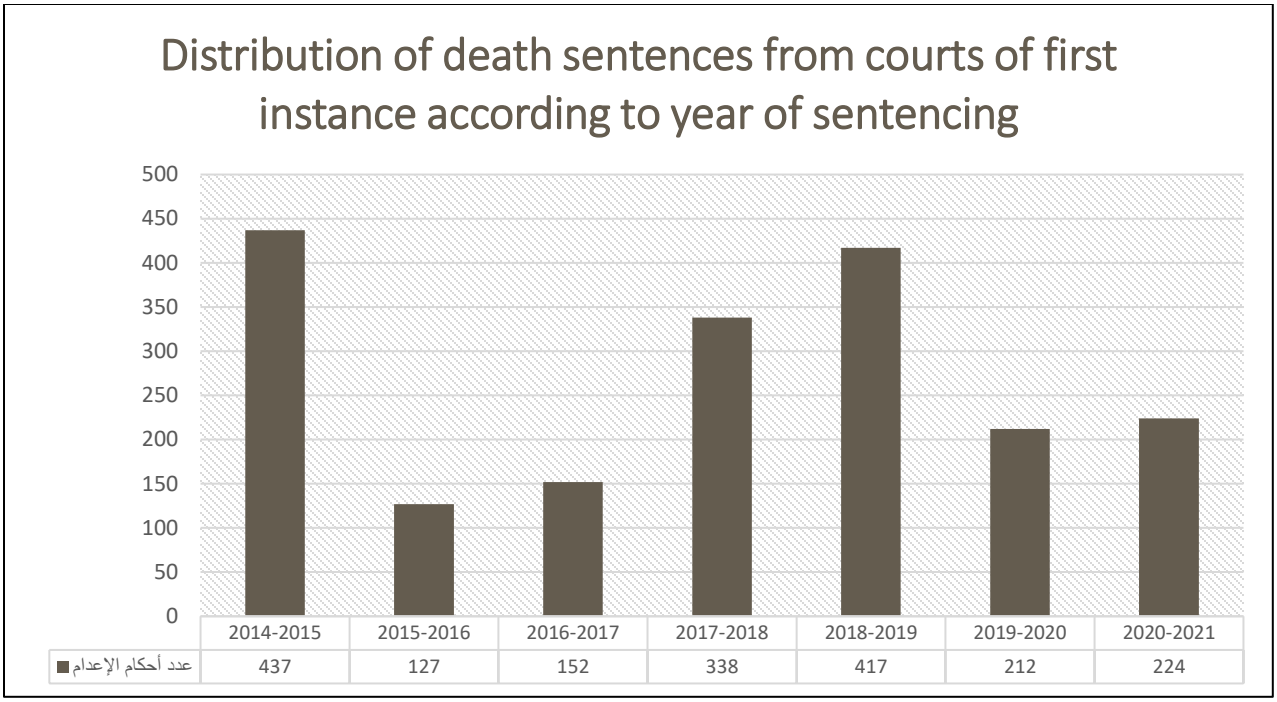
Frist : Compilation and analysis of death sentences from August 2020 to August 2021

The Campaign to Stop the Death Penalty in Egypt monitored a total of 534 death sentences during the period from August 2020 to August 2021. The distribution of these sentences was as shown in Table No. (1), with 228 judgments from the various criminal courts, and the Court of Cassation supported 6 of them., in addition to referring the papers of 26 cases with 61 defendants to the Grand Mufti of the Republic to express an opinion on their execution. The Egyptian Prisons Authority carried out 176 death sentences during this period.

Table (1) Number of cases according to current legal status	
Current legal status	Total
Papers referred to the Mufti	61
Death sentence (first degree)	228
Death sentence (final)	69
Execution of death sentence	176
Total	534

By comparing the number of death sentences issued by criminal courts of the first degree with previous years, we will find that the total number of death sentences issued from August 2014 to August 2021[3] amounted to 1907 death sentences. The distribution of these sentences was as shown in Figure No. (1), where the highest number of death sentences was issued in the year (2014-2015), where criminal courts in Egypt issued 437 death sentences; the number reached 417 in the year (2018-2019). In the year (2017-2018), no less than 338 death sentences were issued. As for the current year, the criminal courts issued no less than 228 death sentences, which indicates that there is a continuous expansion in the use of the death sentence by criminal courts in Egypt, and a failure to use the discretionary power of the judge in an attempt to reduce death sentences as was customary in previous decades.

[3] The report relied on death sentences from August 1, 2014 to July 31, 2020, according to the "Egypt Death Penalty Index" database. As for death sentences from August 1 to August 30, 2021, it is based on compilation of data by the campaign to stop the death penalty in Egypt.



The distribution of these sentences according to gender is shown in Table (2), where 212 men were sentenced to death by criminal courts compared to 16 women. The death sentences against 68 men and one woman were upheld by the Court of Cassation. As for the Egyptian Prison Authority, it executed 160 men and 16 women.

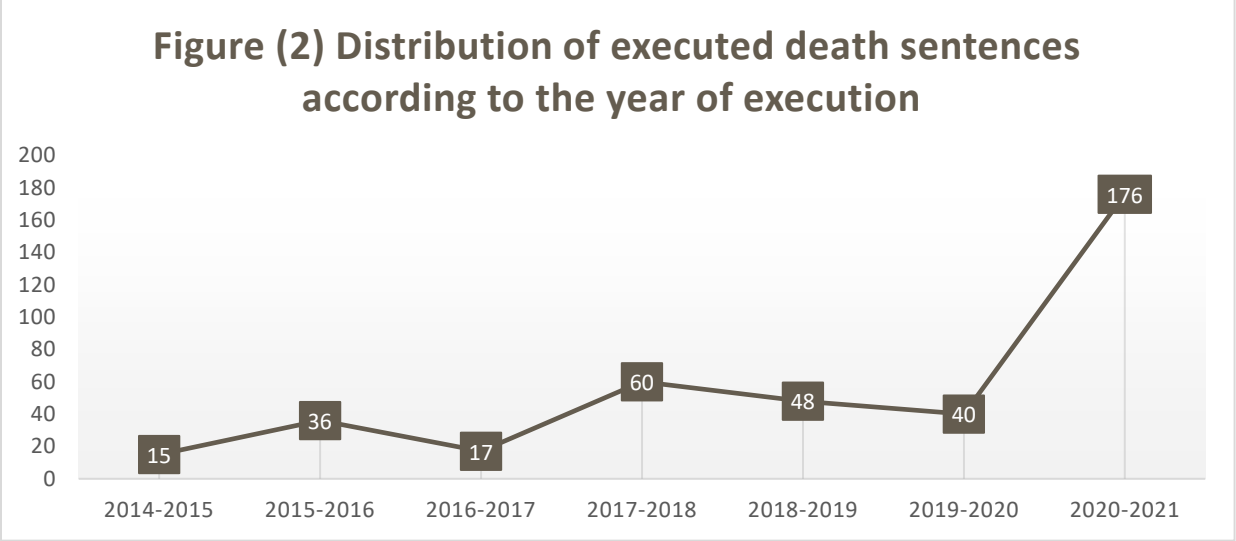
Table (2) Distribution of cases according to legal status and gender			
Legal status/gender	Males	Female	Total
Papers referred to the Mufti	60	1	61
Death sentence of first instance	212	16	228
Final death sentence	68	1	69
Execution of death sentence	160	16	176
Total	500	34	534

The Campaign to Stop the Death Penalty in Egypt identified the age groups of 153 convicts and executed, while it was unable to determine the ages of the remaining cases for the reasons mentioned in the research challenges. The distribution of ages across groups was is shown in Table No.(3) .

