

Hurried Death Sentences

A Legal Analysis Report







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Executive Summary

In its third year (September 2021-September 2022) the report of the “Stop the Death Penalty” campaign addresses the phenomenon of hurried criminal trials, specifically cases that occupied a large social and media space and ended with death sentences for the defendants in substantive trials that lasted only several days. This report details the impact of public opinion and hurried trials on the death penalty through four main angles. The first angle is an analytical legal study of three criminal cases that have sparked societal and legal controversy recently. Rizk Wadid Rizkallah Boutros, archpriest of the Virgin Mary and Mar Bolous Church in Alexandria, and the second case known in the media as the case of the “murder of the Mansoura University girl Naira Ashraf”, and the third case is the Ismailia incident and the “Shabu drug” where the defendant slaughtered the victim (Ahmed Muhammad Siddiq) in broad daylight, while under the influence of methamphetamine.

Through this angle, the report attempts to carry out a comprehensive and analytical legal study of the three cases, starting from the moment the crimes were committed until the death sentences were issued. The analysis reviews the details of the incident, their coverage by the media, the arrest of the defendants, the questioning and hearings by the public prosecution with the defendants, witnesses, families of both victims and the defendants. It also analyzes the security investigations about the circumstances of the crimes, forensic reports and the reports of the Regional Council for Mental Health (for defendants in the first and third cases), descriptions by the Public Prosecution for referring the defendant to trial, as well as the substantive pleading sessions in each case, requests made by the defense in each, and how the management of each court body of the trial substance, leading to the issuance of death sentences and the merits of each ruling. At the end of this review the report highlights the most important violations and problems that affected the application of fair and equitable trial standards in each case.

The second section of this report discusses the extent to which each court can use clemency in previous cases and cases of exemption and replacement of the original penalty in light of the law and the discretionary authority of the court. The law, specifically Article 62 of the Penal Code, sets clear reasons for the lack of criminal responsibility. Also, Article 17 of the Penal Code allows the court, without any conditions, to reduce or alter the sentence in light of the circumstances of the cases. This section also discusses similar cases in which clemency was used with the defendant.

The third section of the report lists the reasons that the Egyptian Commission considers behind the speedy settlement of those cases in question, namely the impact of public opinion, the media, and societal pressures, giving priority to religious and personal motives of some of those in charge of the justice system, and the absolute discretion of the criminal court judges, which played an important role in the pace of these trials ending so quickly.

The final section presents the recommendations made by the “Stop the Death Penalty” Campaign regarding the contents of this report, including a general recommendation on combating the death penalty and replacing it with life imprisonment without the opportunity for a conditional pardon and indefinite prison sentences, and secondly, a recommendation regarding a legislative amendment to the text of Article 338 of the Code of Criminal Procedure. The third recommendation deals with the development of legislative texts, specifically Article 62 of the Penal Code.

Report Methodology

The methodology of the report “Hasty death sentences” issued by the “Stop the Death Penalty” campaign in Egypt launched by the Egyptian Commission for Rights and Freedoms (ECRF) involved reviewing the report of the campaign in its third year (September 2021 - September 2022) through legal analysis of some examples of cases in which death sentences were issued against convicts were during hasty trials (three months). The campaign engaged with these cases through legal analysis of the case documents in order to determine the extent to which fair and equitable trial standards were observed and applied, including the case known in the media as the case of the murder of the Mansoura University student “Naira Ashraf”, in which the trial lasted for 15 days only, and the case of the murder of a Karmouz monk in Alexandria, in which the trial lasted for 40 days, and finally the case of Ismailia, in which the defendant cut the neck of the victim while under the influence of Shabu anesthetic, the trial, in this case, lasted for 64 days.

The trials in these cases were characterized by the speed in concluding their procedures, accompanied by a widespread media impetus, and a careful societal follow-up of all the procedures of these cases, given the seriousness and gravity of the details and facts of the crimes committed, in which the criminal courts ended with issuing the most severe criminal penalty in the penal system, which is the death penalty. All these initial circumstances raised some questions for the “Stop the Death Penalty” campaign: do we

need hurried trials that take days to achieve speedy justice? Did the Public Prosecution conduct sufficient and complete investigations? Do these trials achieve public and private deterrence in the community? Did these trials take into account in their procedures the guarantees of fair and impartial trials? Could the judges have used clemency with the defendants in those cases? The report also lists criminal cases in which the courts used clemency with the defendant.

Introduction

On the occasion of the International Day Against the Death Penalty, the “Stop the Death Penalty” Campaign in Egypt publishes in its third year, its second annual report under the title “Hasty Death Sentences.” The report addresses the phenomenon of death sentences being handed down through hurried criminal trials that have been affected by public opinion pressures represented in societal anger and intense media follow-up, given the enormity of the details of the crimes committed.

This report does not discuss whether the three defendants in the cases under study and legal analysis deserved to be ruled innocent of their actions towards the victims. Rather, what will be discussed in the body of this report is related to the application of fair trial guarantees and standards in the trial procedures of the defendant in the cases known in the media as the murder of archpriest Arsanios Wadid Rizkallah, of the Virgin Mary and Mar Bolous Church in Alexandria, the case of “the murder of the Mansoura University student, Naira Ashraf”, and the case of the Ismailia incident, where a methamphetamine abuser “Al-Shabu” slaughtered the victim (Ahmed Muhammad Siddiq) during the day in the midst of passers-by.

Perhaps the most prominent features in the investigations and trials of the aforementioned cases - and in fact the motives behind this report - are the Public Prosecution's completion of investigations and interrogations of the cases within days. The defendant in the killing Naira Ashraf was referred to trial after 48 hours of his questioning. In the case of the murdered archpriest, the referral for trialing was made 11 days after the incident, while the defendant in the Ismailia case was referred by the Public Prosecution to the criminal court three days after the crime, despite evidence that he was a drug addict and was under the influence of methamphetamine “Shabu” at the time of the crime. What also emerges in the substantive trials of the three cases under study and analysis is that they ended within days. In the Ismailia case, the defendant was tried in three sessions over six days, and in

the Alexandria case, the defendant was tried in two sessions over a period of 5 days. As for the Mansoura University case, the defendant was tried over two sessions within three days.

The main reason for the speedy completion of investigations and trials in the three cases is the great societal pressure and the huge media momentum that accompanied all stages of these cases. Those urgent trials were marred by some violations that constitute a violation of fair trial standards, and they include the absence of optimal legal representation for the defense of the defendant, the inability of lawyers to prepare their defense in a sufficient manner given the limited time available, and the rejection of lawyers' requests to place the defendant for reasonable periods of time in psychiatric hospitals and presenting them to five-member committees to issue complete medical reports regarding them. Also, some of the defendants were investigated by the Public Prosecution in the absence of their defense, and in those sessions, they confessed to having committed the crimes.

There is no doubt that everyone wants prompt justice without any deliberate delay or inaction, but it must be achieved through investigation procedures and a fair trial within sufficient and reasonable time for all parties to the criminal case, in order to uphold the principles of the rule of law and equal legal opportunities regarding all elements of criminal trials. 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.

I. Hurried trials and death sentences within days: three case studies

First case: The murder of the murder of archpriest Arsanius Wadeed Rizkallah in Alexandria

Background of the case

On the evening of April 7, 2022, in the Alexandria Governorate, security elements of the Security Directorate arrested an elderly man named Nehru Abdel Moneim Tawfiq Abdel Moneim, aka “Abdul Rahman Nehru”, 59 years old, born in the Dayrut Center in Assiut Governorate, Upper Egypt. Nehru's arrest was for stabbing archpriest Arsanius Wadeed with a knife.

The victim was the archpriest of the Virgin Mary and Mar Bolous Church in the Karmouz area in Alexandria. The incident occurred while the archpriest - who was wearing priestly garb - was leaving the beach with a group of young people. The testimony of witnesses to the incident was consistent that they were on a recreational trip to the beach of Enas Haqqi, and that when they left it at about eight o'clock in the evening to return to the cars that were waiting for them in front of the beach, where the victim was supervising their ride, they were taken aback by the defendant heading towards the oblivious victim with a knife in his hand, jumped on him and stabbed him with one blow in the right side of the neck while repeating "God is Greater.. Praise be to God.

The late archpriest Arsanius died on his way to Mustafa Kamel Military Hospital due to a severe drop in blood circulation, heart and respiration, as a result of being stabbed in the right side of the neck.¹

– Prosecution hearings

At 12:10 a.m. on 8/4/2022, the Montazah Public Prosecution began investigations with “Nehru” in the presence of a delegated lawyer and charged him with the two charges of premeditated murder and unjustified possession of a white weapon. The defendant denied those accusations and that he did not remember the incident at all and refused to sign the

¹ According to the forensic medical report, the death of the victim is due to a stab injury in the upper right neck and the severing of the main blood vessels in the upper right neck and the accompanying heavy bleeding and irreversible hemorrhagic shock. Pg 6 of the report of the Forensic Medicine Authority issued on 4/8/2022.

report claiming that he was in no condition to be questioned². He specifically refused to answer the investigation questions regarding the incident of the assault on the archpriest Arsanius, saying that he saw the archpriest on the street, and then found himself lying on the ground and several people beating him. He confirmed his possession of a knife he had found in the garbage, but he denied his connection with it – and that he took it to protect himself, because he was sleeping on the streets, as he had arrived in Alexandria four days before the incident in search of work and shelter³. He provided evidence that he was admitted in Abasseya mental hospital 10 years ago because he was suffering psychiatric illnesses. When the prosecutor asked him about his psychological condition during the questioning, he replied that his psychological state was tense and sometimes he loses control of himself.⁴

The Public Prosecution completed the investigations with Nehru on the same day, specifically at 4:30 pm, without the presence of a lawyer with him. Most of the interrogation questions were about his living conditions and his brothers' political history. The defendant admitted that all of them were members of the Islamic group and that his brothers were arrested randomly among many young men in Upper Egypt due to the security ban imposed against the background of the sectarian strife events that took place in their hometown of Dayrout, and that his brother Muhammad remained in detention for 15 years. Nehru also confirmed that he was also arrested while he was a student at Dar Al Uloom College⁵ for 26 days in 1989 and was also arrested in 1990, and in 1992 he was arrested for the last time, and remained in prison for 17 years. According to his statements, his latest arrest was a political arrest without an indictment. The rest of the investigator's questions revolved around Nehru's views on the Islamic Group, the Muslim Brotherhood, the Shiites, and the two Sheikhs Ibn Taymiyyah and Omar Abdel Rahman⁶.

