

**THE INTERIOR MINISTRY AND THE PUBLIC PROSECUTION  
BREACH THE CONTRACT**

# **CONSTITUTION**



## **The Interior Ministry and the Public Prosecution breach the contract:**

**On the wasted guarantees enshrined in Article 54 of the Egyptian Constitution**

### **Statements and positions;**

Independent human rights Organisations, independent media, -  
and opposition forces: Egypt is rife with enforced disappearances.  
Interior ministry, official and the security affiliated media outlets: -  
There is no enforced disappearance in Egypt.  
The Public Prosecution: silence and ignoring the only way to prove -  
the validity of all party's statements.

### **Q: How to solve the dispute?**

A: Ministry of Interior and the Public Prosecution should respect the provision of Article 54 of the Constitution, and implement it.

### **Let's start:**

#### **Article 54 of the Egyptian constitution stipulates;**

“Personal freedom is a basic inviolable right, and with the exception of the case of flagrante delicto, no one may be arrested, searched, imprisoned, or restricted in any way except by a reasoned judicial order necessitated by the investigation. Anyone whose freedom is restrained must be informed immediately of the reasons, his rights in writing, enabled to contact his family and lawyer immediately, and be presented to the investigation authority within twenty-four hours from the time of restraining his freedom.

Any investigation may not begin except in the presence of his lawyer. If he does not have a lawyer, one shall be appointed. The necessary assistance should be provided to people with disabilities, in accordance with the procedures prescribed in the law. Everyone whose freedom is restrained, and anyone else, has the right to grievance before the judiciary against that procedure, and to decide on it within a week of that procedure, otherwise he must be released immediately.

The law regulates the provisions of preventive detention, its duration, reasons and cases entitled to compensation that the state is obligated to

pay for preventive detention, or for the execution of a sentence which would be annulled by a final verdict. In all cases, any defendant may not be tried for crimes if proven he/she would be imprisoned except in the presence of an authorized or appointed lawyer. "

## **The constitution / The social contract:**

The constitution is the supreme law in any country that respects its citizens and the law. This means respecting its provisions and that all laws must abide by the constitution.

To distinguish between a rule of law state that is subject to the law in its broad sense and those belonging to the pre-state eras that are not subject to the law, the basis of that distinction is respect for the constitution and the laws implementing it.

The idea of constitutionalizing a rule or a right is to elevate its position as a supreme law so that ordinary laws are always obligated to respect it. Modern constitutions in law-abiding states are regarded as a contract between the citizens and the various authorities. The most important provisions and rules of this constitution as a "social contract" is embedding personal freedoms as a basic constitutional rule and a natural human right protected by the constitution.

## **First: The rights and guarantees stipulated in Article 54 of the Constitution:**

Article 54 of the constitution stipulates a combination of rights and guarantees;

### **It is not allowed to arrest anyone except in two cases; -1**

#### **(a) The case of flagrante delicto**

It is regulated by Article 30 of the Criminal Code, and according to which it determines when such a case is available;

- Watching the crime while being committed. -
- Watching the crime shortly after it has been committed. -
- Tracking the perpetrator after the crime. -

If the perpetrator was found, soon after the crime, carrying objects or traces -  
of which it can be inferred that he was the perpetrator or a partner in the  
crime.

The Egyptian Court of Cassation has decided that the flagrante delicto is a condition  
that is associated with the crime itself, not the person who committed it. The Court  
put in place multiple guarantees to state whether the flagrante delicto is available or  
not, and consequently the validity or nullity of the arrest.

Consequently, any arrest of any person who is not in a state of flagrante delicto is  
considered null along with any evidence derived from this arrest which would be  
considered unreliable evidence, and the arrest based on the absence of that  
situation becomes a necessity of immediate release.

### **(b) A judicial order**

The second case that permits arrest is a judicial order, which is not absolute and not  
subject to the mere desire to restrict the freedoms of people. Rather, several  
elements must be available for the validity of the judicial order, including:

When there is an ongoing investigation prior to the judicial order that -  
required its issuance

This order must mention the reasons that necessitated it otherwise it will be -  
considered not valid

The order should be issued by a competent authority -

It has to specify clearly and in details the time and person or place -

### **The rights of the arrested according to the constitution, -2** **"the social contract", which stipulates;**

Inform the arrested immediately of the reasons for the arrest "in writing". (a)

Enable the arrested to contact his family and lawyer (b)

Presenting the arrested to the competent investigation authorities within (c)  
24 hours from the time of arrest.

The investigation with the arrested shall not begin without the presence (d)  
of his lawyer

Assigning a lawyer to the arrested if he does not have one. (e)

The arrested, and others, have the right to grievance. This grievance is to (f)  
be decided within a week, otherwise the arrested should be immediately  
released.