Table (3) Distribution of cases according to legal status and age group							
current legal status	under 18 years	18-30 years	31-40 years	41-50 years	over 50 years	Age not specified	Total
Papers referred to the Mufti	0	12	1	1	1	46	61
Death sentence (first degree)	0	35	26	9	6	152	228
Death sentence (final)	0	7	7	6	9	40	69
Execution of death sentence	0	12	15	3	3	143	176
Total	0	66	49	19	19	380	534

The number of executions carried out in 2020/2021 was the highest since 2014, as shown in Figure (2), the number of death sentences executed by the Ministry of Interior from August 2020 to August 2021 represents 80% of the total number of executions during the period from August 2014 to July 2020. This shows the extent to which the Egyptian government has expanded the implementation of the death penalty over the past year.

The Prison Authority also followed this year a very cruel practice of carrying out mass executions, such as those that took place on November 18, 2020, where nine people were executed in Burg Al Arab prison, and eight people were executed on October 3, 2020 in the same prison; on the same day a verdict was executed against 13 people in the Appeal Prison in Cairo.



As for the distribution of executed death sentences according to the place of execution, during the period from August 2020 to August 2021, the “Stop the Death Penalty” campaign in Egypt monitored the implementation of 176 death sentences in 9 different prisons nationwide. The Appeal Prison in Cairo and the Burg Al Arab Prison in Alexandria were the highest in the number

of sentences executed during this period with 56 executions; 19 were executed in Wadi al-Natrun Prison, 18 in Minya Public, and 10 were executed in each of Tanta General Prison and Assiut General Prison, in addition to 4 sentences executed in Damanhour General Prison and one sentence each in Zagazig General Prison and Qena Prison.

Table (4) Distribution of executed death sentences according to place of execution	
Place of execution	Total
Appeal prison – Cairo	56
Burg El Arab prison – Alexandria	56
Damanhour general prison – Beheira	4
Zaqaziq general prison – Sharkeya	1
Tanta general prison – Gharbeya	10
Wadi El Natrun prison – Beheira	19
Assiut general prison – Assiut	10
Minya general prison – Minya	18
Qena general prison – Qena	1
Location unknown	1
Total	176

Table (5) shows the distribution of executions per month, where the highest number of executions came in the months of October and November 2020 with 54 sentences in October and 50 sentences in November; the Prisons Authority also carried out 23 executions in June 2021, 19 during March, and 17 during April.

Table (5) Distribution of according to month of execution	
Month of execution	Total
October 2020	54
November 2020	50
December 2020	4
February 2021	6
March 2021	19
April 2021	17

May 2021	1
June 2021	23
July 2021	1
August 2021	1
Total	176

As for the nature of cases for which the death penalty was given, confirmed and executed, the largest percentage of judgments was in cases of a criminal nature (457 judgments, including 55 referrals to the Mufti of the Republic, 199 judgments from criminal courts, 59 judgments supported by the Court of Cassation, and 144 judgments executed). In cases of political nature, the number of death sentences was 77 (6 referred to the Mufti, 29 rulings from various criminal courts, in addition to 10 confirmed by the Court of Cassation, in addition to the implementation of 32 death sentences), as is shown in Table (6).

Table (6) Number of cases according to the background of the accusation and the legal status

Legal status, nature of case	Political	Criminal	**Total**
Papers referred to El Mufti	6	55	**61**
Death sentence (first degree)	29	199	**228**
Death sentence (final)	10	59	**69**
Execution of death sentence	32	144	**176**
Total	77	457	**534**

As for the distribution of the number of rulings according to the governorate of the incident, as shown in Table (7), central governorates came in the first place with 170 rulings, then the Delta governorates with 156 rulings, 127 rulings in Upper Egypt governorates and 12 rulings in the canal cities. The campaign could not specify any death sentences in border governorates.

Table (7) Distribution of the number of cases according to the governorate of the incident, the background of the incident and the geographical region

Governorates	Political	Criminal	Total	Geographic region	Total
Cairo	13	67	80	Central governorates	170
Giza	20	31	51		
Alexandria	2	37	39		
Qalubeya	0	29	29		156

Dakahleya	3	29	32	Delta governorates	
Gharbeya	0	6	6		
Sharkeya	7	27	34		
Menufeya	0	4	4		
Beheira	24	11	35		
Kafr El Sheikh	0	11	11		
Damietta	0	5	5		
Port Said	0	4	4	Suez Canal cities	12
Ismailia	0	8	8		
Suez	0	0	0		
Fayoum	0	9	9	Upper Egypt governorates	127
Beni Soueif	0	6	6		
Minya	6	25	31		
Assiut	0	4	4		
Sohag	0	7	7		
Qena	0	62	62		
Luxor	0	5	5		
Aswan	0	3	3		
North Sinai	0	0	0	Border governorates	0
South Sinai	0	0	0		
Marseh Matrouh	0	0	0		
Red Sea	0	0	0		
New Valley	0	0	0		
Unknown	2	67	69	unknown	69
Total	77	457	534	Total	534

Second: Legal problems related to the integrity of the procedural and objective rules used in execution cases as supported by a case study of the case of the Abu Makar Monastery monks, including:

Well-established Judicial practices in Egyptian criminal jurisprudence (the legal principles established in the judiciary of cassation) and some criminal legal texts grant extensive and sometimes absolute discretion to judges of criminal courts of different jurisdictions when issuing sentences, including death sentences. In this context, the presidents of criminal courts may issue judgments based on their judicial convictions and in implementation of their discretion to fragment the evidence of judicial recognition and exclude testimonies they chose to ignore. On the other hand, some judges of the criminal courts are affected by public opinion, the political will of the regime, as well as religious and moral motivation. In all details of this section, the report deals with a comprehensive legal analysis by studying the case of the monks of the Abu Makar monastery, which is the case known in the media by the killing of the late monk Epiphanius, bishop and head of the Monastery of Anba Makar in Wadi al-Natrun.

Judicial confession as evidence and the case of the Monastery of Anba Makar monks

Case summary

On the morning of July 29, 2018, the monks of the Monastery of Anba Makari in Wadi El Natroun found the body of the deceased monk Epiphanius, the bishop and head of the Monastery, in front of his cell in the monastery, on his way to attend Sunday mass. On August 5, 2018, security forces arrested 6 monks, including the monk Wael Saad, whose ecclesiastical name is Father Isaiah al-Maqari, and the monk Remon Rasmi, whose ecclesiastical name is Father Faltaous al-Maqari, who was attacked by an unknown person, and was taken to Kasr El Aini hospital as a result[4]. Later, four monks were released, Father Isaiah al-Maqari was kept held in the monastery, and Father Faltaous al-Maqari, was kept in hospital until the end of the trial due to his poor health condition. The Coptic Church also deprived them of their monastic rank by ecclesiastical decision, meaning that they were not subject to any protection or representation from the Church.

[4]The incident of monk Faltaous al-Maqari: Father Faltaous al-Maqari was exposed to an accident that was proven to be a suicide attempt and was used as evidence against him to have committed the incident. In one of the court sessions he refused to document the incident as a suicide attempt and later confessed that he tried to do that as a result of threats he received in hospital. Regarding the suicide incident, Father Faltaous al-Maqari reported that a masked person broke into his residence in the monastery and beat him until he lost consciousness, then woke up to find himself in the bathroom with split arteries in his right and left hands. He continued in his statement when confronted with the suicide attempt claim that he went to the monastery clinic trying to find held and searched for Dr. Mikhail. When he did not find him in the clinic, he went up to the roof of the clinic, expecting him to be there because the monks used to climb to the roof to escape the heat, but he got dizzy and lost consciousness from the effect of the bleeding and fell unconscious from the third floor. He was then transferred to Qasr Al-Aini Hospital and was placed under heavy guard.

