El Hak Foundation

Legalizing Exception

Legalizing Exception El Hak Foundation

The Law of criminalizing the publication of courts session data

Legalizing Exception
The Law of criminalizing the publication of courts session data.

Public of the trial sessions are A Constitutional Principle.

Whereas the established constitutional principle is the publicity of court sessions witnessed by citizens (the public) without discrimination, so that ; to allow the public opinion to follow what is going on in the cases of concern and its omission leads to nullity of the trial procedures and the judgment issued accordingly is null and all that unless the court decides the trials to be confidential in observance of public order or preserving morals, or the law determines the confidentiality of the trial for considerations it assesses, as is the case in the trial of a child as stated in the first paragraph of *Article 126* of the Child Law promulgated by Law No. 12 of 1996.

Appeal No. 29653 of Judicial Year 67
Criminal Chambers - Session 10/3/1998
Technical Office (Year 49 - Rule 53 - Page 388)

It is forbidden in any way censorship, confiscate, stop, or close Egyptian newspapers and media. An exception may be imposed on them in times of war or public mobilization. A liberty deprivation is not imposed for crimes committed by means of publication or publicity. As for crimes related to incitement to violence, discrimination between citizens, or insulting the honor of individuals, the penalties for which shall be determined by the law.

Article 71 of the Egyptian Constitution

Court sessions should be public, unless the court decides their privacy in observance of public order or morals, and in all cases pronouncing judgment should be in a public session.

Article 187 of the Egyptian Constitution

The Law of criminalizing the publication of courts session data.

On December 16, 2020 AD, the Egyptian Government announced its intention to add a new article to the Penal Code, the text of which is as follow:

«Shall be punished by imprisonment for no less than a year and a fine of not less than one hundred thousand Egyptian pounds and not exceeding two hundred thousand Egyptian pounds, or by one of these two penalties whoever copies, records, broadcasts, publishes or exhibits, words or pictures of the proceedings of a session designated for examining a criminal lawsuit during its session by any means; without the permission of its president judge, after the approval of the Public Prosecution, the defendant , the civil claimant, or the representatives of either of them, and a ruling is issued to confiscate the devices or other devices that may have been used in the crime, or what resulted from it, erase it, or execute it, according to the circumstances.

The Presidency of Ministers Council statement in this regard came to indicate that the proposed amendment came with the aim of preventing the media from filming the defendants until a final ruling is issued in the cases in which they are judged in order to protect them, because the basic principle in human is innocence, and every defendant enjoys this basic principle until a final judgment is issued against him in a manner that gives him the right not to have any photo taken of him in a situation that makes him contempt or suspected.

Report Methodology

In its methodology, this report relied on sources by the Presidency of Ministers Council announcements and media statements regarding proposed amendments to the Egyptian Penal Code regarding the transmission and filming of the proceedings of the sessions in the criminal courts in Egypt.

In its vision, the report relied on the proposed amendments in addition to the Egyptian Constitution and the principles of the Supreme Constitutional Court, as well as the principles approved by the Egyptian Court of Cassation, in addition to the Articles of the Egyptian Constitution in its latest amendments - in addition to The International Agreements and Conventions.

The report also dealt with the proposed amendments through two main axes that intersected with them, which are:

- Freedom of the Press and publication, and the circulation of information and data,
- In addition to the right to a fair and adequate trial.

Introduction

Without any warning and without any introductions, the Council of Ministers declared its adoption of a legislative amendment by adding a new Article to the Egyptian Penal Code providing imprisonment for a period of up to one year and a fine of up to two hundred thousand Egyptian pounds for any one filmed, recorded, broadcasting, publish or display words or pictures of a proceeding session devoted to hearing a criminal case while it is held, by any means; Without permission from its president.

Through this report, we will review the proposed Article, the reasons and the legislative need that prompted the Egyptian Government to expedite the preparation and announcement of this proposed law.