On 4/18/2022, the Public Prosecution resumed the investigations with Nehru for the last time in the absence of a lawyer, in light of the receipt of a report of the Regional Council for Mental Health. The prosecutor confronted the defendant with the report stating that he did not suffer a mental or psychological disorder at the time of the crime. The defendant

² Pg 11 of the prosecution's investigations with the accused

³ Pg 2 and 3 of the prosecution's investigations with the accused

⁴ Pg 6 of the prosecution's investigations with the accused

⁵ Dar Al Uloom College works to prepare a graduate specialized in Arabic language, literature and Islamic sciences, who is able to employ the language and teach its texts. Reading, writing, listening and speaking, and qualified for academic research in the areas of specialization, researching community issues and addressing its linguistic, literary, legal, intellectual and historical problems.

⁶ The statements of the accused, Nehru Abdel Moneim, from p. 10 to p. 24 from the investigations of the Public Prosecution

replied “there is a contradiction in the report in the absence of any symptom and the absence of motives for the incident which I deny”.⁷

The Public Prosecution inspected the crime scene and the body of the victim and listened to the statements of 17 witnesses who witnessed the incident. The prosecution included in the case file 3 video clips from the beach cameras that showed the presence of the defendant. The angle of the footing did not show the stabbing incident itself. It also added three video clips following the incident taken from social media showing skirmishes at the scene of the incident. The Public Prosecution interrogated the arresting officer and the National Security officer who conducted his investigations regarding the incident, and after being delegated, the Assiut Prosecution began interrogating the defendant’s brother, his sister, his neighbor, and the sheikh of the Biblau village district, in order to obtain information about the life of the defendant⁸. Eleven days after the crime was committed, specifically on 19/4/2022, the Montazah Public Prosecution referred Nehru Abdel Moneim, to the Criminal Court.⁹

– Trial procedures

The Alexandria Criminal Court considered the case over the course of three sessions. The first court session was held on May 14, 2022. In this session, the court heard the testimony of 17 people who witnessed the incident and the testimony of the security investigations officer and the national security sector officer conducting the investigations. The civil plaintiffs’ lawyers requested to amend the legal description by which the defendant was referred by the prosecution to the criminal court from murder without premeditation, to premeditated murder¹⁰.

The court also decided, after the defendant’s request, to delegate a lawyer to defend him, and the court decided to postpone consideration of the case to the session of 18/5/2022. In that session the court showed the video clips which the prosecution had included in the case file as well to the statements by the prosecution and the delegated lawyer. In the same session the court referred the case to the Grand Mufti of Egypt¹¹ to seek his religious

⁷ Pages 33, 34 of the Public Prosecution's investigations with the accused

⁸ From p. 1 to p. 16 of the memorandum of the Public Prosecution with information in the case

⁹ Pg 41 of the Alexandria Criminal Court ruling

¹⁰..... By advocating several things, including the background of his arrest and the cases committed by the accused during his youth, as well as his affiliation with the Islamic group and his embrace of their ideas. Source:

<https://www.albawabhnews.com/4580378>

¹¹ Article 381 of the Code of Criminal Procedure stipulates in its second paragraph that “... the Criminal Court may not issue a death sentence except with the unanimous opinions of its members, and before issuing this ruling, it must take the opinion of

opinion on the execution of the defendant, and scheduled the 11/6/2022 to pronounce the verdict, which was issued unanimously by Sharia and legal opinions to execute Nehru Abdel Moneim by hanging, based on the modification of the description of the crime from simple deliberate murder without premeditation to deliberate murder without premeditation for a terrorist purpose.

In the merits of its verdict of conviction, the court said, “And since the incident as described above settled the evidence for its authenticity and provenance against the defendant, Nehru Abdel Moneim, from the statements of witnesses and supported by the forensic report, supported by police investigations, the statements of its conductors, and the report of the Criminal Evidence Department, the report of the Regional Council for Mental Health, and the report of the examination of the crime scene and follow-up of social networking sites with the knowledge of the Public Prosecution and the confession of the defendant and his family’s statements¹².

On April 17, 2022, Al Maamoura Mental Health Hospital sent the defendant Nehru to put him at the disposal of the Public Prosecution, along with the psychiatric and mental medical report on his condition, in which the Tripartite Committee concluded that *“the defendant does not suffer from any symptoms of any mental or psychological disorder at the present time or at the time of the concerned crime that would reduce his abilities of judgement, choice, sound will, correct judgment on matters and knowing wrong from right, which makes him responsible for the accusation against him”*.¹³

In this regard, we find that Nehru’s delegated defense has requested that Nehru should be presented to a five-member committee to determine his health condition¹⁴, and the lawyer also argued that the defendant is mentally ill and suffers from insanity, and that he was not kept for 45 days of observation in Al Maamoura mental hospital¹⁵; the defense argued the invalidity of the technical report issued by the Regional Council for Mental Health and

the Mufti of the Republic and the case papers must be sent to him; if his opinion does not reach the court within the ten days following the sending of the papers to him, the court shall rule in the case.

¹² Pg. 4 of the ruling of the Alexandria Criminal Court, Circuit 22, in Public Prosecution Case No. 7429 of 2022 Felonies of the Beginning of Al-Montazah and restricted to No. 343 of 2022 Al-Montazah Prosecutions.

¹³ Pg 6 of the report of the Regional Council for Mental Health

¹⁴ Pg. 18 Court ruling in the case

¹⁵ Article 338 of the Code of Criminal Procedure states: “If the matter calls for examining the state of the accused’s mental disorder, the investigating judge or the summary judge, such as the request of the Public Prosecution or the court before which the case is heard, according to the circumstances, may order placing the accused if he is in pretrial detention under observation in a health facility. The government psychiatry designated for this for a period or periods not exceeding in total forty-five days after hearing the statements of the Public Prosecution and the defense of the accused, if he has a defender.

demanded the application of the text of Article 62 of the Penal Code for lack of responsibility¹⁶.

The court rejected the defense's request to assign a five-member committee on the grounds that it was satisfied with the result of the tripartite committee's report¹⁷, which is the same reason for its refusal to plead the nullity of the tripartite committee's report. The court also argued that admitting the defendant for observation in a mental hospital for 45 days according to the interpretation of article 338 of the law of criminal procedures means that the maximum duration of admission is 45 days, while the text did not oblige the court nor the prosecution with a minimum duration of admission. The court added that estimating the experts' opinions and deciding on objections directed to their reports are referred to this court, which has complete freedom to assess the strength of evidence provided in the expert's report submitted to it.¹⁸

However, the report of the Regional Council for Mental Health was marred by a procedural flaw, which is that the first paragraph of the text of Article 24¹⁹ of the Mental Patient Care Law No. 71 of 2009 described the formation of the tripartite committee of doctors registered with the Council, which did not happen in the case of Nehru, as it was proven in the report that the doctor, the first member of the Tripartite Committee, was "retired"²⁰.

In addition, the statements of the defendant and the requests of his defense regarding his psychological and mental disorder were not mere baseless statements, but were supported by facts, evidence and documents, including for example, that Nehru on February 26, 2007 was issued a mental medical report by the Abbasiya Mental Health

¹⁶ Article 62 Penalties: A person who suffers at the time of the commission of the crime from a psychological or mental disorder that has made him lose consciousness or choice, or who suffers from a coma resulting from narcotic drugs of any kind, shall not be held criminally responsible if he took them forcibly or without his knowledge of them. The person who suffers at the time of committing the crime from a psychological or mental disorder that has led to a decrease in his awareness or choice, and the court shall take into account this circumstance when determining the sentence period shall remain criminally responsible.

¹⁷ Pg. 19 of the Alexandria Criminal Court ruling

¹⁸ Pg. 25 of the Alexandria Criminal Court ruling

¹⁹ The text of the article: "In the event of a decision by the Public Prosecution or a judicial ruling to place one of the accused in a mental health facility for examination, the Regional Council for Mental Health shall delegate a tripartite committee of physicians registered with it to examine the mental and psychological state of the applicant according to the content of the decision or judgment, and the judicial authority must be informed of a report on the case. Psychological and mental health includes the result of the evaluation within the period specified by the decision of the judicial authorities and he may request an additional period, if necessary, provided that the report includes the following:

- 1- The psychological or mental state of the person concerned at the time of the commission of the crime in terms of the availability of awareness or choice.
- 2- The psychological or mental state of the applicant at the time of the assessment.
- 3- Suggested treatment plan.

²⁰ pg. 1 of the report of the Regional Council for Mental Health

Hospital²¹, which concluded with a diagnosis of his condition at that time that he was suffering a mental hysterical disorder and a conversion disorder of loss of speech with a recommendation to continue psychotherapy and follow-up in the area in which he is detained²². Also, the details of the previous incident circulated on media platforms, as Al-Masry Al-Youm newspaper republished an article on April 10 of an old press report March 9, 2007 entitled “*Two injured in a quarrel in the observation ward in a mental hospital*”²³. The article included the following text “A quarrel and two injured inside Ward 8 designated for those placed under observation” and that “*Nehru Abdel Moneim Tawfiq, defendant in Petition No. 3 of 2007, petitions of the insane, consigned to the hospital, took two of his colleagues, Atwa Imam Atwa and Abd al-Salam Ahmed Khalifa- also admitted for observation- by surprise assaulted them while they were asleep resulting in a cut wound of the nose and a bruise to the left eye of the first and injured the second with an abrasion in the left eye and forehead.*”

The report of the Regional Council for Mental Health also stated that Nehru's history of behavior was characterized by nervousness and ill-treatment towards everyone, and that he had repeatedly attacked his uncle, stabbing him in the stomach²⁴, and assaulting a child using a pocket knife with which he stabbed him in the neck²⁵. The officer, conducting national security investigations, wrote in his testimony, “that the defendant, due to the conditions of detention he went through, shows psychological imbalance due to the length of his detention”²⁶. Investigations of the National Security Sector also confirmed that Nehru was presented several times to Assiut Hospital. It was found that he suffered from abnormal electrical activity of the brain, severe agitation that was difficult to control, and deterioration of his psychological and mental state, and that he suffered from psychological imbalance and agitation at varying periods, as well as some irresponsible behaviors²⁷.