The actual date of arrest was on August 5, 2018, for Father Isaiah al-Maqari. However, the case papers indicated that he had been released on August 6[5], and then the documents stated that he was arrested at a checkpoint in Beheira governorate on August 10 upon a seizure and arrest warrant issued by the Public Prosecution against him. On August 10, the Alexandria Appeal Prosecution decided to detain the monk, Isaiah al-Maqari, for four days pending interrogations, and the Public Prosecution charged him with the murder of monk Epiphanius. According to the case papers, the first defendant confessed his crime before the criminal investigation team headed by Major General Khaled Abdel Hamid, Undersecretary of the Ministry's Investigations, and indicated the location of the crime instrument, an iron rod "a pipe" that was found in a scrap store in the monastery, and was used in the process of killing the bishop with a single blow to the head. In his statements, he decided that the monk Faltaous al-Maqari was assisted him in the commission of the crime, and the Public Prosecution charged Father Faltaous al-Maqari with the murder of the head of the monastery in an investigation session on August 11. He was also remanded in custody pending investigations conducted by the Public Prosecution. This was the official version of the horrific killing incident. However, there are some essential points about the first defendant, the monk Isaiah al-Maqari, which can be summarized as follows:

- In fact, the first defendant was not released on August 6, as the official documents stated. He was subjected to physical and moral abuse inside the monastery, where he was interrogations by security officers for 48 continuous hours (5, 6 August) and he was not allowed to use the toilet during that period. After that, the monk Isaiah was detained without right or legal justification at the headquarters of the National Security Apparatus in the city of Nubariya, near the Beheira governorate, until his arrest report was issued on August 10, 2018, while he was in the custody of security, and not as stated in the arrest report[6].
- After the lawyers were not able to attend the interrogations sessions or the sessions to renew the detention order, the monks were referred to the criminal trial. During the trial sessions, Father Isaiah Al-Maqari changed his confession to the commission of the incident before the second circuit of the Damanhour Criminal Court and confirmed to the court that his confession was the result of physical and moral coercion through torture, where he was electrocuted and threatened to force him to confess and to enact the crime through the judicial officer, who himself is the main

[5]According to the case papers, upon their arrival at the monastery, the criminal investigation officers prevented the entry and exit of any individual and kept all the monks inside to ask some of them about their information regarding the incident. Among them was monk Isaiah ElMakari who confessed that he had committed shameful acts with some women visitors to the monastery. On his phone, there were disturbing conversations between him and some women and in order to preserve the reputation of the families and in view of the circumstances of the death of the head of the monastery, the Public Prosecution decided to impose a gag order the case. After investigating the monk Isaiah, the Public Prosecution decided to release him on August 6, 2018, but none of the monk's lawyers were able to have a photocopy of this case. Isaiah was not allowed to photograph it or see it, as no lawyer attended the investigations with him, nor was it referred to trial, and no one was able to know any details about the case, including the names of the victims.

[6] Father Isaiah al-Maqari was held for a month in an illegal place of detention, which is the headquarters of the National Security Agency in the city of Nubariya, near the Beheira governorate, even after he was presented to the Public Prosecution on August 10, 2018, preventing him from communicating with his family and his lawyer in violation of the law throughout that period.

witness in the case and is also conducting security investigations about the circumstances of the incident, which literally coincided with the confession of the first defendant against himself and his testimony against the second defendant. However, the court discarded these demands, and on April 24, 2019, the Criminal Court issued its ruling punishing both Father Isaiah al-Maqari and Father Faltaous al-Maqari to death by hanging for the charges against them. However, on July 1, 2020, the Criminal Chamber of Cassation addressed the case in the first session without the need to overturn the verdict. It used its authority to consider the penalty and decided to reduce it against Father Faltaous al-Maqari to life imprisonment and to uphold the death sentence against the monk Isaiah al-Maqari. On May 9, 2021, the Prisons Department of the Ministry of Interior executed the death sentence against Wael Saad without notifying his family or his lawyer, which is in violation of the provisions of the law of Criminal Procedures[7]. It was also a flagrant violation of the procedural legality, which affirmed that the executions are not to be carried out in the event of a petition for reconsideration of the penalty submitted before the court of cassation[8].

Confession and the testimony of witnesses are anecdotal evidence in criminal proof, and the essential difference between them is that the evidence of confession is issued by the person of the defendant, while the evidence of testimony is issued by witnesses to prove or disprove the incident to the Judicial Council or before the various investigative bodies. Considering a confession to be the master of evidence is suspicious evidence, with a heavy past, dating back to the Middle Ages, when investigation authorities used various methods of torture - and it was considered an interrogation tool at the time - to get defendants to confess to committing the crimes attributed to them[9]. Therefore, the recommendations of the Sixth International Conference on Penal Law, held in Rome in 1953, had decided that confession is not considered legal evidence. Despite that, investigation bodies and judicial platforms are still looking forward to obtaining confessions from defendants and seeking them as decisive pieces of evidence in the investigation of the criminal cases. With the development of legal systems and the integration and application of human rights concepts, various legal legislations put many controls in place to take into account as evidence confessions made by defendants. Looking at the Egyptian criminal jurisprudence, we find that it defined the confession evidence as the accused's acknowledgment of himself committing the facts constituting the crime, whether wholly or partially, but if the defendant mentioned during his interrogation statements related to other defendants, those would be called testimonies, not confessions. A confession considered as evidence is the judicial confession, that is, the one issued by the defendant in the Interrogations by the Public Prosecution or in the trial, and the Court of Cassation has ruled that the court may take into account the confession of the defendant in the police report (the Evidence-Gathering Report)

[7]Article 472 of the Code of Criminal Procedure: "The relatives of the person sentenced to death may meet him on the day set for the execution of the sentence, provided that this is far from the place of execution. If the religion of the person sentenced to death requires him to confess or other religious obligations before death, the necessary facilities must be made to enable one of the clerics to meet him; first paragraph of Article 474 of the same law "The execution of the death penalty must be in the presence of..., and the defender of the convicted person must always be permitted to attend."

[8]Article 448 of the Code of Criminal Procedure: "A request for reconsideration does not entail a stay of execution of the sentence unless it is a death sentence."

[9]Al-Wassit in Criminal Procedures - Part One - Tenth Edition \ 2016 - Dr. Ahmed Fathi Sorour - p. 543

when it is assured of its truthfulness and conformity with reality, even if the defendant changes it in other stages of the investigation[10]. For the proof of recognition of a confession to be valid, the following conditions must be met:

1) The availability of procedural capacity in the person of the confessor, which means that he\she is a defendant and that he\she also enjoys sound awareness and discrimination[11]
2) That the confession be made upon a free and conscious will[12]
3) The confession must be specific, clear, unambiguous and unvague13
4) The confession must be based on correct procedures, and if it comes as a result of invalid procedures, it will be invalid[14]
5) Conformity of the confession to the truth[15].

The substantive trial court is free to assess the seriousness of the evidence of judicial confession in accordance with the conditions of its validity that the cassation judiciary has settled on. A confession, like other evidence of criminal evidence, is subject to the discretionary power of the criminal judge. All the conditions for judicial recognition may be fulfilled, and still the court may not take it into consideration if it doubted the accusation against the defendant, if it was contrary to reality, or if strong material evidence is found that refutes this confession, then doubt is always explained in favor of the defendant, even if he confesses against himself, since the confession may be a result of material or moral duress, especially if the confession was recorded in the investigation report made by a judicial officer, or if the goal of the defendant's confession spare others an accusation, either for psychological or emotional reasons of his own. At other times, the substantive trial court may suffice with the evidence of the confession alone as a reason for conviction, after making sure that its conditions were met and that it matches the truth. The court may search for the existence of other evidence that supports this confession in order to form its conviction, and the substantive trial court's assessment of the confession is an act that it undertakes independently and is not Reviewed by the Court of Cassation. The substantive trial court has the right to take into account the confession of the defendant whenever it is issued at any stage of the investigation of the criminal case, even if he\she recanted after that, on the condition that the court ensures that the conditions for the validity of the confession and its conformity with the truth and reality are met.