The Article also will be dealt through two axes that contradict with them, and their contradiction is with the Egyptian Constitution explicitly, which forbade liberty-depriving penalties in publishing cases, in addition to the contradiction with well-established constitutional principles that the origin in trials is being public and that the violation of this principle is the exception and Not the opposite.

Accordingly, this report will be divided into three axes:

The First Axis: publicity of trials is an original guarantee of the right to a fair trial.

The Second Axis: legislation contrary to the constitution

The Third Axis: the national legislation governing the publication of trial facts.

The First Axis

Publicity of trials are an original guarantee of The Right on a fair trial.

“The right in getting a fair trial is considered one of the most important human rights because of its important impact on protecting the rest of the rights. These rights and guarantees the more they are strengthened, the more we are exposing what is known as a fair trial, and the more it is lost or faded, the more we are facing a flawed trial in which the rights of individuals are violated without any Right.

The First Topic
What is a fair trial?

Fair trials are defined as: A trial in which there is a possibility to prosecute the defendant with a criminal accusation brought against him, before an independent court, established by the rule of law before his indictment, according to public procedures in which the defendant can defend himself while enabling him to review the judgment issued against him by the judiciary of the highest court, that judged him.

It is also defined (the fair trial) as " a set of procedures administered by an independent, impartial court formed in accordance with the law, and to be conducted in public except as required by the rules of public order, and to be dominated by the principle of equality of litigants."

We mean by Publicity here that; all judicial procedures are public in a way that entitles citizens to the means of direct verification or by means of the press that the conditions are met by which the judiciary is conducted in their name, and that these guarantees go beyond the guarantees granted to the parties to the case.

Which means that the publicity of the trials sessions requires that the trial sessions be oral for the prosecution and the pleading in presence of the public, including the press, according to the subject matter of the case, and some have tried to point out that the press and media coverage of the trials gives it the quality of full publicity, However, some others believe that the press and broadcasting coverage of trials does not dispense with the public's attending the trials. This element of publicity is not completed without the presence of the public and informing them of what is going on in the session, which generates in them - that is, the public - confidence in the justice of the judiciary.

The openness of trials is a fundamental guarantee of the rights of the defendant.

Through what we have made clear about the definition of publicity of trials and their procedures, it becomes clear to us the importance of the openness of the trial as it is a fundamental guarantee of the rights of the defendant.

It is obvious from the foregoing that the principle in criminal trials - especially that their judgments are issued in the name of the people - is being public. However, the law grants the president of the court an exceptional power to impose privacy on some trials, provided that the reasons for this exceptional change are related to the preservation of morals and in observance of public order.

This is affirmed by the Egyptian Constitution in *Article 187*, where the text is explicit and not ambiguous, that "court sessions are public, unless the court decides their confidentiality in observance of public order or morals, and in all cases the pronouncement of judgment is in an open session."

The publicity of trials is not considered an individual guarantee for the defendant only, rather; that guarantee is transferred to the whole community, so informing the public of the procedures of the trials and the judgment that the court concludes, undoubtedly leads to citizens' trust and confidence in the judicial system.

Accordingly, there is no disagreement or controversy regarding the openness of the trials. The matter is constitutionally decided, and Judicial and criminal jurisprudence has settled on it over many years, and there is no room for doubt in this matter.

However, it is noticeable that there is a difference appears from time to time regarding these forms of publicity. Whoever believes that the attendance of the public for trials without distinction is sufficient for the availability of publicity and some believe that broadcasting trials without the attendance of the public is sufficient to complete the publicity, and some also see that filming and broadcasting sessions is not a matter of openness of the trials, and publicity is just to enable citizens to attend the sessions without discrimination.

Accordingly, we will address in the next section what are the forms of publicity that are required in criminal trials.

The Second Topic
Public images

We concluded in the previous discussion that the publicity of trials is a genuine constitutional guarantee. We do not deny this, and it is not only a guarantee of the rights of the defendant, but rather a fundamental guarantee for the proper functioning of justice as it considered a component of a fair trial.