Thus, we find that Nehru’s psychological, nervous and mental condition, according to the previous reasons, needed a longer examination period than the one he spent in Al-Maamoura Hospital, which will not exceed in the best estimate 8 days, as on 9/4/2022 the Public Prosecution sent a copy of the case papers to the Regional Council Mental Health²⁸,

²¹ A psychiatric report, the subject of Case No. 3 of 2007, petitions for insane persons, which includes the diagnosis of Nehru's case

²² Pg 3 of the report of the Regional Council for Mental Health

²³ <https://www.almasryalyoum.com/news/details/2569830>

²⁴ Pg 5 of the report of the Regional Council for Mental Health

²⁵ Where Nehru assaulted the child Ahmed Ramadan Ahmed, subject of registration No. 4591 in 2008, Dayrut misdemeanor

²⁶ Pg 8 of the testimony of the National Security Officer before the Public Prosecution

²⁷ Pg 2 of the National Security Sector Investigations

²⁸ From the investigations of the Public Prosecution, p. 27

and on April 17, 2022, the hospital sent Nehru to the prosecution with a medical report. It was not clear from the case papers neither the date of Nehru Abdel Moneim's admission to Al Maamoura Mental Health Hospital nor the time period he spent there, nor the number or dates of the medical examination sessions that the defendant underwent.

The court modified the legal description of the crime from simple deliberate murder without premeditation to deliberate murder without premeditation, and that the crime was driven by a terrorist purpose. It based this description on Nehru's history of political detention which lasted for 17 years the last time he was arrested, as well as the history of his brothers and their previous affiliation with the Islamist group. Also, Nehru had admitted that he was a member of Da'wah (Islamic advocacy) in the past and that he was at present a sympathizer with the ideas of the group. The court said that it did not concur with the description of the crime by the prosecution, and that it recognizes aggravating circumstances related to the offender's intent and psyche to commit murder in implementation of a terrorist purpose, in accordance with the aggravating circumstances stipulated in Articles 230 to 234 of the Penal Code, the court stated the reasons for its ruling "which took his life, and that was in implementation of a terrorist purpose of endangering the safety and security of society, harming national unity, and sowing terror among a group of people, as indicated in the investigations²⁹".

The purpose that the court disclosed in amending the legal description is to increase the penalty to the death penalty, because the defendant at the time of committing the crime approached the victim specifically since he wore the priestly garb and the cross³⁰. However, the court was at fault in this decision because it based its decision on cases of a political nature at the time of the existence of an emergency state which had been in force for 30 years, while there was no evidence of a clear role of the defendant nor his brothers in such cases or their involvement in incidents of violence. Also, the files of those political cases were not added to the file of the killing of archpriest Arsanious Wadeed, since after the arrest of Nehru examination of his criminal record prepared by the Ministry of Interior did not have any enforceable criminal provisions against him. Thus, he was not even a criminal to whom one of the cases of recidivism stipulated in Articles 49 to 54 of the Penal Code applied.

²⁹ Pg 42 of the ruling of the Alexandria Criminal Court

³⁰ Pg 21 and 22 of the ruling of the Alexandria Criminal Court

What reinforces the previous theses is what was stated in the testimony of the National Security Officer, saying, "... my investigations did not find a relationship between the character of the victim revealed by his clothes and the defendant's choice of him to commit the incident. He also added elsewhere... that the defendant did not have a prior motive or planning or any form of criminal participation in committing that crime, but was the result of a momentary feeling and thinking that the defendant had upon seeing the person of the victim³¹. The officer confirmed that the defendant at the present time is not linked to the Islamic group intellectually or organizationally, but rather sympathizes with its people. He added that the incident did not result in what may lead to disturbing public order or endangering the safety and security of society. The incident also did not instill terror in the hearts of citizens and did not endanger their safety or rights, nor did the incident harm national unity. The officer replied that his investigations confirmed the absence of any terrorist purposes in the defendant's commission of that incident³².

In conclusion, in this regard, neither the Public Prosecution nor the national security investigations have advanced or proven that the purpose of the crime was of a terrorist nature, so the court used its authority granted by Article 307 of the Code of Criminal Procedure by amending the legal description of the crime and did not bind itself by the indictment articles contained in the referral order by adding aggravating circumstances proved by the investigation or the pleading in the hearing.³³

In the reasons for the conviction, the court said that among the evidence was the defendant's and his family's confession, which is contrary to what was established in the papers. Nehru did not confess to committing the crime, whether in the three hearings with the prosecution or during the two trial sessions, with only three days separating both. Also, statements by the defendant's family, according to the prosecution's investigations, only said that Nehru had been arrested more than once, that his psychological state was troubled and that he had attacked his uncle and one of his neighbors with knives.³⁴

³¹ Pg 7 of the testimony of the National Security Officer before the Public Prosecution

³² Pg 8 of the testimony of the National Security Officer before the Public Prosecution

³³ Where the article stipulates that "the court may change in its judgment the legal description of the act attributed to the accused, and it may amend the accusation by adding aggravating circumstances that are proven from the investigation or from the pleading in the hearing, even if they were not mentioned in the referral order or summons. It also has the right to correct every material error and realize every omission in the phrase accusation included in the referral order, or in the subpoena. The court must alert the accused to this change, and give him a deadline to prepare his defense based on the new description or amendment if he so requests.

³⁴ p. 11 from the list of evidence of the Public Prosecution

The court was also at fault regarding the unnecessary hastiness of the trial. The defendant did not have a lawyer with him neither in the last two sessions with the prosecution, nor in the first court session. After Nehru's request from the court, it responded and delegated two lawyers and handed them copies of the case papers and only three days to prepare to plead for the defendant, which is a short period, during which the defense cannot prepare the best defense for a case of this nature. The court's failure to respond to the defense's request by appointing a five-member commission, amending the legal description of the crime, and ignoring the national security investigations that confirmed that the crime occurred without any terrorist purposes, all of these matters have revealed the court's tendency to deliver the defendant to the gallows under the influence of public opinion because of the gravity and ugliness of the crime and due to the good reputation enjoyed by the late archpriest Arsanious Wadeed.

Second case: the murder of Mansoura university student Naira Ashraf

- Background of the case

The events of the incident date back to the morning of Monday, June 20, 2022, when the defendant, Mohamed Adel Mohamed Ismail, followed and rode the same bus taken by his colleague at the university and the victim, Naira Ashraf Ahmed Abdel Qader, from their hometown of Mahalla al-Kubra, heading with other colleagues to Mansoura University to perform the end-of-year exams. The defendant followed the victim after everybody had left the bus and stopped in front of the Toshka gate of Mansoura University. He took out a sharp object from the folds of his clothes and stabbed Naira from behind. She fell to the ground. Then he continued to stab her body intending to end her life. The screams of the victim rose in front of the Mansoura University gate, and one of the security personnel accompanied by one of the university students rushed to her and tried to save her. They tried to keep the defendant away from her, but he had decided to take Naira's life and make sure she was dead, so he threatened them with a sharp instrument. Muhammad returned to Naira again and then grabbed her head with his left hand and cut her throat. Then a university security member was able to seize him after he had executed his plan, taking her life³⁵.

³⁵ Source: The order to refer Mohamed Adel to the Mansoura Criminal Court in the Public Prosecution case No. 11409 of 2022 First Division of Mansoura and No. 1191 of 2022 South Mansoura Prosecution.

The victim, Naira Ashraf, died, and her young soul went to her Lord, affected by a cut in the left lung, a deep cut wound in the back of the neck, and a dislocation between the third and fourth vertebrae, which led to a sharp drop in blood and respiratory circulation, according to forensic reports.

– Prosecution hearings

After the arrest of Muhammad Adel, the Mansoura Prosecution began investigations with him in the presence of his lawyer. By confronting him during the prosecution's investigations, he admitted that he was the one who appeared in the crime videos, where the content of the surveillance cameras at the crime scene showed all the details of the incident listed above. Muhammad Adel confessed to committing the crime in the investigations of the Public Prosecution, where he stated that he came to know the victim, Naira Ashraf Ahmed Abdel Qader, as a colleague at the Faculty of Arts, Mansoura University, during the academic year 2020, and he provided her with scientific research and a romantic relationship developed between them. However, soon she wanted out of the relationship. He repeatedly tried to get her back and get close to her through messaging her on social media, but she blocked him. He went to officially propose to her but he and her family rejected him. They had arguments for which she filed complaints against him in the second police station of Al-Mahalla Al-Kubra³⁶.