Also, the substantive trial court has the right to divide the confession of the accused, as it is not accept the literal wording or appearance of the confession of the defendant[16], but the principle of splitting the confession is not legally valid unless the confession was focused on committing the crime and the denial of the offender was limited to facts related to the circumstances of the crime or the assessment of the penalty[17], as that the defendant confesses that he\she did not commit the crime of murder alone, but that another defendant participated with him\her in

[10]Criminal Cassation - Session December 30, 1979, Collection of Judgments, Q. 30, No. 213, pg. 989
[11]Criminal Cassation - Appeal No. 9367 of 65 J - Session of July 21, 1997
[12]Criminal Cassation - Session of June 2, 1983, Collection of Judgments, S. 34, No. 146, p. 730
[13]Criminal Cassation - Session of April 21, 1961, Collection of Judgments, No. 11, No. 65, pg. 328
[14]Criminal Cassation - March 15, 1979 session, Collection of Judgments, Q. 30, No. 71, pg. 346
[15]Criminal Cassation - Appeal No. 1203 of 54 J - Session 14 March 1985
[16]Criminal Cassation - January 25, 1983 session - Collection of judgments - S. 34 - No. 31 - p. 174
[17]Criminal Cassation - March 25, 1963 Session - Judgment Collection - Q14 - No. 47 - p. 225

perpetrating the killing. In this case the criminal effect of the confession is limited to the committing of the crime irrespective of the surrounding circumstances, the estimation of which would remain within the discretion of the court together with other pieces of evidence[18]. If the court takes into account the statements of the defendant who has confessed that another person has contributed with him\her in committing the crime, these statements are removed from the evidence of confession to the evidence of testimony. There is no legal or judicial acknowledgement of a defendant's confession against another.

The legal problem of the evidence of judicial recognition and the extent to which its authority is taken as criminal proof is that it depends on judicial practice and the discretionary power of criminal court judges and their legal doctrine, since there is only one legal text in the Code of Criminal Procedure, which is specific in the case of the confession of the defendant when questioned by the court. In this case the court may be satisfied with the confession and pass its judgment on the accused without the need to hear witnesses[19]. The confession of the accused of committing any crime, regardless of the gravity of the crime, is the focus of the conviction when the verdict is issued, whether the court is convinced of this solitary evidence or there is other evidence to support it. The question that arises here is, is the evidence of confession sufficient to sentence an accused to death? In order to answer this question, let us review an example of a criminal case, in which the evidence of confession was the basis of the conviction, and the case goes back to the incident of the murder of the late monk Epiphanius, bishop and head of the monastery of Anba Makari in Wadi al-Natrun.

The death sentence issued by the Criminal Court and supported by the court of cassation, which was executed, is based only on Father Isaiah al-Maqari's confession and his statements against the second defendant. this confession and that testimony is the matter that was later amended by the first defendant at the beginning of his trial before the Damanhour Criminal Court; the investigations of the criminal research unit - which was carried out with the knowledge of the officer in charge and the first to report the confession and testimony in the record of collecting evidence - corresponds literally with what was mentioned in the confession and testimony, both of which were made in the absence of the monk's defense at the time. In this case, the conditions for the validity of the judicial confession that were settled by the Cassation Court were not fulfilled, and the criminal court should have discussed the monk Isaiah in reversing his confession, especially since this happened at the beginning of the trial and long before the pleading was closed[20], and to respond to the defense requests in the investigation into the facts that the monk Isaiah was subjected to physical and moral torture and unlawful detention in one of the security

[18]Al-Wassit in Criminal Procedures - Part One - Tenth Edition \ 2016 - Dr. Ahmed Fathi Sorour - p. 552

[19]The second paragraph of Article No. 271 of the Criminal Procedure Code No. 150 of 1950 "After this, the accused is asked whether he confessed to committing the act attributed to him. From the Public Prosecution Office first, then from the victim, then from the civil rights plaintiff, then from the accused, then from the person responsible for civil rights".

[20] Dr. Ahmed Fathi Sorour says in this regard, "It is required that the accused insist on his confession before the court until the pleading is closed. If he abandons it, the court must take all other procedures for the final investigation of the case, and not implement the procedural effect of Article 271/2 procedures." Al-Wassi in Criminal Procedures - Part One - Tenth Edition \ 2016 - pg. 554

headquarters of the National Security Sector, but the Criminal Court used its right to consider that the judicial confession was achieved in this case, even if the defendant had retracted it, as long as it had verified the conditions of his validity and conformity to reality and logic, a matter which cannot be reversed by the Court of Cassation.

The monks' lawyers argued the invalidity of the confession of the monk Isaiah al-Maqari, as it was the result of physical and moral coercion. The response of the Criminal Court, supported by the court of cassation was as follows: ".. it has been established that the confession of the first defendant coincided with the truth of reality as concluded by the court from the case's material evidence, and according to witness testimonies and circumstances of the incident that the confession made by the first defendant was made voluntarily by him while he was fully conscious and fully aware and conformed to reality in the most accurate details and was made after the commission of the accident by a sufficient time, and was reinforced by his voluntarily enacting how he committed the crime with the second defendant, which took place with his knowledge, and in the presence of the Public Prosecution, as well as his confession that he committed debauchery with some women who came to the monastery, admitting their names, phone numbers and his acts; he also mentioned in detail the motivation behind the crime and lead security forces to the location of the crime weapon."

Testimony of witnesses

There is no legal text that is binding or even regulating the objective method of adopting the evidence of witness testimony in criminal proof[21]. The matter is left to the discretion of the judge in understanding and weighing the witnesses' statements in light of his research with the rest of the evidence in the case. Undoubtedly, the strongest type of testimony is direct testimony, through which, the witness can perceive through one of his senses (sight, hearing, smell) the commission of the crime in whole or in part, and the testimony must focus on the acknowledgment of what has been perceived with certainty and not just a guess or an interpretation as a result of the witness's diligence. There is also the audio testimony, through which the witness testifies to what he heard from others, and is not considered conclusive evidence of the incident to be proven. To accept this type of testimony, the cassation court specified that it should fulfill, that they be true[22], the witness be a specific person[23] and that the statements be represented in the facts of the case; the second condition is that these statements are supported by a proven fact and therefore not be the sole basis for the proof. Returning to the case of the murder of monk Epiphanius, the bishop and head of the monastery of Anba Makari, we find that the case did not include any contemporary witnesses to the killing, and the court refused to include the content of the cameras of the monastery and unload their contents due to the failure of the cameras to work. Also, the area of the monastery is estimated at 11.34 km^2 and includes seven churches and many buildings and farms, and the lands of the monastery

[21]Criminal Cassation - Session of July 2, 1997 - Appeal No. 9240 of 65.
[22]Criminal Cassation - January 17, 2010 hearing - Appeal No. 5841 of 78 J.
[23]Criminal Cassation - February 24, 1936 Session - Set of Rules - Part 3 - No. 444 - p. 550

are constantly exposed to acts of theft and looting from some Bedouins who live near the monastery. Two weeks before the killing, the monastery was robbed. All the testimonies that the court heard in this case were secondary testimonies, most of which were speculations about the existence of financial, administrative and ideological differences between the deceased head of the monastery and the condemned monks, as none of the witnesses to the evidence had witnessed those disputes, and the testimony of the arrest officer and the conduct of the investigations echoed what was admitted by the first defendant while in police custody, which is the confession that the monk Isaiah recanted in his trial because it occurred under physical and moral duress. However, the Criminal Court convicted the accused to death by hanging on the basis of a confession by a defendant and statements of questionable authenticity, and relied on hearing testimonies, which are not considered direct evidence in criminal proof.

The Court of Cassation responded to the monks' lawyers' argument that there was no witness to the incident by saying, "It was decided that the law does not require for the establishment of the crime of murder and the death sentence for the perpetrator to have eyewitnesses or to establish certain evidence, but rather for the court to be confident in its belief of conviction in that crime from all that it has considered from the circumstances of the case and reading it, and when it recognizes the conviction, it has the right to sentence to death the perpetrator of the act that requires retribution without the need for his confession, or the testimony of two witnesses that saw him in the event of the act being committed by him or that he be caught in flagrante delicto. Objective controversy in evaluating the evidence, which is what the substantive trial court is independent in weighing regarding the elements of the case and deducing its belief from them, is not what may not be raised before the Court of Cassation".