We have also concluded that the publicity here does not mean the mere presence of litigants or parties to the criminal case only, but rather it extends to a broader than that through the necessity to hold trials in places that any member of the public can access, enter, attend and view the trial proceedings without restriction within some framework limited by law and required to maintain order in court sessions, in addition to allowing trial proceedings to be published through known publishing methods, which means that its publicity guarantee is provided through two pillars, the first is that court yards are open for citizens. And that newspapers should be able to examine and publish the course of trials.

First:

The right of the public to attend court sessions without restrictions or conditions.

This right requires, as we have already indicated in more than one place, that the courts open their doors to the public to attend the sessions without any restrictions or conditions, and this is what the jurisprudence and judiciary have settled on, provided that this principle the court can make an exception on it in observance of morals or maintaining public order , Which is confirmed by the Egyptian Constitution, in its amendments on 2014 AD in Article 187, which is also affirmed by both the laws of the judicial authority and criminal procedures.

“The trial sessions should be in public unless the court orders to be confidential in observance of morality or to preserve public order and pronouncing judgment should in all cases be pronounced in an open session. The order and regulation of the session are subjected to the President of the court”.

Article 18 of the Judicial Authority Law No. 46 of 1972.

“The session must be public, and the court may, however, in observance of public order or preserve morals, order that the whole case or part of it be heard in confidential session or prevent certain categories from attending it.”

No. 268 of the Criminal Procedure Law No. 150 of 1950.

This was confirmed by the Egyptian Court of Cassation over many years through its many stable rulings in this regard. And which is the most prominent.

`` The basic principle in the law is that the court sessions are public, but Article 268 of the Criminal Procedure Code permits the court to order that the whole case or part of it to be heard in a confidential session in observance of public order or the preservation of morals. There is no exception to this principle except what is mentioned in Article 352 of that law stipulates the necessity of holding courts Juveniles - no other courts - in a counseling room. And since the court did not observe a place to consider the case in a confidential session, the obituary for the appellant in this regard is without any legal basis.

(Appeal No. 630 for the year 43 session 10/8/1973 x 24 qs 170 p. 818)

Publicity here does not mean that the court is obligated by the public attendance at trial sessions or during the pronouncement of the verdict. The condition of publicity here is provided when individuals can attend without the need for them to attend. The rule of publicity is respected even if no one from the public will attend the trial proceedings if the doors of the session hall are open to the public. Whereas the court is prohibited from holding any of its sessions in private, without legal justification.

Second:

Publishing.

We concluded previously that publicity is a condition, and its guarantee is a basic constitutional essential for a fair trial, and that the principle in trials is openness, with the court's right to deviate from this principle exceptionally to preserve public order and observe morals.

This means that everything that takes place in public trials becomes the right of public opinion to stand on it, and then it may be published by various means of publication. Whereas publicity gives the right to everyone to transmit to the public opinion what is happening in these trials, in addition to the publication carried out by the newspapers. Because the press is free to publish what is happening in public trials, and this freedom is represented by the right to express opinion on the one hand, and the right to knowledge and information on the other hand. And some jurists argue - while they are right - to the fact that the publicity that is achieved through publication, especially the journalist, is more important than that which is achieved through the presence of the public at trial sessions, because the actual publicity of the sessions is not achieved by the presence of people who do not have a characteristic gathered accidently, rather it is achieved by publishing in all its means.

However, this does not mean that publicity in the trial is not achieved simply by the presence of the public, as the presence of the public only without publishing is sufficient to achieve the publicity, but this openness remains limited, and it is necessary for the trial to be published to achieve the actual publicity.

We can reach a conclusion that; without publishing the trial procedures, actual publicity cannot be achieved, Consequently, real oversight of the trial procedures is not achieved. But despite the importance of publishing to achieve publicity, publishing alone of the trial procedures is not sufficient to achieve the openness of these procedures, because it is unacceptable to say that the public's access to information through newspapers or other means of publication is sufficient to achieve publicity.