Muhammad continued in his confession, "A customary session was held in which I pledged not to harass Naira and I signed a money receipt handed over to Naira's family and erased all the pictures and conversations as I was ordered in the customary session" He added that he pretended to comply with the decisions and admitted that during the month preceding last Ramadan he was trying to communicate with Naira to end their disagreements and get back together, but she refused and blocked him. The defendant confirmed that he pretended to comply with Naira's family's requests, so that he can get to her during the time of the exams and execute his plan to kill her. In that regard, Muhammad added that since the month of Ramadan he decided to get rid of the victim to put an end to what was between them. He kept his decision to himself to avenge himself and end her life. When he saw her in the university during the exams of the aforementioned university year, he tried to talk to her and she sought the help of the security officer, which angered him and he determined to take revenge on her after taking the first exam.³⁷

³⁶ Pg 7 of the Mansoura Criminal Court ruling

³⁷ Pg 8 of the Mansoura Criminal Court ruling

At the beginning of June 2022, Muhammad bought a new knife and chose this type of weapon because he is a cook and has knowledge and skill in using knives, but he postponed the execution to the second exam in anticipation of her being accompanied by a member of her family. Muhammad stipulated in his confession that he had resolved to carry out the execution during the third exam on 11/6/2022, so he went to the university carrying the above-mentioned knife designated for his purpose, but he did not have the opportunity because he could not see her. During the fourth exam he carried the same knife to commit his crime, but he couldn't see her this time either. So, he resolved that the implementation would take place during the fifth exam on 20/6/2022. Muhammad's exact words were, *"...I went down today carrying the knife. I saw her sitting with her colleagues. When I saw her, I thought this is an opportunity to make peace with myself and get rid of her as she walks off the bus. As soon as we left the bus, she was a little ahead of me. I followed and all I could think about was to get rid of her. I stalked her and as soon as I came close, I took the knife out of the bag I held it in and finally released my anger³⁸"*

The Public Prosecution referred the murderer of Naira to the Mansoura Criminal Court on charges of premeditated murder and possession of a white weapon in cases other than those authorized by law. This took place on 22/6/2022, that is the public prosecution concluded its investigation before the end of 48 hours after the crime was committed. The public prosecution listened to the testimonies of four friends of the deceased who had accompanied her on her journey from Al-Shoun Square in Mahalla to Mansoura University. The prosecution also heard the statements of 14 witnesses who saw the incident, including security personnel and students in the vicinity of the scene of the incident and citizens who happened to be present at the time. All those testimonies concurred to the description in the first paragraph of the case analysis. The prosecution also heard the statements of the bus driver, the mother and father of the victim, owner of the Sarkis Tours Office and an employee in the office, who presented a video showing that the defendant did not take more than one bus that had vacant places, but boarded the bus which the victim had boarded.

In his testimony before the investigation authorities, the head of the investigations of Mansoura's first police department said, "...that his secret investigations indicated to him the existence of an emotional relationship between the defendant and the victim since 2020. As a result of her ending this relationship, a dispute arose between them, upon which the defendant harassed her. Consequently, she filed complaints number 108, 109 for the

³⁸ Pg 8 and 9 of the Mansoura Criminal Court ruling



year 2021, with the economic misdemeanors, second division, Mahalla al-Kubra, and other compliant number 1953 to 2022, administrator, first division, al-Mahalla al-Kubra. So, the defendant resolved to take revenge by killing her to avenge his dignity³⁹..." The rest of his statements matched the description in the first paragraph of the case analysis. Investigations by the Public Prosecution documented that the apparent bruising injuries on Muhammad Adel were the result of beatings by university security personnel and witnesses and passersby who witnessed the incident⁴⁰.

– Trial procedures

In the first substantive trial session on June 26, 2022, the Mansoura Criminal Court heard the statements of the defendant, Mohamed Adel, who revealed a lot about the details of the relationship that he had with the victim⁴¹. In that session, the defendant began by denying the charge of extremism, and that he had nothing to do with intellectual or religious extremism. He continued that he was emotionally involved with Naira, and that she was the one who started the first disagreement them. He continued, "*She told me that she wanted to leave the modelling job and work in other fields, and she and I used to love each other, and I didn't mind anything she wanted to work at*"⁴²." The court decided to postpone for the defense to see the case papers and for both the Public Prosecution and the defense to plead their case on the 28th of June 2022. The court also imposed a gag order on the case, except for the judgment pronouncement session. Based on that decision, the defense had an entirely insufficient time, which is one day, to prepare his plea for the defendant in a first-degree murder case.⁴³

Muhammad Adel's defense asked to amend the legal description from premeditated murder to beating that led to death, which was rejected by the court on the pretext of the validity of the defendant's detailed confession in its most accurate details, video clips, witness testimony and other evidence. The defense also requested to question four witnesses, but before his final plea, the court allowed him to question the victim's father in a secret session, and he did not adhere to the rest of the witnesses whom he wanted to

³⁹ Pg 18 of the Mansoura Criminal Court ruling

⁴⁰ Pg 28 of the Mansoura Criminal Court ruling

⁴¹ <https://www.almasryalyoum.com/news/details/2630344>

⁴² <https://www.elbalad.news/5334981>

⁴³ Source : <https://www.youm7.com/story/2022/6/28/%D8%AC%D9%86%D8%A7%D9%8A%D8%A7%D8%AA-%D8%A7%D9%84%D9%85%D9%86%D8%B5%D9%88%D8%B1%D8%A9-%D8%AA%D8%B3%D8%AA%D8%A3%D9%86%D9%81-%D8%A7%D9%84%D9%8A%D9%88%D9%85-%D8%AC%D9%84%D8%B3%D8%A7%D8%AA-%D9%85%D8%AD%D8%A7%D9%83%D9%85%D8%A9-%D9%82%D8%A7%D8%AA%D9%84-%D8%A7%D9%84%D8%B7%D8%A7%D9%84%D8%A8%D8%A9-%D9%86%D9%8A%D8%B1%D8%A9-%D8%A3%D8%B4%D8%B1%D9%81/5817432>

question before. He also asked to examine the contents of the defendant's mobile phone, if available⁴⁴. Muhammad Adel's lawyers requested that the defendant be presented to forensic medicine to examine his mental health and psychological balance at the time of committing the crime. The court rejected that request saying: *"... that the court is confident about the soundness of his mental and psychological state and the soundness of his perception and choice, before and at the time of his perpetration of the crime of murdering the victim and in its aftermath. "*

The court added in the rationale for its ruling, *"While it was decided that the assessment of the defendant 's mental or psychological condition is one of the substantive issues that the trial court has jurisdiction to decide on, but for the integrity of the judgment, if the defendant raises it, it must conduct an investigation that will reach the sufficiency of the matter in it. It would have then to appoint an expert to decide in this case by proof or negation, and if it didn't, it must provide at least justified reasons on which to base its decision of rejecting this request, if it believes, from the circumstances of the case, the facts of the case and the condition of the defendant that he is responsible for the crime he committed."*

Indications that Ashraf was free of any psychological or mental illness from the court's point of view, is his choice for the crime instrument, a new sharp knife and not another weapon, and that Muhammad was aware that the bus was not the right place to achieve his goal of killing the victim the passengers intervened and prevented it; the defendant threatened bystanders with a knife so that they would not come to the rescue of the victim then returned to her after threatening them and cut her throat; his choice of the third exam in order to start committing his crime so that no one from her family would be with her at the beginning of the exams; surveillance cameras revealed that Muhammad waited for Naira at the bus stop and then followed her to the bus she rode; copies of chats that illustrate Muhammad's threats to Naira, in addition to the customary session and the official records that were written against the defendant not to harass the victim prior to the incident, in addition to the defendant's confession to the Public Prosecution In the presence of his defense and reenacting the crime freely in a presentation attended by his lawyer. Also, Muhammad Adel was answering the Public Prosecution's questions with great accuracy and clear phrases, and with consistent and coherent words that did not rave and did not falter. The defendant's defense sought the judiciary to acquit him, based on the absence of criminal intent, the intent to kill, the absence of a premeditated circumstance, the contradiction of witness statements, the shortcomings of the

⁴⁴ Pg 22 and 23 of the Mansoura Criminal Court ruling



investigations, the absence of the two elements of the crime of premeditated murder, the absence of precedents for the defendant, and the lawyer requested that the court use its power of clemency in view of the circumstances of the defendant.⁴⁵

After two sessions in the substantive trial within 3 days and after the end of the pleadings by the Public Prosecution, the lawyer and the civil plaintiff in the second session, the court referred the defendant's papers to the Grand Mufti of Egypt⁴⁶ to obtain a religious opinion on the execution of the murderer of Naira, only 7 days after the crime was committed⁴⁷. The court gave the Grand Mufti a period of 7 days to prepare his opinion, which should abide by the legal consensus that there is no suspicion to avert retribution. The court issued its ruling on July 6, 2022, to death by hanging of the defendant for premeditated murder, 15 days after the defendant had committed the crime. Two months after the judgement, the Court of Cassation scheduled a session for January 26, 2023 to consider the defendant's appeal before the Thursday "D" circuit of the Court of Cassation⁴⁸.

In its verdict of conviction, the court relied on the defendant's confession in the prosecution's investigations that he had committed the incident as well as his insistence on it before the judge and during the trial session, from the statements of 26 witnesses, the officer conducting the investigations, the forensic and the biological lab reports, examination of the victim's phone, photos of the conversations between her and the defendant, and the prosecution's examination of the place of the incident and its observations of video clips from the surveillance machines at the crime scene, where surveillance cameras captured the incident of stabbing and slaughter in its details. By confronting the defendant with these clips, he admitted that he was the person appearing on them, and he simulated committing the crime, in addition to a copy of the complaint that the victim had filed against the defendant and a copy of the conversation sent from the defendant to the fourth witness asking her about the time the victim arrives at university, before committing his crime⁴⁹.

⁴⁵ From p. 26 to p. 28 of the Mansoura Criminal Court ruling, which is the part about the court's reasons for not referring the accused to psychiatric examination.

⁴⁶ Footnote 11

⁴⁷ <https://www.youm7.com/story/2022/6/28/%D8%B4%D8%A7%D9%87%D8%AF-%D9%84%D8%AD%D8%B8%D8%A9-%D8%A5%D8%AD%D8%A7%D9%84%D8%A9-%D8%A3%D9%88%D8%B1%D8%A7%D9%82-%D9%82%D8%A7%D8%AA%D9%84-%D9%86%D9%8A%D8%B1%D8%A9-%D8%A3%D8%B4%D8%B1%D9%81-%D8%A8%D8%A7%D9%84%D9%85%D9%86%D8%B5%D9%88%D8%B1%D8%A9-%D8%A5%D9%84%D9%89-%D8%A7%D9%84%D9%85%D9%81%D8%AA%D9%89/5819263>

⁴⁸ <https://www.elbalad.news/5437491>

⁴⁹ Pg 6 of the Mansoura Criminal Court ruling.