Security investigations and the death penalty

Security investigations come at the top of the pyramid of inferences carried out by judicial officers to search for crimes and their perpetrators[24], and it may be a preceding or subsequent stage to the arrest of the accused. In the first case the prosecution issues a warrant of arrest and search if it considers that the investigations done by the judicial officers and their assistants are serious according to a special legal text. In the second case, i.e., if the defendant is caught in flagrante delicto or had confessed, the judicial investigation authorities may request investigations by the Criminal Investigation Unit, National Security or Drug Control about the circumstances of the incident to ensure the validity of the arrest, or to arrest other defendants or for any other interest, where the investigation authority deems it necessary in order to fully investigate the criminal case. The substantive trial court may monitor the investigation authority to the extent that it is convinced of the seriousness of these investigations, but the Court of Cassation has no authority after that to comment on this. The substantive trial court may take the investigations seriously or ignore them in light of its search for the truth together with other evidence. Security investigations alone are not sufficient to prove guilt but must have a base in the facts and

[24]The Judicial officer shall search for crimes and their perpetrators, and gather the evidence needed for the investigation and the case. Article No. 21 of the Code of Criminal Procedure"

materials of the case. Investigations, with their necessary research, search and inference, are not valid in any case as a justification for issuing a search warrant. Rather, they must be supported by evidence and presumptions that suggest the occurrence of the crime by the person required to be arrested and brought in, so that the judge himself can verify the seriousness of those investigations, and can extend his control over the evidence, and determine its value as proof.

However, there are two points of view in the Cassation Court regarding the extent to which the secret sources (secret aides) used by the judicial control officer in conducting the investigations can be disclosed. The first entitled judicial officers to hide the identity of their helpers in undertaking the investigations if they are supportive of evidence obtained. It said "there is no fault on the court if it takes into consideration police investigations within the evidence it has relied on, so the court has the right to rely on what was stated in the police investigations as they corroborate the evidence presented. It is not necessary for the officer to disclose the source of his intelligence, and what is raised in this regard is rhetorical regarding the substance of the case and an assessment of its evidence, which falls within the independent authority of the substantive trial court[25]." There is another point of view in the Cassation Court, which obliges the law enforcement officer to reveal the source of his information, and the court said in this regard, "It was also decided that although the court may rely in the formation of its conviction on investigations as a presumption that reinforces the evidence presented, it is not valid on its own to be considered sufficient evidence by itself or an independent presumption of the accusation, and it is after all just an opinion of its owner, subject to the possibilities of truth and falsehood, honesty and lies, until the source is known and determined, so that the judge himself can verify this source and can extend his control over the evidence, and estimate its value as evidence[26]."

The substantive trial court responded to the monks' defense regarding the lack of seriousness of the investigations and its undertakers, that it echoed the confession and statements of the first defendant with "in this case, and since the court is entitled without blame to consider intelligence by investigation officers within the evidence on which it relied, since it is established that the court may rely in the formation of its conviction on what came in the police investigations as they corroborate the evidence presented by it, as long as it was assured of its seriousness. Judicial officers can seek the help of secret informers and others who inform him of what actually happened in the crime since he is personally convinced of the truth of what they tell him and of the truth of the information he received and this intelligence is not affected if the source remains unknown or if the judicial officers do not disclose whom they have sought to help them in doing their task, nor if it is a reiteration of the confessions by the defendant, since the conclusion is that the undertaker of the investigation has ensured the truth of the confession. This decision was accepted by the court of cassation.

[25](Court of Cassation - Criminal - Appeal No. 31330 of Judicial Year 83 on 05-05-2015)
[26](Criminal Cassation - Circuit "Wednesday A" - Appeal No. 15321 of Judicial Year 85 - Session 3/2/2016(

Evidence obtained under physical and psychological duress

In the Middle Ages torture was one of the judicial interrogation tools entrusted to the investigating authorities, and this was a natural matter based on the false belief that the defendant is obligated to express his statements truthfully, as it was required to obtain the confession of the defendant as evidence in the commission of some crimes in order to impose penalties[27]. However, modern criminal systems have squandered this method that undermines human dignity and humanity until we reached the right of the defendant to remain silent about the accusations leveled against him. After the end of the World War II, the universal human rights movement began to undertake serious steps in supporting human rights worldwide, which was reflected in global declarations and international agreements, including the Universal Declaration of Human Rights issued by the United Nations General Assembly, where its fifth article absolutely prohibited torture of the defendant28; also on December 9, 1975 the United Nations General Assembly issued a resolution declaring the protection of all persons from being subjected to torture and other forms of cruel, inhuman or degrading treatment or punishment.[29]

Article 13 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment issued by the United Nations affirms the obligation of state parties that no one within their territory should be subjected to torture and that the competent authorities investigate complaints of torture impartially and promptly[30]. Article 15 of the same convention stipulated the obligation of member states to exclude evidence obtained as a result of torture from any legal procedures[31.] The Committee against Torture of the United Nations was established to monitor the implementation of the Convention by members and to prevent all forms of torture. The committee is composed of ten independent experts and considers individual complaints and complaints between member states regarding the implementation of articles of the Convention, and member states are obliged to submit regular and periodic reports to the Committee against Torture every four years on how rights are implemented and enforced within the borders of their region. All successive Egyptian constitutions prohibited torture. Article 52 of the 2014 constitution stipulates that torture in all its forms is a crime with no statute of limitations[32.]

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[27]Dr. Sami Sadiq Al-Mulla - the confession of the defendant - doctoral thesis

[28]Article 5 of the Universal Declaration of Human Rights "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment".

[29]https://www.ohchr.org/AR/ProfessionalInterest/Pages/DeclarationTorture.aspx

[30]Article 13 of the Convention against Torture "Each State Party shall guarantee to any individual who alleges that he has been subjected to torture in any territory under its jurisdiction, the right to lodge a complaint with its competent authorities and that his case shall be promptly and impartially examined by those authorities. Necessary steps should be taken to ensure the protection of the complainant and witnesses are subject to all kinds of mistreatment or intimidation as a result of his complaint or any evidence presented.

[31]Article 15 of the Convention against Torture "Each State Party shall ensure that any statement proven to have been made as a result of torture shall not be cited as evidence in any proceedings, unless it is against a person accused of torture as evidence that such statement was made."

[32]Article 51 of the 2014 constitution stipulates that "dignity is a right of every human being, and it may not be violated, and the state is obligated to respect and protect it." Also, Article 55 of the same constitution stipulates that "anyone who is arrested, imprisoned, or whose freedom is restricted must be treated in a manner that preserves him." He may not be tortured,

However, proving the occurrence of torture, whether physical or psychological, is one of the difficult matters in the process of criminal proof, especially in the event that a long period of time lapses over the alleged incidents of torture, because forensic medicine would not be able to determine the occurrence of physical attacks against the victim. As for psychological torture, it is one of the very difficult issues in criminal proof, except on the assumption that there are contemporary witnesses to the incident of moral coercion or the existence of a visual recording of the incidents of coercion in general, as happened in the famous torture case of citizen Imad al-Kabir or the incident of torture of the Alexandrian martyr and the icon of the 25th January Revolution “Khalid Said”, which was resolved when the forensic medical report confirmed the legal position that the death occurred as a result of physical torture by judicial officers.

In the case of the monk Isaiah al-Maqari, who was executed, the court did not investigate the incidents of torture that he recounted during his trial and that his lawyers asked the court to investigate, despite the presence of indicators and evidence of physical and moral coercion, such as the illegal and unrightful detention of the monk Isaiah for two days inside the monastery and three days at the headquarters of the National Security Agency in Nubaria before being presented to the Public Prosecution, and he remained in that place for a month in total, in violation of the Prisons Organization Law and its Executive Regulations, and the confession made by the monk was made without the presence of a defender. Moreover, his lawyers were not able to attend the two sessions renewing his detention before he was referred to the urgent trial before the Criminal Court. The first contact between the monk and his family and his lawyers took place a month after the incident of his arbitrary detention. In addition, no one knows yet the final action in the case of monastic misconduct, in which the monk Isaiah was accused, which was the reason for his arrest. He was also the one who took the imitative of making detailed confessions regarding shameful incidents that amounted to sexual molestation and yet the public prosecution released him, disregarding the matter despite the severity of the alleged crime.