The Third Topic

Comparative legislation and its attitude on the publication of the trial sessions

Many comparative legislations have agreed on publishing the procedures of hearings in public trials. The legislative principles have almost stabilized in many countries that it is not permissible to violate the right of the press to publish what is going on inside the courtrooms and in public sessions, as it is considered an inherent right of the press to publish and circulate information on one hand. On the other hand, as one of the main pillars of the publicity corner, without which it cannot be straightened.

In France, a law promulgated on July 29, 1881, permitted the press initially to transmit debates and publish judgments issued in public trials.

As for the English system, the general rule is that the trial procedures may be published completely. Accordingly, Article (3) of the amended criminal slander law issued in 1881AD states that fair and accurate publication is permitted in any newspaper, if this publication is for public trial procedures. Under condition that the publication is parallel on the main time with the procedures and not opposed to the religious and moral prohibition. Nevertheless, the law has given the court the authority to prohibit the publication of the procedures until they are completed, and this restriction was set by the law in the interest of the defendant who can assign it.

As for the American system, it has also given newspapers the right to publish the public trial procedures, so that the judge is not allowed prohibit the publication of what is going on in the public sessions, nor allowed to ask the journalists to attend without publishing the trial procedures or to publish it in a specific manner.

Filming and Broadcasting Public Sessions.

We concluded through the previous discussion that newspapers publishing the public sessions procedures is one of the pillars of the principle of publicity of trials, but is the matter confined to contemporary press publication of the trial or immediately following it, or does the matter extend to broadcasting the facts of the trials directly at the moment they occur via the radio, television screens, or other means Modern media.

This query has its relevance and importance, as there are many jurists whose opinion is that the issue of filming from inside the session even though there is a broad and unlimited publicity, but it may be considered a violation of the prestige of the court. The jurisprudence was divided here into two opinions without giving precedence to one of them over the other. Each party has his good reasons upon which they based their opinion.

The first opinion considers the permissibility of filming or broadcasting from inside the session, if it does not violate the prestige of the court and its order, because filming from inside the session is one of the requirements of publicity in the trial and that prohibiting the transmission of trial procedures on radio and television is incompatible with the openness of the trial.

As for the other opinion, it is considered that it is not permissible to use recording and filming devices from inside the session, but it is permissible in the event that there is an obligation in some cases and provided that there is no breach of the session order. His argument for not permitting this filming lies in the fact that this would indirectly affect the behavior of the witnesses, the defendants, the lawyers, and the judges themselves, in addition to that it may not transmit everything that takes place in the hearing, but rather is limited to some aspects of the trial.

The national legislation of many countries also did not agree on broadcasting or filming the sessions.

In France, the French law came through a decree issued on December 6, 1954, to prohibit filming or broadcasting from inside the session, which is the same as decided by the French Criminal Procedure Code in Articles (308, 403 and 535).

As for American law, Article (53) of the Federal Criminal Procedure Law made the issue of filming or broadcasting in the courtroom subjected to the authority of the jurisdiction.

In the Yugoslavian system, the law entrusted the issue of filming and television broadcasting for trials under the authority of the Supreme Court (Article 269). The law decided that a request should be submitted to the Supreme Court to grant a permission send to the president of the trial, and the Supreme Court, with free hand, must respond with acceptance or rejection without reasons.

Accordingly, we can conclude that the basic principle in trials is publicity which is both public and that citizens attending the trial sessions without restriction or condition, and the other part is the press and media publishing of the procedures of the public sessions.

As for the issue of filming the sessions and broadcasting them on television or similar to the modern media, it is a matter of jurisprudential and legal arguments, and if the majority believes that the matter should be left to the court authority to decide without reasoning or censor the possibility of televised or radio transmission of the proceedings of the sessions out of nowhere because they are the most aware of the nature of the trial and its procedures.

The Second Axis
Legislation against the Constitution

It is forbidden in any way to censor, confiscate, stop, or close Egyptian newspapers and media means. An exception may be imposed on it during times of war or general mobilization.