We conclude from the trial of the killer of Naira Ashraf that it was a hurried trial under intense scrutiny by various media platforms and social media platforms. The trial received the attention of Egyptian public opinion, and large segments of society expressed their anger at the ugliness and gravity of the crime, as the defendant and the victim were in their early twenties. All of the above affected the mindset of the court that issued the judgment, as is evident from the speed by which the trial was concluded. The actual substantive trial took three days, and the investigations of the Public Prosecution took less than 48 hours. The defense did not question any of the prosecution witnesses, as the court said that the defense did not adhere to this request in the second trial session and was satisfied with questioning the victim's father only in a confidential session, after which the court issued its decision to ban publication on the case. The court did not respond to the defense's request to refer the defendant to psychiatric examination on grounds that Article 338 of the Code of Criminal Procedure does not obligate it to do so, as the matter falls within the discretionary authority of the trial court judge - and this is not subject to contestation by the court of cassation - after hearing the statements of the Public Prosecution and the defense of the defendant⁵⁰. The court was expected to respond to this request and issue a decision to place Muhammad Ashraf at the disposal of the Regional Council for Mental Health, if only for one week out of the forty-five days stipulated as a maximum period of observation under the Code of Criminal Procedure.

If that decision had been made, it would not have harmed the process of justice. The basic principle in criminal trials is that all parties to the case take their sufficient time to prepare for the criminal litigation, since a suspicion may reveal itself that may avert retribution or a circumstance that mitigates or aggravates the punishment against the defendant, or that the blood guardian accepts the blood money in accordance with true Sharia or pardons it. This last hypothesis has no legal effect because the penalty for premeditated murder is the right of society represented by the Public Prosecution, and the family of the victim, whether they accept blood money or refuse it, they can only waive their right to a civil claim before the criminal court and not initiate a civil compensation case against the defendant or his successor. However, the court did not take into account the previous considerations in its judgment, which are necessary for the integrity of the trial procedures, for the principle of the right to a fair trial to be realized within a reasonable time, and for the defendant to have a proper defense, especially if the case is of the size of the killing of Naira Ashraf. Rather, the court was influenced by public opinion as regards the hurried conclusion of the murderer's trial. It even requested displaying the execution of the death

⁵⁰ Footnote 15



sentence on air, in implementation of the principle of "rightful punishment witnessed." The judgment appealed to the legislator to introduce this amendment as if we were living in the Middle Ages⁵¹.

Also, the investigations confirmed the existence of an emotional relationship between the defendant and the victim, but it did not seize the mobile phone of the defendant and examine it claiming that it was lost during the incident!! Didn't the court have enough time to issue its decision to the Ministry of the Interior to track and find the defendant's mobile phone, as thousands of Egyptians do throughout the year and report losing their mobile phones, upon which the prosecution and the Ministry of Interior begin the procedures, and the investigation authority applies its technical know-how using modern monitoring and tracking methods to reach the location of the personal phone of the defendant in case there was something on its that would mitigate his punishment and to prove the truth of his words of an existing emotional relationship between him and the victim. According to press sources, three appeals were filed on behalf of the defendant, Mohamed Adel, and the legal details of those appeals include a grave breach of the right of defense, represented by the illegality of allowing a lawyer of a court of first instance to be present on behalf of the defendant, the failure of the defendant's lawyer to attend the witness hearings, as well as Mohamed Adel's rebuttal to the invalidity of the ruling as the referral to the Grand Mufti was made without the presence of a member of the court and the judge's expression of his opinion on the case. The reasons for the cassation also included the violation by the ruling and its error in applying the law and the lack of fair trial procedures..⁵²

Third case: The Ismailia incident and the Shapo narcotic

⁵¹ Pg. 34, Mansoura Criminal Court ruling.

⁵² https://www.masrawy.com/news/news_cases/details/2022/9/14/2291353/3-%D8%B7%D8%B9%D9%88%D9%86-%D9%85%D9%86-3-%D9%85%D8%AD%D8%A7%D9%85%D9%8A%D9%86-%D9%84%D9%88%D9%82%D9%81-%D8%A5%D8%B9%D8%AF%D8%A7%D9%85-%D9%82%D8%A7%D8%AA%D9%84-%D9%86%D9%8A%D8%B1%D8%A9-%D8%A3%D8%B4%D8%B1%D9%81-%D9%83%D9%8A%D9%81-%D8%AA%D8%AA%D8%B9%D8%A7%D9%85%D9%84-%D9%85%D8%B9%D9%87%D8%A7-%D9%85%D8%AD%D9%83%D9%85%D8%A9-%D8%A7%D9%84%D9%86%D9%82%D8%B6 -

– Background of the incident

Facts of the case date back to 1/11/2021 when the defendant, Abdel Rahman Nazmi Muhammad Ibrahim, known as “Dabour” was walking on the street and saw the victim, “Ahmed Muhammad Siddiq,” riding a motorcycle. When he saw him, he stopped him and walked towards him asking him about a hair straightener he had given him for repair. The victim told Dabour that he had fixed it and asked him to go to his shop on condition that he would perform homosexual acts with him “according to the defendant's statements” as he had done with him before, otherwise he would expose him, which angered Dabour, and for fear of being exposed, the defendant took out a knife from under his clothes and cut the victim’s throat then stabbed him into various parts of his body which caused injuries and “complete separation of the head from the body”, resulting in his death. Then a bystander tried to stop him but the defendant did not give him any notice and continued to stab the victim and then got out from under his clothes a huge knife and continued to stab him until he fell to the ground. He then severed his head from his body and then took the head and put it in a black plastic bag and walked on the street. Then the defendant saw victim Mahmoud Ahmed Ibrahim and attacked him with the bigger knife causing injuries to Mahmoud as well other victim called Suleiman Eid. After that the defendant tried to escape, but the people caught him and beat him, inflicting injuries on him as he was a drug addict, until the police arrived at the crime scene and took him into custody.

Inquiries were conducted by the Chief of Investigations of the second Ismailia Police Department concluded that the validity of the commission of the incident, as the court laboratory revealed that the urine and blood sample of the defendant tested positive for the Shabu drug.⁵³

– Prosecution hearings

After the arrest of Abd al-Rahman Dabour, the Public Prosecution began questioning him in the absence of a lawyer⁵⁴. The defendant confessed to committing the incident according to its description in the previous paragraph. The prosecution heard the witnesses of the incident and the statements of the family of the defendant and the officer conducting the investigations, all of whom were 12 witnesses, and included video clips extracted from the surveillance cameras in the vicinity of the incident. The Public Prosecution referred the defendant to an urgent criminal trial on 4/11/2021, that is, three days after the crime occurred, on charges of premeditated murder - without aggravating circumstances - and

⁵³ Details of the incident from the referral memorandum

⁵⁴ Interview by ECRF with sister of defendant

attempted premeditated murder, and possession with the intent to abuse of a drug substance in other than the authorized cases, which is the narcotic "Methamphetamine".

- Trial procedures

The first session of Abd al-Rahman Dabour's trial was held on December 4, 2021, and the court decided to postpone to the December 6 session to assign a lawyer at the request of the defendant. In this session, the defense requested to question the mother and sister of the defendant and two of his neighbors, who are, respectively, the seventh, eighth, tenth and eleventh witnesses in the referral order. The defense wanted to prove that the defendant has been suffering from addiction since a long time. In the third session on December 9, 2021, the delegated lawyer pleaded, and the court decided to refer the defendant's papers to the Grand Mufti of Egypt to seek a religious opinion on the existence of a suspicion that prevents the application of the death penalty. The January 5, 2022 session was scheduled to pronounce the verdict. During the trial sessions, the defendant personally attended and denied the incident after he had previously admitted it. The defense sought acquittal, arguing that the investigations were invalid because they were just an opinion of the conductor. He challenged the mental and psychological health report that concluded with the mental health of the defendant, as he was ill with addiction and was not responsible for his actions, and that he has reached the stage of insanity and hence was not criminally responsible for his action. The delegated lawyer also argued that the defendant had no criminal intent, which was to take a life, based on the fact that the defendant was ill with addiction, and requested the use of the utmost degree of clemency for what was attributed to the defendant of using narcotic substances⁵⁵.

The defendant's defense requested the application of the text of Article 62 of the Penal Code⁵⁶ so that Dabour could benefit from the mitigating excuse for the punishment contained in the article because he was in a state of mental and psychological imbalance as a result of consuming different types of intoxicants on the morning of the incident, including methamphetamine or shabu. The court replied that to benefit from Article 62 he must prove that he used narcotic substances against his will or without his knowledge of them. In this case, the court finds that Dabour took narcotics of his own free will, based on

⁵⁵ Pg 7 of the judgment of the Ismailia Criminal Court

⁵⁶ Where the article stipulates, "A person who suffers at the time of the crime from a psychological or mental disorder that has made him lose consciousness or choice, or who suffers from a coma resulting from narcotic drugs of any kind, shall not be held criminally responsible if he took them under compulsion or without his knowledge of them. The person shall remain criminally responsible. The person who suffers at the time of committing the crime from a psychological or mental disorder that has led to a decrease in his awareness or choice, and the court shall take into account this circumstance when determining the period of punishment."

his confession, investigations, witness statements, and a report from the chemical laboratory, and therefore the defendant is responsible for the charge of premeditated murder⁵⁷. In this regard, the court also relied on what was stated in the forensic report issued by the Regional Council for Mental Health dated on 4/11/2021 *"... that the defendant is free from any symptoms that indicate a psychological or mental disorder, which could affect his awareness, choice, integrity of will, discernment, and knowledge of right and wrong, whether at the present time or at the time of the incident, which makes him responsible for the accusations against him..."*⁵⁸ "

On January 5, 2022, the First Circuit of the Ismailia Criminal Court issued its ruling to execute Abdel Rahman Dabour by hanging, but this ruling raised many problems, including:

- The absence of a lawyer with the defendant during the investigations of the Public Prosecution, so his confession took place in the absence of his defense. Also, the assignment of a lawyer for the defendant took place in the second court session and the first session attended by the lawyer was on December 6, 2021, he pleaded in the December 9 session, which is the same session in which the court referred the defendant to the Grand Mufti. All of this casts doubt on the trial procedures, because the defense had to prepare for the case in only three days, and the substantive trial consisted of three sessions over six days. Regarding the form, the court corrected the format of the trial, but regarding the substance of the case, it did not guarantee enough time to present a good defense of the defendant in order to reduce the sentence. The faulty speed of the trial is clearly apparent here, where the court was affected by the huge media space occupied by the case, the ugliness and gravity of the crime, and the demands of sections of society for speedy retribution. A hurried or speedy trial does not mean reaching a conclusion of justice.