Moreover, the Criminal Court should not have accepted the confession of the defendant after he had retracted it at the beginning of his trial, as long as that had happened before the pleading was closed. In its response to the physical and moral torture of the monk Isaiah, the Criminal Court recounted - and was later supported by the court of cassation - by saying, "The papers were devoid of any trace of this alleged coercion, except for a loose statement by the defendant and his defense at the trial session, which was intended to question the court's reassurance about its authenticity of the court and contradicting what the defendant had stated on page 153 of the investigations that he was not subjected to any coercion that was imposed on him by the first witness, and thus the court is reassured of the integrity of the detailed confessions made by the accused in the investigations by the Public Prosecution”.

intimidated, coerced, or harmed physically or morally, and his detention or imprisonment is only in places designated for that that are humanly and healthily appropriate, and the state is obligated to provide means of accessibility for persons with disabilities. The accused has the right to remain silent, and every statement that is proven to have been issued by a detainee under the weight of any of the foregoing, or the threat of something from it, is wasted and unreliable.

Violation of the right to defense

Guaranteeing the right of defense of the defendant is one of the most important guarantees of a fair and equitable trial, without which the parties to the criminal case will not be upright. The defense journey begins with the obligatory presence of the lawyer with the defendant in the investigations of felonies and misdemeanors that are punishable by imprisonment, and the lawyer has to prove his defenses and requests starting from the investigation stage and interrogations until the completion of his procedural and substantive pleading in his capacity as an attorney for the defendant. This was confirmed by Article 54 of the 2014 Constitution[33] and Article 124 of the Code of Criminal Procedures[34]. At the top of the priority of the defendants' defense is the presence of a lawyer with them in the preliminary investigation sessions, confronting the seizures, and confronting the statements of the rest of the defendants - in the event that they are several in one case. However, the Code of Criminal Procedures has been released from this constitutional restriction by excluding the case of flagrante delicto and the case of need for speedy intervention due to fear of losing evidence, and in this case the investigator must prove this in his official record and prove that he has taken all possible measures to assign a lawyer. If a lawyer cannot attend the investigation session with the accused in this hypothesis, it is not void in order to preserve the interest of the investigation of the criminal case, and the legislative reason for this is that the Public Prosecution has authority of accusation and investigation at the same time, which is not a welcome situation. The substantive trial court, according to its discretion, monitors investigation authorities in the extent to which the urgency is achieved for fear of losing evidence without being contested by the Court of Cassation.

The monks' lawyers argued that the investigations of the Public Prosecution and the interrogation that took place with its knowledge were invalid because a lawyer was not present with the monks, so the criminal court's response, supported later by the court of cassation was as follows:

[33] Article 54: Personal freedom is a natural right which is safeguarded and cannot be infringed upon. Except in cases of in flagrante delicto, citizens may only be apprehended, searched, arrested, or have their freedoms restricted by a causal judicial warrant necessitated by an investigation. All those whose freedoms have been restricted shall be immediately informed of the causes therefor, notified of their rights in writing, be allowed to immediately contact their family and lawyer, and be brought before the investigating authority within twenty-four hours of their freedoms having been restricted. Questioning of the person may only begin once his lawyer is present. If he has no lawyer, a lawyer will be appointed for him. Those with disabilities shall be provided all necessary aid, according to procedures stipulated in the law Those who have their freedom restricted and others possess the right of recourse before the judiciary. Judgment must be rendered within a week from such recourse, otherwise the petitioner shall be immediately released. The law shall regulate preventive detention, its duration, causes, and which cases are eligible for compensation that the state shall discharge for preventative detention or for execution of a penalty that had been executed by virtue of a judgment that is overruled by a final judgment. In all cases, the accused may be brought to criminal trial for crimes that he may be detained for only in the presence of an authorized or appointed lawyer.

[34]Article 124 of the Code of Criminal Procedure: "It is not permissible for the investigator in felonies and misdemeanors punishable by imprisonment to question the accused or confront him with other accused or witnesses except after inviting his lawyer to attend, except in the case of flagrante delicto and speeding due to fear of losing evidence as evidenced by the investigator in the record. The accused shall announce the name of his lawyer in a report to the clerk's office or to the prison warden, or notify the investigator, and his lawyer may undertake this announcement or notification. On his own initiative, he may delegate a lawyer for him, and the lawyer may record in the minutes any defenses, requests, or observations that are relevant to him"…

- ***The Public Prosecution sent a representative to delegate a lawyer from the lawyers' room at the court to attend the investigations with the first defendant and found the room closed because the day of the investigation was on Friday, August 10, 2018, and the prosecution followed the same order regarding the investigation with the second defendant on August 11, 2018, but no lawyer was available to attend***
- ***The statements of the first defendant indicated that he had committed the crime***
- ***Because of speed and fear of losing evidence***
- ***Lawyer Amir Rushdi Nassif's testimony does not affect the authorities' failure to enable him to attend the interrogations with the first defendant because he did not present any evidence to support his statement, as they are nothing more than loosely made statements.***
- ***The second defendant did not announce the name of his lawyer during the Interrogation***

Looking at the responses of the substantive trial court about the absence of lawyers with the monks, we find that they lack legal and rational logic, so how does the first defendant influence or tamper with the evidence while in the custody of the security after his detailed confession and his indication of the only original contributor in committing the crime? The second defendant was also detained in the hospital due to his poor health and remained throughout all stages of his trial in hospital; also, 10 full days had passed since the killing of the head of the monastery without charges being brought against anyone. So why the hurry in having the investigation on a Friday with an accused in an incident such as that, in which public opinion would be concerned to see all defense guarantees fulfilled to the fullest; and if the day of interrogation with the monk Isaiah was an official holiday, why did a lawyer not attend with the second defendant the following day, which was a Saturday?

The discretion authority of the criminal judge

Criminal court judges enjoy greater discretion than civil court judges, due to the different nature of disputes in both areas, and the expansion of the court's authority in criminal justice comes in fulfillment of the principle established by the judiciary according to its jurisprudence, which is the freedom of the criminal judge to be convinced. In the stage of judgment, there must be complete certainty of conviction and not just assumption or guesswork. This certainty is not the personal certainty of the judge, but rather it is the certainty that imposes itself on the judge and spreads in the conscience of all, because its conclusion must be logical, which is technically known as judicial certainty or logical certainty[35]. The sources that the criminal judge relies on when issuing his judgments are the constitution, the law, the judicial custom, the principles of Islamic law, and if the judge does not find what constitutes his legal belief in those four sources - according to their previous arrangement - he is obliged to rule according to his conscience and legal belief, not his personal one. The principle of freedom of criminal proof enjoyed by the parties to a criminal case means that the judge is free to evaluate the evidence without restriction in terms of its facts and in terms of its source in fulfillment of his judicial duty, and this is what Article 302 of the Code of Criminal Procedure stipulates: "The judge rules in the case according to the belief that he has

[35]Al-Wassit in Criminal Procedures - Tenth Edition/1016 - Dr. Ahmed Fathi Sorour, pp. 605, and beyond.

formed. With complete freedom." And this is what the cassation judge settled on by saying, "The substantive trial court has the right to extract the image of the incident as it was depicted in its conscience by means of deduction, induction and all mental processes, as long as these are sound and consistent with reason and logic."[36]

The implementation of the principle of the judge's freedom of conviction requires the achievement of two indispensable elements, subjective confidence and judicial certainty. The judge's subjective confidence is one of the mechanisms of criminal proof in addition to the mechanisms of legal evidence. Subjective confidence of the judge is achieved through a legal framework governed by limits, which is respect for the principle of the origin innocence of the defendant, which means the implementation of the fundamental rule that doubt is always explained in the interest of the defendant, while the other limit is the judge's adherence to the evidence specified by the law. As for the element of judicial certainty, which is the basis of a conviction[37], it has conditions that must be met when conviction is reached, which are 1) that the judgment be based on judicial evidence, 2) that the evidence be legally acceptable (the legality is not required in the proof of innocence[38], 3) that judicial conviction is consistent with reason and logic[39].