A freedom-depriving penalty shall not be imposed for crimes committed by way of publication or publicity. As for crimes related to incitement to violence, discrimination between citizens, or contesting the honor of individuals, the penalties for which shall be determined by law.

Article 71 of the Egyptian Constitution

«Shall be punished by imprisonment for a period of no less than a year and a fine of not less than one hundred thousand Egyptian pounds and not exceeding two hundred thousand Egyptian pounds, or by one of these two penalties whoever films, records, broadcasts, publishes or exhibits, words or pictures of the proceedings of a session designated for the examination of a criminal case during its session by any means; Without the permission of its prisedent, after the approval of the Public Prosecution, the defendant, the civil claimant, or the representatives of either of them, and a ruling is issued to confiscate the devices or other devices that may have been used in the crime, or what resulted from it, erase it, or execute it, according to the circumstances.

The Text added to the Penal Code by the Presidency of Ministers Council

The new Egyptian Constitution prohibited all forms of censorship of Egyptian newspapers and media means, as well as their confiscation, suspension, or closure. However, the proposed text to add to the Egyptian Penal Code regarding publishing and broadcasting criminal trial sessions was totally and partially inconsistent with the Egyptian Constitution and what was stipulated in its guarantee of liberty of expression, publication, circulation, and transmission of information.

Through this section, we will deal with the constitutional and legal texts requiring the right to publish in court sessions, which allow newspapers to publish the proceedings of the sessions in criminal trials, as well as the rulings issued by those trials.

The First Topic

Requisition of liberty depriving penalties and confiscation in violation of the Constitution

Initially, the Egyptian Constitution guaranteed liberty of opinion and expression, liberty to publish, circulate and transmit information. Not only that, but also it prohibits censorship and confiscation of newspapers and prohibits liberty-depriving penalties concerning publishing issues while leaving the ordinary legislator with the matter of penalties for crimes related to incitement to violence or by discrimination between citizens or by insulting individual's honor.

Once perusing the proposed text, we find that it contradicts the current Constitution and clashes with more than one explicit constitutional text.

Where it is opposed to many constitutional texts as follows:

Article 68

Information, data, statistics, and official documents belong to the people, and disclosure of them from its various sources is a right guaranteed by the state to every citizen, and the state is committed providing them and making them available to citizens in a transparently, and the law regulates the controls for obtaining them, their availability and confidentiality, the rules for depositing and preserving them, and complaining against refusal to give it, and also determines the penalty for withholding information or deliberately giving false information.

State institutions are obligated to deposit official documents after the finishing of their work period at the National Records House, to protect and secure them from

loss or damage, and to restore and digitize them, by all modern means and tools, in accordance with the law.

Article 71

It is prohibited in any way to censor, confiscate, stop, or close Egyptian newspapers and media. An exception may be imposed on it during times of war or general mobilization. A liberty-depriving penalty should not be imposed for crimes committed by way of publication or publicity. As for crimes related to incitement to violence, discrimination between citizens, or insulting the honor of individuals, the penalties for which is determined by law.

The proposed text comes in contrast with the Constitutional Text 68, which aimed to protect the right of citizens to access, circulate and transmit information.

It also violated the text of Article 71, which prohibited censorship or confiscation of newspapers and as well as liberty-depriving penalties in publishing cases. By reviewing the proposed text, we find it codifies liberty-depriving penalties in cases of publishing the procedures of court sessions on one hand and on the other hand, adding a complementary penalty, which is confiscating whatever results of the publishing crime, which means that it can lead to the confiscation of the newspaper or the blocking of the website that published it.

The text also came in contradiction to *Article 187* of the Constitution, which states that the original is the publicity of trials. The court is entitled to an exception leaving this original rule and transferring the trial to a trial that would preserve the public or morals.

Accordingly, we find that the suggested text was based on a philosophy based on the legalization of the exception and the grant of sustainability, so as we concluded in the first axis that the origin is the publicity of the trials and that the publication of criminal trials is one of the pillars of that publicity, while giving the court an inherent right to an exception based on two reasons: concern for public order and morals, they are two wide in scope exceptional, allowing the court freely without real restriction to activate this exception and convert the trial to a confidential form instead of public, with the obligation to announce the verdict in publicly.