- The judgment overlooked the defendant's medical history with drug addiction and did not take into account the testimony of the seventh, eighth and ninth witnesses, who are the defendant's family and neighbors, who admitted that the defendant was a drug addict and was previously admitted to an anti-addiction center and did not complete his treatment due to their lack of financial ability. Rather, the court relied on those testimonies to proving the charge of drug use by the defendant!!

- The court ignored the truth that the defendant had used methamphetamine or shabu at the time of the crime and ignored medical opinions regarding its effects on addicts.

⁵⁷ Pg. 7, 8 of the judgment of the Ismailia Criminal Court

⁵⁸ Pg. 8 of the judgment of the Ismailia Criminal Court

According to what a doctor at the Ismailia Health Directorate testified before the Public Prosecution Office, Dabour had committed his crime under the influence of methamphetamine. The most important questions and answers were as follows:

Q: What is the effect of shabo, specifically?

A: It is the narcotic Shabu. Its direct effect causes intense activity and deprivation of the sleep for long periods that may reach three consecutive days, followed by long periods of sleep that may reach a whole day. It has a long-term effect on the shabu addict. It is a state of extreme violence and may cause auditory and visual hallucinations, delusions, a feeling of delusions of grandeur and severe insomnia.

Q: Is it conceivable that the defendant would commit the incident under investigation and the practical actions due to the narcotic effect of methamphetamine?

A: The amount of violence and brutality observed in the incident under investigation, its timing and place, as it was in broad daylight on a crowded street, indicates that the defendant may have committed it under the influence of the narcotic methamphetamine.

Q: What do you say about the statements by the defendant's mother and brother about the defendant's abuse of methamphetamine for more than a year and his admission to one of the treatment centers and his exit from the center before completing his treatment due to his poor financial condition and that the defendant returned to taking narcotic substances and the appearance of symptoms of behavioral change about 3 months ago before the date of the incident?

A: The abuse of the narcotic methamphetamine has a long-term effect and causes delusions, illusions and apparent behavioral disturbances that appear in the form of behaviors that are incomprehensible to those around him.

Q: Based on the information that was presented to you from the investigations regarding the defendant, is it conceivable that the defendant suffers from psychological or mental illnesses that led to his perpetration of the incident under investigation?

A: No. Based on the information about the defendant's use of narcotic substances, the defendant committed the incident under investigation, and what I saw in the videos of the incident from the long-term effect of drug abuse, especially methamphetamine and the narcotic Astrox⁵⁹.

⁵⁹ The source: Questioning of the doctor of the Directorate of Health in Ismailia : <https://www.elwatannews.com/news/details/5845396>

From the above, we find that the omission by the verdict of the effect of the Shabu drug on Abd al-Rahman Dabour at the time of committing the crime is inconsistent with the scientific facts of the narcotic substance, and these proven specialized facts exceed the capabilities and expertise of the criminal judge, because this issue depends on the opinion of technical expertise and specialists. Another evidence on the dangerous effects of methamphetamine or ice shabu had been confirmed by the Drug Enforcement Administration (DEA) in its 2020 Supplement on narcotic drugs, where it answered these important questions regarding methamphetamine, meth, crystal meth, ice, or shabu⁶⁰:

What is its effect on the mind?

Meth is a highly addictive drug with potent central nervous system (CNS) stimulant properties. Long-term use of methamphetamine results in many adverse effects, including addiction. Chronic methamphetamine users can display violent behavior, anxiety, confusion, restlessness, and psychotic features including paranoia, aggression, auditory and visual hallucinations, mood disturbances, and illusions — such as the sensation of insects crawling on or under the skin, suicidal or fatal thoughts. Researchers report that up to 50 percent of the dopamine-producing cells in the brain can be damaged after prolonged exposure to relatively low levels of methamphetamine. Some studies have suggested that methamphetamine use may also lead to serotonergic neurotoxicity.

What is its effect on the body?

Taking small amounts of methamphetamine can cause increased alertness, increased physical activity, decreased appetite, rapid breathing, increased heart rate, irregular heartbeat, increased blood pressure, and hyperthermia. High doses can raise body temperature to dangerous and sometimes fatal levels, cause convulsions and even cardiovascular collapse and death. Methamphetamine use may also cause severe loss of appetite, memory loss, and severe dental problems.

- Not placing the defendant in an addiction treatment clinic to determine the reality of his psychological, neurological and mental condition and to prepare a report on whether the narcotics, specifically methamphetamine, being a chemical drug, the appearance of which was noticed in Egypt recently, specifically in the Ismailia governorate. The “Dabour”

⁶⁰ <https://www.getsmartaboutdrugs.gov/sites/default/files/2021-08/Methamphetamine-2020.pdf> See also : <https://www.justice.gov/archive/ndic/pubs5/5049/5049p.pdf>

incident is not the first of its kind in the coastal governorate, but rather it is the fifth in a short period⁶¹,

According to a press report published by Al-Watan newspaper on 4/11/2021 was titled “5 Crimes due to Shabo... the last of which is the Ismailia Incident.” The report dealt with some of the details of two crimes that occurred in Ismailia, the first occurred in April 2021, where a father who was a Shabo addict killed his son by electrocution, while in the second crime a Shabo addict also murdered his father after a verbal altercation in July 2021. In another crime that took place in Qena in March 2021 known as the brothers’ massacre, the defendant, who was also addicted to Shabu drug, killed his three brothers with firearms in an argument and the defendant was killed in a confrontation with security forces. The fourth crime took place in Fayoum, in April 2021, where the defendant raided his wife’s family home with a firearm and killed his wife, child and sister-in-law. The fifth incident mentioned in the report was that of Dabour.

Therefore, the Public Prosecution or the court should have referred Dabour to one of the addiction and drug abuse treatment centers instead of sending him to the Regional Council for Mental Health to determine his mental and psychological state. Here we find a strange paradox. The defendant suffers an addiction disorder, but he is not a mental patient. This reflects a pervasive moralistic attitude that a drug addict is a criminal who must be punished. It is a view characterized by hostility and arbitrariness in punishment and not seeking to reform and reintegrate sick addicted citizens. The saying that “the addict is sick and not a criminal” has its origin in reality, logic, mercy and humanity, and certainly the law, and the period the defendant had spent is at the disposal of the Council did not exceed three days at most and was therefore not sufficient.

-The court relied on the fact that the defendant took drugs of his own free will, not against his will or without his knowledge, as Article 62 conditioned to remove criminal responsibility. The court did not take into account the fact that the defendant had been addicted to Shabu for a year, according to his mother's statements and his sister's interview with a member of the Egyptian Commission.

- The court accepted the defendant's acknowledgment of committing the crime - a Shabu drug abuser - and did not take into account the provocation he was subjected to from the victim.

⁶¹ <https://www.elwatannews.com/news/details/5783626>

- Ignoring the previous incidents of violence against individuals committed by the defendant while carrying a knife.

- Lack of consideration for the psychological state of the defendant at the time of committing the crime as evidenced by his attack on other citizens.

II. The extent to which the court can use clemency in previous cases and cases of exemption and replacement of the original penalty in light of the law and the discretionary authority of the court

The principle of the criminal judge's freedom to form his belief according to the evidence and presumption before him, means that the criminal court has a large space in order to search for reasons to reduce the penalty or to increase it. What is likely between these two hypotheses is that the criminal judge weighs the presumptions, evidence, the circumstances of the facts and their parties to determine which direction he will take according to his judicial conviction. The judge may abstain from this whole issue by applying the text of the law to which the convict is referred to trial before him in the event that the court's belief is that of conviction. The court may, according to specific legal reasons, not hold the perpetrator criminally accountable to the point of exemption from punishment. These reasons were limited by Article 62 of the Penal Code to psychological or mental disorder, coma resulting from narcotic drugs taken by the defendant against his will or without his knowledge.

The Court of Cassation has settled with regard to the implementation of the text of Article 62, on *"While it was evident from reviewing the minutes of the trial sessions that 175th convict /.../, requested his referral to a mental hospital, to demonstrate the extent of his mental health. According to the text of Article 62 of the Penal Code losing the will or awareness of insanity or mental disability, in criminal terms, entails the lack of responsibility of the defendant, whatever the type of crime ascribed to him, whether it was intentional or unintentional, this defense by the convict is an essential defense, since if it is proven that he had a mental disability at the time of committing the acts attributed to him, he would no longer be responsible for them pursuant to the text of Article 62 of the Penal Code, and it was to be assessed that the mental state of the defendant , even if it was*

originally one of the substantive issues that the trial court is competent to rule on, but in order for its judgement to be sound, it must appoint an expert to decide on this case confirming or refuting, because of the consequences of punishment or non-punishment of the defendant. If it doesn't, it should at least mention in its merits convincing reasons for refusing this request, that is, if it considers from the circumstances and the facts of the case, and the condition of the defendant that his mental powers are sound, and that he is responsible for the crime that he committed, and since the court did nothing of that, then its judgment is tainted by the defect of shortcomings in causation, and a breach of the right of defense, and thus invalidates it.⁶² "

There may be judicial reasons to commute sentences or replace the original and accessory penalties with other sanctions. Here, the discretionary authority of the court expands to use clemency with the defendant. Factors contributing to the court's assessment include the young age of the defendant, or the commission of the crime with non-evil motives, or based on a serious unjustified provocation by the victim, or that the circumstances of the crime or the offender call for clemency, which is in accordance with the text of Article 17 of the Penal Code⁶³, which authorizes the court, using clemency, to reduce penalties from death to life imprisonment and from life to hard imprisonment, and so on until the end of the penal hierarchy.