The discretionary authority granted to the criminal judge does not have binding legal controls, because this contradicts the will of the legislator of its presence in the criminal judiciary. Rather, it has frameworks, controls and limits regulated by criminal jurisprudence and principles of the Court of Cassation. Unfortunately, many of the evidence of criminal proof such as evidence by confession, witness testimony, security investigations – all of which have a heavy weight in criminal proof - are governed by more than one judicial principle, and the oversight of the Court of Cassation may be limited to how the substantive trial court worked in assessing and verifying the weight of a lot of evidence, since the court of cassation is primarily a court of law and not substantive trial court except within specific boundaries according to the Law of Cases and Procedures for Appeals in Cassation. Therefore, the Constitutional legislator emphasized in the 2014 Constitution the necessity of having a degree of appeal for the judgments of criminal courts - ten years after the adoption of the constitution - in order to achieve the constitutional and legal guarantee that litigation at two levels is a right guaranteed to all citizens. The Court of Cassation is not a degree of litigation because it is an unusual means of appeal.

The court that convicted monk Isaiah by death sentence used its discretionary power to implement the judicial principle of accepting the defendant's confession and statements even if he retracted them at any stage of the investigation of the criminal case, as long as this confession was consistent and agreed with other evidence presented before the court, which

[36] Established Judiciary, see, Criminal Cassation - March 17, 1985 session - Collection of Judgments, No. 36, No. 70, pg. 409.
[37] The judiciary of the Supreme Constitutional Court settled that "the criterion of certainty and certainty has a constitutional value, leaving no reasonable room for suspicion of refusal of innocence." Supreme Constitutional - January 2, 1993 - Case No. 3 of the 10th constitutional judicial year.
[38]The Court of Cassation said in this regard, "It is not required in the evidence of innocence that it be the result of a legitimate procedure, because the origin of the accused is innocence, so the court does not need to prove his innocence, and all it needs is to question his conviction." Criminal Cassation - January 25, 1965 session Group of Rulings, No. 16, No. 21, pg. 87.
[39] Refer to Al-Wassit in criminal procedures - 1016th edition - Dr. Ahmed Fathi Sorour, pp. 606, and beyond.

are thus not to be reviewed by the Court of Cassation, since the weight of the evidence and the extent of its authority is a matter for the substantive trial court to independently determine in accordance with its doctrine that it has justifiably extracted by examining all the evidentiary evidence and achieving a principle that supports criminal evidence.

Third: Reasons that favor the continuation of executions in the same manner, according to the point of view of the Egyptian Commission.

• *2017 Amendments to the Law on Cassation Appeal Cases and Procedures.*

Law No. 11 of 2017 came with a fundamental amendment to the Law on Cases and Procedures for Appeals in Cassation, with regard to the amendments that occurred to Article 39 of the aforementioned law[40]. This amendment enabled the Court of Cassation to extend its control over the substantive trial court's assessment of the penalty and its mitigation without the need to overturn the contested judgment In order to schedule a session to consider the subject of the lawsuit, and thus the ruling becomes final, i.e. exhausts all the ordinary and extraordinary means of appeal, and in this the Court of Cassation says, "Law No. 11 of 2017 regarding the amendment of the provisions of the Law on Cases and Procedures of Appeals in Cassation had the jurisdiction of the Court of Cassation to consider the subject matter of the case if it overturned the contested ruling; this entailed the right of the Court of Cassation to extend its oversight over the substantive trial court's assessment of the penalty, as it is synonymous with its function, and a part of its original jurisdiction by inflicting the correct ruling of law on the presented incident. It is logically unacceptable for the assessment of the penalty to remain outside the oversight of the Court of Cassation, and therefore it has become necessary to extend the oversight of the Court of Cassation over the assessment of the penalty by the substantive trial court, since the law authorizes the rule of cassation to apply the texts that put the penalty within its reach, and this application inevitably requires that the Court of Cassation estimate the necessary penalty without the need to discard the appealed judgment and set a session to consider its subject[41].

The legislative development in amending some provisions of the Law on Cases and Procedures for Appeals before the Court of Cassation - which was brought about by Law No. 11 of 2017 - has led to a steady increase in the issuance of final death sentences by the criminal departments of the Court of Cassation, which represents a deviation from the old general trend of the criminal chambers of the Court of Cassation of retrials of cases in which death sentences were issued by criminal courts of all jurisdictions (civilian, military, emergency state security) given the gravity and severity of the death sentence as the most severe punishment in the criminal system, as it

[40] Article 39 of the Law on Cases and Procedures for Appeals in Cassation, as amended on April 27, 2017, which states: "If the appeal or its reasons is submitted after the date, the court shall rule that it is not accepted in form. In accordance with the law, and if the appeal is based on a nullity in the judgment or a nullity in the procedures affecting it, the court shall overturn the judgment and consider its subject matter, and the legally established procedures for the crime that occurred shall be followed, and the judgment issued in all cases shall be in presence.

[41] Court of Cassation - Criminal Chamber "Wednesday (A)" - Appeal No. 13611 of Judicial Year 89 - Session of July 1, 2020.

involves deprivation of the most important characteristic of the human being, which is the right to life. The Court of Cassation used this amendment to reduce the penalty from death to life imprisonment for the second defendant in the case of the killing of the president and bishop of Deir Abu Makar in Wadi al-Natrun. At the same time, the Court of Cassation approved the death penalty for the first defendant, and this amendment was also implemented in the recent ruling of the Court of Cassation in the well-known case of the dispersal of the Rabaa al-Adawiya sit-in, where the Cairo Criminal Court sentenced 75 defendants to death by hanging for the charges they were accused of. However, the Court of Cassation exercised its authority to monitor the substantive trial court in its assessment of this punishment, so the Court of Cassation upheld the death sentence on 12 defendants only, while reduced the sentences against the rest from death to life imprisonment.

• Non-permissibility of appeal or resort to court of cassation on sentences issued by emergency courts

Article 12 of the Emergency Law, according to the latest amendment in force so far, stipulates that, judgments issued by state security courts may not be appealed, and those judgments become final only after ratification by the President of the Republic[42]. Article 13 stated the rejection of civil claims in front of state security courts, and those convicted under the emergency law have only the right to submit a complaint (not an appeal) against the emergency ruling before the president of the republic ratifies it, according to Article 16 of the emergency law[43]. The authority of the president of the republic is not restricted by any time restriction regarding ratification of state security court judgments. This could take place days after the ruling is made or the ratification may remain indefinitely suspended, which contradicts the principles of the finality of judgments and the stability of legal status, which are the main purpose of litigation. Also, the authority to ratify emergency judgments contradicts the special and restricted procedural text that sets the date for appealing the final criminal judgments with a maximum of 60 days after the judgment is issued[44]. Under this latest amendment, the jurisdiction of the Emergency State Security Courts was expanded not only to include cases of terrorism and very serious crimes, but also extended this jurisdiction to include some minor crimes such as building violations, cases of fraud in food commodities and cases of white weapons (knives). These amendments are a flagrant violation of the principle of procedural legality and the guarantees of a fair trial, as they constitute a breach of the constitutional restriction and the legal obligation inherent in the criminal justice system that litigation is of two degrees and that no one is tried except before his natural judge. According to Article VI of the guarantees approved by the United Nations with regard to the death penalty, it is obligatory to appeal the death sentences when

[42] Article No. 12 of Emergency Law No. 162 of 1958, to which is added the amendment issued by Law 22 of 2020 on May 6, 2020. The article stipulates that "it is not permissible to appeal in any way the judgments issued by the state security courts, and these judgments are not final until after their ratification by the President of the Republic".

[43] Article 16 of the Emergency Law states: "The President of the Republic shall, by a decision from him, delegate an advisor to the Court of Appeal or one of the public defenders, provided that he is assisted by a sufficient number of judges and employees, and his task is to verify the correctness of the procedures, examine the grievances of the concerned and express an opinion. A commentary justifying his opinion is submitted to the President of the Republic before the judgment is ratified.