However, we see that this text proposed by the Egyptian Government came to legalize this exception and grant of sustainability in contravention of the constitution and its principles of what the Egyptian courts have approved on, so that the principle is to prohibit publication in every form and shape in public hearings and provided the court to decide an exception and order to publish the facts of those sessions. Relying that publicity is only available because there are no restrictions on the attendance of individuals and persons for trial.

The Egyptian Government justified this amendment that it aims to prevent filming the defendants on public until a final judgment is issued in the cases they are being judged in order to protect them, because the basic principle for a person being innocence, and this principle is a privilege to every defendant until a final judgment is issued against him in a manner that gives him the right not to be picked up any picture in a situation that makes it the object of contempt or suspicion of others.

On the other hand, some corroborative of this amendment indicated that the media presence would harm the trial session or that it might affect the prestige of the court or the performance of the defense or witnesses.

However, it is noticeable that the argument put forward by the government to justify the proposed legal text has been overtaken by the text, so if the main goal is to protect the defendant from media photographing, there is no justification for criminalizing the publication of words or pictures of the proceedings of the session far from the defendant himself. If the original was the legislator’s desire to balance between the principle of the defendant's innocence until a final judgment is issued for him has become clear and the trials are public, so it is better the prohibition is only photographing the defendant in criminal cases during their trial. Not only that, but this prohibition does not include photographing the accused during their transfer to the courtroom, but the matter is limited to sessions only, which refutes the flimsy argument that the government sought to justify this flawed legal amendment.

As for what some of the defenders of this proposed amendment have cited that the transmission, broadcasting and filming of trials distort the court's prestige and may affect the performance of the defense or witnesses, this matter is counter-productive that if the press and media presence and broadcasting sessions would negatively affect the trial, the court has absolute power to convert the session into a confidential session and prevent the media or press from attending. It has the right to order a halt to television or radio broadcasting or even photography, and the court has the right to impose whatever controls it deems to extend its authority inside the courtroom and to set procedures of the trial and the control of the session's control and administration are the responsibility of its president. For this purpose and taking into account the provisions of the Lawyers' Law, he may dismiss from the courtroom anyone who violates its order, and if he does not comply and persevere, the court president may immediately sentence him to imprison him for 24 hours, or to fine him five pounds, *Article 104 of the Procedure Law*.

Accordingly, we find that there is no real legal justification or need for such a text proposed by the government with the right that the legislator seeks to protect (protecting the reputation of the defendant and his spouse of innocence) it is not really protected. But the text exceeded this right and transferred the publicity right from a genuine right to an exception authorized by the court, the prosecution, the accused person and the civil claimant, which is a transgression and a violation of an original and unjustified right.

The Second Branch

The Executive Authority intervenes in The Work of Legislation without Necessity.

The legislative authority is responsible for enactment of Laws in accordance with the Egyptian Constitution within the framework of its original function and while the principle is that the legislative authority directly assumes this function that the Constitution established for it, all Egyptian Constitutions have had to balance the separation between The Legislative and The Executive Authorities requires in assuming their functions in the area originally assigned to them, with the necessity of preserving the entity of The State and approving order in its territory in relation to what it may face - between the sessions of the legislative authority or its absence - of the risks looming or diagnosing the damages that accompany it. Equal to that if these risks are of a material nature, or if their rise is based on the need for the state to intervene in a legislative organization that is necessary to meet its international obligations.