In this regard The Court of Cassation said, *"In addition, the appellant has no interest in contest the ruling regarding a premeditated circumstance, because the sentence imposed on him, a life imprisonment, falls within the limits of the penalty prescribed for the felony of premeditated murder, devoid of any aggravating circumstance, and it does not change this consideration to say that the court used clemency with the appellant, and that when estimating the penalty it was under the influence of the description it gave of the incident, as the assessment of the penalty revolves around the same criminal incident that the offender committed, not the legal description that the court adapts, and as it implements its optional right to use clemency by applying Article 17 of the law, it considers the punishment that is commensurate with the incident and the circumstances surrounding it⁶⁴.*

⁶² Court of Cassation - Criminal - Appeal No. 15321 of Judicial Year 85 on 02-03-2016 Technical Office 67 Page No. 153

⁶³ Article 17 of Penal code. "In criminal matters, if the conditions of the crime for which the public case is filed necessitate the judges' clemency, the penalty may be altered in the following manner:

The death penalty to a penalty of life imprisonment or hard labor.

The penalty of life imprisonment to a penalty of hard labor or imprisonment.

Temporary hard labor to imprisonment, which may not be less than six months.

Imprisonment to imprisonment for no less than three months.

⁶⁴ Court of Cassation - Criminal - Appeal No. 26565 of Judicial Year 83 on 01-03-2016 Technical Office 67 Page No. 30

* Returning to the details of the three cases subject to legal analysis to examine the possibility of criminal courts using clemency in those cases, we find that in the first case concerning the defendant “Nehru Abdel Moneim” the court should have used clemency with the defendant given his age (60 years) ,his medical history and his 17 years of political detention, the charges for which we know nothing about so far. It was proven, according to previous governmental medical reports, that Nehru suffered from a hysterical neurotic disorder and a conversion disorder in the form of loss of speech. This caused the defendant to stab others, including his relatives and neighbors, and others placed with him in the Abbasiya Mental Health Hospital. Investigations of the National Security Sector confirmed the defendant’s imbalance and that his crime was not for terrorist purposes and did not harm social peace or public security, and that he was not at the time a member of any terrorist group. Investigations and statements by Nehru and his family proved that he spent nearly a year sleeping on the streets and searching for food in garbage bins. However, the court instead of taking into account all these circumstances combined, amended the legal description of the crime by adding an aggravating circumstance, which is that the crime of killing the late priest Arsanius Wadeed took place in implementation of a terrorist purpose, which is inconsistent with what the Public Prosecution had concluded regarding referring Nehru to a charge of simple premeditated murder. This completely contradicts the findings of the national security investigations, even if the investigations confirmed that Nehru sympathized with some members of the Islamist Group as they have given their support for Nehru during his years of political detention and after his release.

So far, no session has been set before the Criminal Chamber of the Court of Cassation to consider the appeal, after the defendant approved the cassation appeal report. Even with the conviction of premeditated murder, even if one of the aggravating circumstances of the penalty is available, the court may use clemency with the defendant and apply the text of Article 17 penalties, which is what actually happened at the beginning of this year in the case known in the media as the Dakahlia murderer who burned his sister. On 1/1/2022 the Mansoura Criminal Court issued its ruling commuting the death penalty to life imprisonment for the defendant after he deliberately set his sister on fire with the intent to take her life due to inheritance disputes. The main reason behind that was what the mother of the defendant and the victim said to the court before pronouncing the sentence that she did not want the court to execute her son because she had not had any sons other than the offender and the victim. After the court established the intention of the defendant’s



premeditated murder and brought about that result, it used its right to clemency with the defendant, taking into account the circumstances of the mother of the offender and the victim. The court ordered the offender out of the cage to apologize to his mother, and the judge ordered him to kiss his mother's hand and head in front of the audience at the session, telling him that his mother had saved him from execution⁶⁵.

As for the second case, subject to legal analysis, which is the case of the murder of Naira Ashraf, we believe that the trial was affected by the pressure of public opinion, as was clearly evident in the speedy and insufficient conclusion of the substantive trial, as the trial lasted for only three days, and the defendant was not referred to psychiatric examination as requested by his defense, a matter which the court had to undertake, perhaps producing an effect in favor of the defendant. Also, the failure to track the offender's phone weakened his story that there was an emotional relationship between him and the victim. The court also did not listen to the testimony of any of the prosecution witnesses, as Muhammad Adel's defense said, according to press sources that the referral to the Grand Mufti was issued in the absence of a member of the court and that the validity of this hypothesis means that there is an invalidity in the issuance of the ruling. We do not argue here about the justifications for this heinous crime or that the defendant deserves clemency. We argue regarding standards of a fair and impartial trial, where the defense can draw his plan as free chooses, that the court enables the defense to play its role to the fullest, to remove any obstacles to the defense and not deal with the defense as an opponent. The court should document requests made by the defense such as questioning witnesses to avoid what was happened in Naira's trial, in this regard, the court -in the verdict- justified not questioning witnesses by saying that the defense contented with questioning the victim's father, and the lawyer did not renew his request before starting his plea. We hope that the Court of Cassation will order a retrial in front of a different body of the Criminal Court. Even if the accusation is proven beyond any doubt that it was committed, the integrity of the procedures, their correction and the respect of defense guarantees are more important to follow in order to achieve the rule of law, to uphold procedural legitimacy and to be in line with the standards of fair trials.

⁶⁵ https://www.masrawy.com/news/news_regions/details/2022/1/17/2160147/%D8%A3%D9%85%D9%87-%D8%A3%D9%86%D9%82%D8%B0%D8%AA%D9%87-%D9%85%D9%86-%D8%A7%D9%84%D8%A5%D8%B9%D8%AF%D8%A7%D9%85-%D8%A7%D9%84%D8%AD%D9%83%D9%85-%D8%B9%D9%84%D9%89-%D8%A7%D9%84%D9%85%D8%AA%D9%87%D9%85-%D8%A8%D9%82%D8%AA%D9%84-%D8%B4%D9%82%D9%8A%D9%82%D8%AA%D9%87-%D8%AD%D8%B1%D9%82-%D8%A7-%D9%81%D9%8A-%D8%A7%D9%84%D8%AF%D9%82%D9%87%D9%84%D9%8A%D8%A9

As for the third case concerning the defendant, Abd al-Rahman Nazmi, who is known as Dabour, we really find that he deserves to enjoy legal exemption or judicial clemency instead of the unjust death penalty against him for being addicted to Shabu, which he had used at the time of committing the heinous crime that he committed while he was unaware or lacking in judgement. Rather, the court inferred that the mental integrity of the defendant by watching him shake hands with his mother and his sister and exchange greetings with them before one of the sessions⁶⁶???. We will not recount the legal violations regarding that case, which were dealt with in detail above in the report. These violations are justified reasons for Abd al-Rahman to enjoy legal exemption or the use of clemency against him. So far, no session has been set before the Criminal Department of the Court of Cassation to consider the appeal after the accused signed the cassation appeal report.

III. ECRF opinion: Why the hurried sentencing?

– Influence of public opinion, media and societal pressures.

The three cases addressed in this report gained wide spread coverage across all media as well as social networking sites, due to the horror of the crimes committed and the strangeness of the details of the commission of each. The trial of the killer of Naira Ashraf took 15 days from the occurrence of the crime to the verdict, while the trial of the murderer of the priest Arsanios Wadeed lasted 40 days until the Alexandria Criminal Court issued its verdict of conviction. The trial of Abdel Rahman Dabour, “the patient addicted to shabu,” lasted for 64 days from the commission of the incident until the court’s ruling, and the trial of the judge who killed broadcaster Shaima Gamal also did not exceed 64 days until the issuance of the verdict. It is obvious that the hurried completion of investigations and trials, and the restriction at times for the defendants’ defense, have become general features of the performance of the Public Prosecution and criminal courts in dealing with cases that attract the interest of public opinion. Judges in criminal courts, when they issue verdicts, especially verdicts of conviction, should distance themselves from all pressures and influences surrounding the facts of the cases so as not to affect the integrity of their issued judgments. For these reasons, the Pleadings Law granted judges the right to withdraw their consideration of some cases, if they feel embarrassed to continue to consider them, such as if the judge feels unable to tolerate the circumstances and details of an incident and finds himself sympathizing with one party at the expense of another. In this case, the judge should step down instead of issuing a harsh verdict, such as the death penalty, to

⁶⁶ Pg 8 of the Ismailia Criminal Court ruling against Abdul Rahman Dabour

calm angry parties at the expense of a party who is almost in legal isolation, as is the case with the defendants in the cases analyzed in this report.

Giving priority to religious and personal motives of some of those in charge of the justice system

Every defendant has the right to have his\her case heard in a neutral court, and judicial practice requires that the court be impartial at all stages of the case⁶⁷. Regarding the person of the criminal judge, it is assumed that the judge is impartial to any of the parties to the case, as the judge should be at equal distances from the defendant, the civil plaintiff, and the public prosecution represented in the accusing authority at the trial stage. The religious and personal convictions of the judge or the member of the Public Prosecution must not prevail when engaging in cases and thus determining the fate of citizens, because this contradicts the principle of impartiality of the judge, which is the basis of the criminal justice system. The judge may investigate, interrogate, delegate, and question all the details of the criminal case brought before him for investigation and examination. The personal convictions of the judge differ from the legal doctrine of the court. The first is the right of every natural person, except for anyone who is assigned to public service (such as judges, prosecutors, and judicial officers) when she\he performs his\her duties under the general mandate. While the legal doctrine of the court is required to be available, verified, and unified when the judge enters the deliberation room.

