

GOVERNMENT AMENDMENTS TO THE CRIMINAL PROCEDURES LAW VIOLATE CONSTITUTIONAL PROVISIONS



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Government amendments to the Criminal Procedures Law violate constitutional provisions

The Arab Center for the Independence of the Judiciary and the Legal Profession (ACIJLP) followed with deep concern and dismay the decision of the House of Representatives, during a single session held on 16 October, to approve the amendments introduced by the government to the draft Criminal Procedures Law, in response to the observations contained in the presidential memorandum regarding eight articles of the said draft. The approval was granted without any notable modification, as the government's proposals were endorsed in their entirety, despite the clear unconstitutionality of certain provisions added by the government. Even more troubling is the claim that the Constitution does not explicitly address the concept of procedural necessity, or, in other words, that it is "constitutionally deficient."

The ACIJLP considers that the approval by the House of Representatives of the amended text of Article 48 of the Criminal Procedures Law, which authorizes public authorities to enter homes and inhabited premises "in cases of distress, imminent danger, fire, drowning, or similar circumstances," constitutes a grave concern. The addition of the phrase "or similar circumstances" leaves the door wide open for law enforcement officers to enter private homes without a judicial warrant supported by cause, in violation of Article 58 of the Constitution and the sanctity of private dwellings.

The ACIJLP further emphasizes that the amendment to Article 105, which grants members of the Public Prosecution—regardless of their rank—the right to interrogate a defendant in the absence of their lawyer, contains, first and foremost, overly broad and imprecise language that undermines the standards of legislative drafting in criminal law. The article's verbose and circuitous phrasing appears intended to obscure its true purpose and the rationale behind it, while standing in direct contradiction with Article 54 of the Constitution, which safeguards personal liberty, and Article 98, which guarantees the right of defense.

The ACIJLP notes that the House of Representatives has approved paragraph (2) of Article 112, as amended, which stipulates that in cases where the interrogation of a defendant is not possible due to the absence of their lawyer, the Public Prosecution may order that the defendant be placed in a correctional or detention facility until the interrogation can be conducted in the presence of a lawyer. The provision further states that the same rules applicable to pretrial detention shall apply to the circumstances, grounds, procedures, duration, extension, and appeal of such placement.

This paragraph effectively permits the detention of a defendant without interrogation or investigation for a period that may extend up to 18 months, pursuant to the provisions governing pretrial detention under this law. Such an amendment constitutes a flagrant violation of several articles of the Constitution, including Articles 54, 93, 96, and 98, among others.

The ACIJLP also affirms that the amendment to Article 114, which introduces four alternative measures to pretrial detention, includes a provision rendered inoperative—item (7)—which concerns the use of technological means to monitor the accused, subject to the issuance of a decree by the Minister of Justice in coordination with the Ministers of Interior and Communications, upon availability of the necessary conditions for implementation.

Moreover, the amendment contains a provision that clearly contravenes Article 73 of the Constitution, which guarantees the right to peaceful assembly, as well as Article 57, which protects the privacy of citizens. This is the measure that obliges the accused to refrain from receiving, meeting, or communicating with specific persons in any manner whatsoever.

The ACIJLP emphasizes that the adoption of these disastrous amendments constitutes a serious encroachment upon the rights of defendants, an erosion of the right to defense, and a breach of the principles of fair trial. It represents a deep affront to the Egyptian Constitution and to the very concept of justice.

The ACIJLP reiterates its firm position—maintained since the beginning of the debate on this law—of rejecting the law in its entirety. It had also called for postponing the deliberation of such amendments until the new House of Representatives is constituted, and for forming a committee of independent experts to review and draft the law in conformity with the Constitution and in a manner that provides greater safeguards and freedoms for defendants and their counsel.

Cairo: October 17, 2025