[44]Article 252 of the Civil and Commercial Procedures Law, the first paragraph of which stipulates that "the deadline for appeal by way of cassation is sixty days.

they are passed before a higher court[45]. Recently, 12 Egyptian citizens faced death sentences issued by the Emergency State Security Criminal Court in Damanhour in the case known in the media as the bombing of the bus of the Interior Ministry personnel in Beheira[46], and these defendants had no choice but to file a grievance procedure against this ruling. In fact, the grievance in these cases does not have any strong legal status since the Judicial Committee delegated under the authority of the President of the Republic in a state of emergency has been authorized by law to record its opinion on the margins of the judgment in cases of urgency, which reveals the mere formality of filing a grievance against emergency provisions.

• Nonenforcement of the constitutional text regarding the formation of appellate circuits for criminal court rulings.

Article 240 of the 2014 Constitution stipulates that the state is obligated to take all possible measures to form circuits to appeal judgments of criminal courts, within ten years from the date of the constitution's implementation[47]. This constitutional restriction comes after criminal law jurists and professors have consistently adopted the point of view that supports the need for a degree of appeal to criminal court rulings in order to achieve the constitutional guarantee that guarantees for any citizen that litigation is at two levels and not one degree. The cassation judiciary is not considered a degree of litigation because it is an extraordinary appeal and, in all cases, the Court of Cassation, since its establishment, has been a court of law and is not a substantive trial court established except with specific conditions stipulated in the Cassation Appeal Cases and Procedures Law. So far, criminal appeals departments have not been formed, or legal and legislative discussions have been sought, or even a societal dialogue has been proposed, despite the passage of seven full years since the constitutional restriction contained in the 2014 constitution. The inability to appeal or contest judgments by emergency state security courts after the latest amendment of the emergency law is inconsistent with what was stipulated in the Egyptian constitution, amended in 2014, obligating the criminal justice system to form appellate chambers to hear judgments issued by criminal courts by 2024.

[45]Safeguards guaranteeing protection of the rights of persons facing the death penalty, adopted by the United Nations Economic and Social Council Resolution 1984/50 of 25 May 1984, Article VI "Everyone sentenced to death has the right to appeal to a higher court, and steps should be taken to make this Appeal is mandatory.

[46]The events of the case date back to that on 8/24/2015, the defendants targeted a bus carrying a number of secretaries and policemen in the Buhaira governorate, Rashid Center, by planting an explosive device on the edge of the Rashidiya Canal after an industrial bump in front of the Ezbet Al-Sharif bridge in the area of the village of Mahallat Al-Amir in the center circle during the course of the bus No. 2757/ B12 of the Directorate and related to the transfer of police personnel on the "Damanhour- Rashid" line, which resulted in the death of three policemen and the injury of 39 others with fractures and scattered shrapnel in the body. About 6 kilograms on the edge of the Jadiya Canal was detonated by a remote control from the other side of the canal, as it was found from the inspection that the bomb made a hole about a meter deep at the scene of the accident.

[47] Article 240 of the 2014 Constitution, which stipulates that "the state guarantees the provision of material and human capabilities related to appealing judgments issued in criminal cases, within ten years from the date of enforcement of this constitution, and this is regulated by law."

Fourth: Recommendations

1- General recommendations

These are recommendations adopted by the Campaign to Stop the Death Penalty in Egypt and pertain to the punishment itself, and are represented in the following:

- **Suspension or imposing a moratorium on the death penalty**, in response to the international trend that limits the continuation of the death penalty, which is stipulated in the sixth paragraph of Article Six of the International Covenant on Civil and Political Rights, which obligates the states parties to this covenant to abolish the death penalty.
- **The formation of a judicial committee to review the death sentences that are supported by the court of cassation or ratified by the President of the Republic under the emergency law**. The importance of the formation of this committee is in view of the emergency state and the expanded authorities grated to the court of cassation by means of legislative amendments since May 1, 2017. The formation of this committee remains indispensable in light of the fact that courts of appeals for criminal judgments are not formed until now.

- **Increasing the authority of the President of the Republic to reduce the death penalty**, in accordance with Article 470 of the Code of Criminal Procedure[48]. The Egyptian Constitution granted the President of the Republic the same powers in general over all penalties, as stipulated in Article 155 of the 2014 Constitution[49]. The President of the Republic recently used these powers to commute the death penalty to life imprisonment for Indian citizen Ramana Bagu Ayana, according to a presidential decree issued on August 4, 2021[50].

2. Special recommendations

These are recommendations regarding fair and equitable trial guarantees related to the procedural and substantive rules followed in execution cases. These recommendations are summarized in the following:

- Legal provision for excluding the evidence of judicial recognition from the evidence of criminal proof in the event that the defendants are referred to the substantive trial on charges that may lead to their being sentenced to the death penalty.
- Legal provision regarding the necessity of appointing a lawyer for defendants convicted with the death penalty before the Court of Cassation in the event that there is no financial ability to appoint a lawyer at this critical and dangerous stage of the criminal case, and this is what was recommended by the National Human Rights Strategy issued on September 11, 2021.
- The imperative of defining a clear legal framework for the most serious crimes for which the death penalty is issued, and this is also one of the recommendations of the National Human Rights Strategy.
- The necessity of the existence of a criminal penalty for the legally responsible in the event that the families and the lawyers of the executed are not notified of the actual execution. This is in respect of the rights of the convicts and their families, and in accordance with humanitarian and international standards.
- Activating Article No. 448 of the Code of Criminal Procedure, which states that “a request for reconsideration does not entail a stay of execution of the sentence unless it is a death sentence.” The death sentence was carried out on some of the convicts, despite their defense submitting requests for reconsideration, which is what happened with monk Isaiah Al-Maqari.

3. Legislative recommendations

These recommendations are specific to the legislative environment of the criminal justice system in Egypt, which positively affect the promotion of fair and effective trial guarantees and

[48] Article 470 of the Code of Criminal Procedure, which states: “Whenever the death sentence becomes final, the case documents must be submitted immediately to the President of the Republic through the Minister of Justice. The judgment shall be executed if the order for pardon or replacement of the penalty is not issued within fourteen days.

[49] Article 155 of the 2014 constitution, which stipulates that “the President of the Republic, after consulting the Council of Ministers, may pardon or commute the penalty. A comprehensive amnesty can only be granted by a law approved by the majority of the members of the House of Representatives.

[50] Presidential decree https://www.almasryalyoum.com/news/details/2390760

the adequate and impartial completion of criminal case interrogation. These recommendations relate to and impact when criminal courts issue death sentences, and these recommendations are:

- **The need to return to the separation between the authority of interrogation and the authority of accusation.** The interrogation of a criminal case is not balanced at present, and so far, the strongest party in it, which is the Public Prosecution, enjoys the powers of accusation and interrogation, so how can it be an investigator and an opponent at the same time. The Public Prosecution is the conscience of society and the advocate of the weak in order to obtain its rights, and it is the first oversight body of the work of the executive authority. Thus, the interrogation of the case remains the most important work entrusted to the Public Prosecution. The separation between the powers of accusation and interrogation is what is technically known as the mixed legal system in the investigation of criminal cases, where a public authority assumes the task of indicting, and in the past in Egypt, this jurisdiction was entrusted with both the partial judge and the Appeals Court of Misdemeanors sitting in the counseling room, provided that the mission of the Public Prosecution is the interrogation of criminal cases and the supervision of judicial officers in their work. The mixed system of criminal case interrogation seeks to balance the rights of the defense and the rights of the accusing authority.
- **Suspension of the emergency state.** There is no societal need for the emergency law to continue being enforced until now, and the Egyptian criminal justice system includes many punitive texts that replace the emergency law, which violates the constitution and international and regional agreements that Egypt has ratified and became part of national legislation.
- **Activating the constitutional restriction on the formation of appellate circuits for criminal judgments**, in order to achieve the constitutional and legal guarantee that litigation must be of two degrees and not one degree, which was confirmed by the rules of international law and human rights conventions.