Perhaps the first case in this report concerning the defendant, Nehru Abdel Moneim, showed several manifestations of the judge's lack of impartiality and his adoption of a certain point of view by demeaning the defendant with inappropriate words and adopting a clear point of view from the fourth page of the judgment before reaching the arguments and then the statement of conviction. On page 28 of the verdict, he described Nehru as "a raging, wretched boy, a criminal, a serial killer, lacking justice, thug!" He also went on to belittle the defendant and degrade his dignity; according to the ruling on page 44: *The court concluded the rationale for the ruling by saying: "Since the facts surrounding the crime of the defendant, Nehru Abd al-Moneim, the famous Abd al-Rahman Nehru, claim that he has a soul that is determined on evil and used to cruelty, and brought up on treachery, it is a wretched soul for which mercy is not permissible and for kindness is not deserved. Rather, it is a corrupt germ in society. It is necessary to uproot it and ward off its harm to people. It has ended the life of an innocent, guiltless soul. For this reason, the court sees no reason at*

⁶⁷ p. 108 and beyond from Chapter Twelve of the Second Edition of the Fair Trial Guide issued by Amnesty International.



all to use clemency in punishment and that vengeance against him is the appropriate penalty.”

In the trial of the case of Naira Ashraf, the judge gave a religious and moral sermon before pronouncing the verdict, addressing messages to all segments of society, but he singled out the defendant with that message: *“And to the murderer I say: You came with a despicable act that shook the courageous land that captured King Louis; you shed pure blood with daring stabs of treachery; you slaughtered all of humanity on the day you slaughtered an innocent victim. You are like a poisonous weed in a good land, the sooner the oppression comes before it spreads, the better it is for people and for the land in which it grew.”*⁶⁸

On page 34 of the Mansoura Criminal Court ruling the judge demanded from the legislator to issue an amendment that would allow public announcement and broadcasting of the execution of the death sentence, or even part of the beginning of the execution, in order to achieve public and private deterrence⁶⁹. The judge here expressed his opinion twice, whether in that sermon before pronouncing the verdict, describing the defendant as a poisonous weed in a good land, and the second time clearly appeared in the merits of his ruling by demanding that the execution of the punishment be presented as if it were a scene in the dark ages that did not know the rule of law, except that what the judge proposes to the legislator is illegal according to Article 474 of the Code of Criminal Procedure, which stipulates that “executing the death sentence is a special procedure for executing the sentence in a public prison, in the presence of an agent of the Public Prosecutor, the prison warden, the prison doctor or any other doctor assigned by the prison.” In this case, the judge wants to see the fruit of his jurisprudence and his contradictory work in achieving prompt justice in public, even though he is the same judge who prevented publication in this case. It is also strange that the judge seems to have forgotten that there is a new stage in the Court of Cassation, which might agree with him

⁶⁸ <https://www.youm7.com/story/2022/6/28/%D8%B1%D8%B3%D8%A7%D8%A6%D9%84-%D8%A7%D9%84%D9%85%D8%AD%D9%83%D9%85%D8%A9-%D8%A5%D9%84%D9%89-%D8%A7%D9%84%D9%85%D8%AC%D8%AA%D9%85%D8%B9-%D9%88%D8%A7%D9%84%D8%A5%D9%86%D8%B3%D8%A7%D9%86%D9%8A%D8%A9-%D8%A8%D9%85%D8%AD%D8%A7%D9%83%D9%85%D8%A9-%D9%86%D9%8A%D8%B1%D8%A9-%D8%A3%D8%B4%D8%B1%D9%81-%D8%A7%D9%84%D8%B1%D8%BA%D8%A8%D8%A9-%D8%B5%D8%A7%D8%B1%D8%AA/5819372>

⁶⁹ https://www.masrawy.com/news/news_cases/details/2022/7/24/2263759/%D8%A8%D8%B9%D8%AF-%D8%B7%D9%84%D8%A8-%D8%A7%D9%84%D9%85%D8%AD%D9%83%D9%85%D8%A9-%D9%87%D9%84-%D9%8A%D8%AC%D9%88%D8%B2-%D8%A5%D8%B0%D8%A7%D8%B9%D8%A9-%D8%A5%D8%B9%D8%AF%D8%A7%D9%85-%D9%82%D8%A7%D8%AA%D9%84-%D9%86%D9%8A%D8%B1%D8%A9-%D8%A3%D8%B4%D8%B1%D9%81-%D8%B9%D9%84%D9%89-%D8%A7%D9%84%D9%87%D9%88%D8%A7%D8%A1-



regarding the penalty or might use its discretionary authority to assess the punishment and to reduce it from death to life imprisonment.

– **The absolute discretion of criminal judges⁷⁰**

Regardless of the effectiveness and accuracy of any legal system, regardless of the accuracy of its procedural system and the effective legal oversight of the elements of the operating criminal justice system, the nature of criminal cases singles out for the criminal judge in any judicial system a large space to implement his discretion when issuing judgments and this is consistent with the nature of criminal justice and its need for continuous development. However, this discretionary authority has limits that any legal system adopts according to its societal needs and to ensure legal protection of stakeholders.

⁷⁰ Reducing the discretionary power of criminal judges, pg. 27, 28 of the Egyptian Commission’s report issued last year under the title “The Irreversible.” <https://www.ec-rf.net/%d9%85%d8%a7-%d9%84%d8%a7-%d8%b1%d8%ac%d8%b9%d8%a9-%d9%81%d9%8a%d9%87-%d8%aa%d9%82%d8%b1%d9%8a%d8%b1-%d9%84%d8%ad%d9%85%d9%84%d8%a9-%d8%a3%d9%88%d9%82%d9%81%d9%88%d8%a7-%d8%b9%d9%82%d9%88/>

Recommendations

After legal analysis of the cases in question, the Stop the Death Penalty Campaign recommends the following:

- The first recommendation is a general recommendation adopted by the Campaign to Stop the Death Penalty in Egypt since its launch, and it involves the stop or suspension of the death penalty, in response to the international trend that limits the continuation of the penalty, as stipulated in Paragraph 6 of Article 6 of the International Covenant on Civil and Political Rights, which obligates states parties to the present covenant to abolish the death penalty⁷¹. The campaign calls for replacing the death penalty with life imprisonment without parole or conditional pardon and indefinite prison sentences, especially in light of the current procedural reality of the criminal justice system, which undermines the guarantees of fair and impartial trials, as the judgments of criminal courts are not yet appealed, despite the constitutional restriction which obliges the legislator to establish appellate departments for criminal court rulings 10 years after the adoption of the Egyptian constitution issued in 2014. Also, the legal amendment issued under Law No. 11 of 2017 enabled the Court of Cassation to extend its control over the trial court's assessment of the penalty and its mitigation without the need for a cassation of the appealed judgment and to set a session to consider the matter and thus the judgment becomes final.
- The second recommendation is related to the existence of legislative faults in legal texts that need an amendment, including Article 338 of the Code of Criminal Procedure, which states:

“If the situation calls for an examination of the mental disorder of the defendant, the investigating judge or the partial judge, as requested by the Public Prosecution or the court before which the case is heard, as the case may be, may order placing the defendant, if he is in pretrial detention, under observation in a government mental health facility designated for that, for a period or periods not exceeding a total of forty-five days after hearing the statements of the Public Prosecution and the defense of the defendant, if he has a defender. If the defendant is not in pretrial detention, he can order to place him under observation in any other facility”.

⁷¹ Article 6/6 of the International Covenant on Civil and Political Rights, which states that "no provision in this article may be invoked to delay or prevent the abolition of the death penalty by any state party to this covenant."

The aforementioned article must explicitly provide for the obligation to present the defendant to psychiatric and mental examination and to place him for specific and reasonable periods of time, under certain conditions if they are available, including, for example, if the defendant has a proven medical history of a psychiatric, neurological or mental illness.

- The third recommendation relates to the existence of a legislative vacuum in other important places that require the development of texts or the issuance of a special law, including Article 52 of the Penal Code, which states:

A person who suffers at the time of committing the crime from a psychological or mental disorder that has made him lose his judgment or ability of choice, or who suffers from a coma resulting from narcotic drugs of any kind, shall not be held criminally responsible if he had taken the drug forcibly or without his knowledge thereof.

The person who suffers at the time of committing the crime from a psychological or mental disorder that has reduced his awareness or choice shall remain criminally responsible, and the court shall take into account this circumstance when determining the sentence period."

By reviewing the previous legal text, we find that the legislator did not address the defendant who is a patient of addiction, and the impact of that on his awareness and balance, and thus his criminal responsibility. Rather, the legislator did the opposite and stated in the article that there is criminal responsibility for the defendant if he used narcotic substances by choice. So, the text ignores the scientific and medical facts that drug addicts for a period of time - at least in general - are not in a normal state most of their time, whether psychologically, mentally or regarding their judgement. Rather, the legislator did not issue legislation for addictive patients and the effects of addiction on their behavior, and then whether or not they are criminally responsible when they commit crimes while they are under the influence of narcotic substances. The legislative and judicial environment needs to alter its view that drug addicts are patients and not criminals.

- Increasing the authority of the President of the Republic to reduce the death penalty, in accordance with Article 470 of the Code of Criminal Procedure⁷². 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 Constitution⁷³. The President of the Republic recently used these powers recently to commute the death penalty to life imprisonment for Indian citizen Ramana Bagu Ayana, according to a presidential decree issued on August 4, 2021⁷⁴.
- It is necessary to have a legal text stipulating the necessity of appointing a lawyer for defendants convicted to 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. This was also 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 parents and the lawyers of the executed are not notified of the execution. This is in respect of the rights of the convicts and their families, and in accordance with humanitarian and international standards.
- Enforcing 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.

⁷² 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 sentence is executed if the order is not issued for pardon or replacement of the penalty within fourteen days..”

⁷³ Article 155 of the 2014 constitution, which states: “The President of the Republic, after consulting the Council of Ministers, pardons or commutes the penalty. A comprehensive pardon shall not be granted except by a law approved by the majority of members of the House of Representatives.”

⁷⁴ To view the presidential decree, see this link <https://www.almasryalyoum.com/news/details/2390760>