The approach that these Constitutions have committed to, regardless of their nature or extent, and considering the obligations of this budget - is to authorize the Executive Authority to take urgent measures necessary to confront exceptional situations, whether given their nature or extent. This is the case of necessity; the Constitution considered the establishment of which to be one of the conditions required for the exercise of this exceptional jurisdiction. This is because the competence conferred to the Executive Authority in this domain is nothing more than an exception to the principle that the legislative authority performs its original task in the legislative field. If that were the case, and the urgent measures taken by

the Executive Authority to confront the state of necessity stemmed from its requirements, its detachment would lead it to the cruelty of a Constitutional violation. This is because the availability of necessity - with its objective controls that the Executive Authority is not independent of its evaluation - is the reason for its competence to confront the urgent and pressing situations with these urgent measures, rather it is mandated to exercise this jurisdiction, and to it extends the constitutional control exercised by the Supreme Constitutional Court to verify its existence within the limits established by the Constitution and to ensure that this legislative license - which is of an exceptional nature - does not turn into a complete and absolute legislative authority not restricted, nor is it immune from its impiety and deviation.

Accordingly, the principle is that the House of Representatives is exclusively competent to legislate, and the Constitution has granted an exception to the Executive Authority the right to enact legislation in the absence of Parliament when the case of real necessity becomes available and that case is subject to the control of the Constitutional Court as well.

And if we review the proposed text and its justifications on which it is based, we will not find a real reason or a clear real case of necessity that pushes the government to skip the powers of the House of Representatives and issue such legislation, which means that the text proposed by the government has been tainted with unconstitutionality.

The Third Branch
Violation of the proposed text of international agreements

Article 93 of the Egyptian Constitution affirms the Egyptian State's commitment to international agreements, as it decided:

"The State is bound by international human rights conventions, covenants and covenants that Egypt ratifies, and which will have the force of law after their publication in accordance with the established conditions."

This means that the Egyptian Constitution has singled out priority, especially for international charters and conventions, and gives them obligatory force for the national legislature, so that the ordinary legislator cannot override any of those conventions, charters, and international covenants.

However, the proposed text, the subject of the report, was contrary to many international agreements and covenants as follows:

Article (10) of the Universal Declaration of Human Rights, which has become an international custom binding on all members of the international community, says:

"Every human being on equal with others has the right to have his case examined by an independent and impartial court, with a fair and public consideration, to decide on his rights and obligations and on any criminal charge brought against him."

Article (14) Paragraph (1) of the International Covenant on Civil and Political Rights, which Egypt has ratified, says:

"All people are equal before the judiciary, and it is the right of everyone when entitled to any criminal charge against him or his rights and obligations in any civil lawsuit that his case is subjected to a fair and public, competent, independent, and impartial court established by the rule of law. A prohibition of the press and the

public may be taken to prevented them from attending the trial, in whole or in part, for reasons of public morals, public order, or national security in a democratic society, or the requirements of the privacy of the parties to the case or at the minimum limits that the court deems necessary when publicity in some exceptional circumstances would prejudice the interest of justice. However, any judgment in a criminal case or a civil lawsuit must be issued in public, unless the matter relates to events that require their interest otherwise or was the lawsuit deals with disputes between spouses or related to the guardianship of children.

Which means that the origin in trials is openness and that publicity is based on two pillars that cannot be correct without them, namely the presence of the public and media and press publishing, and that an exception may be made, according to some of the controls, to convert to confidential trials.

- *Article (13)* Paragraph (2) of the Arab Charter on Human Rights, which Egypt signed and ratified recently without saying:

Article (13) Paragraph (2) of the Arab Charter on Human Rights, which Egypt signed and ratified recently says:

"The trial should be public except in exceptional cases required by the interest of justice in a society that respects liberty and human rights."

The Third Axis
National Legislation Governing the Publication of Trial Facts.

We concluded in the previous axis that we do not have a real legislative need for the intervention of the Executive Authority to legislate a new text concerning the publication of trial sessions, far from the fact that the text violates many constitutional texts and established constitutional and legal principles, and it violates also international conventions and covenants, deprives the right of publication, and transform it to an exception and grant the exception the form of sustainability in violation of the norms, legal and judicial principles.

However, through our review of the Penal Code and its numerous texts regarding the publication of trial facts, it will confirm without any doubt that this text legislated by the Executive Authority is unnecessary and does not protect any rights indeed, it encroaches on rights and strikes its important guarantee of its guarantees of a fair trial and justice.

The origin in the publicity of the trials is to be published, unless the court orders otherwise

N 189

The text of *Article 189* came to confirm what the Egyptian Legislator and the jurisprudence has settled on, which is that the origin in public trials is publicity, and this publicity is closely related to the publication of court rulings unless the court decides that the trial is confidential.

This was confirmed by the Egyptian Court of Cassation in more than one of its most important rulings.

Whereas *Article 189* of the Penal Code stipulated the following:

"A penalty of imprisonment for a period not exceeding one year and a fine of not less than five thousand Egyptian pounds and not exceeding ten thousand Egyptian pounds, or one of these two penalties shall be imposed on anyone who publishes, by one of the aforementioned methods, what happened in civil cases or criminal cases that the courts have decided to hear in a confidential session or in cases related to the crimes stipulated in this chapter or in Chapter Seven of Book Three of this law, and there is no punishment for merely publishing the subject of the complaint or simply publishing the judgment. Nevertheless, in a case in which it is not permissible to establish evidence for the alleged matters, shall be punished on notifying of the complaint or the publication of the judgment with the penalties stipulated in the first paragraph of this article, unless the publication of the judgment or the complaint took place upon the request of the complainant or with his permission.

By this, the Legislator indicated that publishing immunity is limited to public judicial procedures and judgments issued publicly, and this immunity does not extend to what takes place in non-public sessions or to what takes place in sessions that the law or the court has decided to restrict its publicity, and it is also limited to trial procedures and does not extends to the preliminary investigation nor to the preliminary or administrative investigations, because all these are not public, as only the litigants and their lawyers can witness it. Whoever publishes the facts of these investigations or whatever takes place in it, detention, imprisonment, search, accusation, and referral to the courts, rather, it is published on his responsibility, and

he may be prosecuted under a criminal trial for the slander and insult that the publication contains.

(Appeal No. 12152 of 75 Hearing 11/24/2005 x 56 p. 630)

It is decided that the Legislator, according to *Articles 189 and 190* of the Penal Code, that the immunity of publication is limited to public judicial procedures and judgments issued in public, and this immunity does not extend to what takes place in non-public sessions, nor to what takes place in sessions decided by law or the court to limit its publicity, as it is limited to trial procedures, and does not extend to the preliminary investigation or to the preliminary or administrative investigations, because all of these are not public, as only the litigants and their lawyers attending. Whereas that, and the primary judgment supporting its reasons by the appealed ruling, the appellant was committed to this consideration and the appellant was punished according to *Article 189* of the Penal Code based on the appellant publishing the subject of the plaintiff's civil rights complaint against her husband for a charge of insult and slander that occurred against her and that this crime is not permissible to establish evidence for the alleged matters. As it occurred against an individual without her request or permission, then it is correct in law, and what the appellant repels in this regard is irrelevant.

(Appeal No. 18346 of 65 Hearing 12/22/2004 x 55 p. 879 q 129)

Conclusion and Recommendations

Through this report, it is clear to us that what came from legislative interference from the Executive Authority aimed on the first place to legalizing exception about prohibiting the publication of the facts of public criminal sessions, which the court did not order to be confidential for the requirements of preserving public order or morals.

Accordingly, we recommend the following.

1. The Egyptian Government should work to postpone its proposed amendment until after the House of Representatives reconvenes during the next few days.
2. The text must act on balancing between protecting the right of the defendant not to defame his reputation, as well as protecting his right and the right of society in publish the trial sessions and its publicity.
3. Modifying the text in order allow the press and the media to cover the proceedings of the sessions and publish them without harming the reputation of the defendant.
4. Omitting any liberty-negative penalties from any possible text in this concern.
5. Confirming that the origin in public trials is to publish the procedures of the trial, and that the exception is within the limits of what the law decides, and the court can decide it or not.
6. Granting the defendant the right to accept or refuse to be photographed or publishing his personal data.