The arrested shall not be tried for any crime punishable by imprisonment (g)  
except in the presence of a lawyer, either authorized or appointed.

## **Second: The guarantees stipulated in Article 54 of the Constitution:**

The right to compensation for pretrial detention (a)  
Compensation for the execution of a penalty in which a final judgment (b) annulled it.

## **Third: The legal value of Article 54 of the Constitution is that it is a self-executing article that needs no legal regulation of the rights and guarantees contained therein**

In part of the previously mentioned article, some guarantees are contained in the Criminal Code. Those guarantees were constitutionalized so that they are the minimum limits that any law can not contradict.

On the other hand, it guaranteed compensation and required the issuance of a law that regulates the right to be compensated. However, the failure to issue this law to compensate pretrial detention or for the punishment that was carried out and then annulled by a later verdict does not make this article idle. The laxity of legislators is not a reason to delay implementing the general legal rules for compensation.

In all cases, the aforementioned article is a constitutional article that can be effective as it is. The Egyptian judiciary witnessed similar cases, in which the implementation of the constitutional texts that are not yet set in laws was not hindered. This is evident in the following examples;

### **Judicial rulings to implement the articles of the constitution: -A**

“If the constitution provides a text that is in itself valid for implementation -1 without the need to enact legislation, this text must be enforced on the day of its adoption.” Appeal No. 2605 for the judiciary year 62, The session on 12/15/1993

“The provision of Article 47 of the Criminal Code is considered implicitly -2 annulled by the force of the constitution itself since its provisions came into effect without the ambiguity of a lower law. Entering or searching houses has to be based on a reasoned judicial order is an impermissible procedure since

that date. As the mentioned ruling did not refer to a judicial order prior to searching the house of the third appellant, and the judge relied in his verdict of convicting the appellant - among what he counted - on the evidence derived from the result of the search that resulted in the seizures that were found in this search without responding to the appellant's demand to annul it. Although if it were correct, it would not be permissible to rely on it as evidence in the case, which makes the verdict defective by the deficiency that nullifies it. "(cassation court case no 141 of the judicial year 60, session on 10/2/1991)

"Whether or not the legislator has been active in organizing this right in the manner that a great people deserves, after two revolutions - the revolution of the twenty-fifth of January and that of thirty of June - the workers' use of this right without damaging public facilities, is legitimate use of a constitutionally established right that does not require punishment (Supreme Administrative Appeal No. 27047 for the year 61 judiciary, session 17/6/2017). -3

#### **Fourth: The relationship between constitutional legal rights and the International human rights covenants:**

The legal value of the Universal Declaration of Human Rights as well as the International Covenant on Civil and Political Rights, are usually faced by the question; do they have an impact on the legal structure? Does ratifying them have an effect on judicial rulings (on the implementation level)?

#### **The Universal Declaration of Human Rights -A**

The Universal Declaration of Human Rights included many rights, some of which should be organized based on the International Covenant on Civil and Political Rights. "Egypt ratified it and published it in the Official Gazette in 1981, and it became a national law, complementing the constitution". It was interpreted by national laws, and some of them were decided to be considered as basic authentic rights. The Egyptian judiciary has dealt with the declaration as an interpretative reference regarding some rights included in national laws, for example:

#### **The Supreme Constitutional Court rulings concerning the Universal Declaration of Human Rights:**

The Supreme Constitutional Court:

“Whereas international covenants stipulated the right to association, including Article (20) of the Universal Declaration of Human Rights which was approved and declared by the United Nations General Assembly resolution on 12/10/1948, and the International Covenant on Civil and Political Rights, which prohibits -according to the second paragraph of Article (22)- imposing restrictions on the exercise of this right except for those stipulated by law and which constitute necessary measures in a democratic society to maintain national security, public peace, public order, protection of public health or public morals, or protection of the rights of others and their sanctity. Comparative constitutions are also concerned with stipulating this right in their documents, as it is included in the First Amendment that was introduced to the Constitution of the United States of America on 12/15/1791, which established the right to meet, and was explicitly stipulated in the existing constitutions in Germany, Jordan, Turkey, Lebanon, Tunisia, Morocco, Kuwait, Yemen, Syria, Bahrain and Algeria. The successive Egyptian constitutions - starting with that of 1923 all the way to the current constitution - have also been committed to guaranteeing the right to association; it is stipulated in Article (75) of the existing constitution that: Citizens have the right to association and to establish civil institutions on a democratic basis, and they acquire legal personality upon notification, and allowed to freely exercise their activities. Administrative authorities may not interfere in their affairs, dissolve them, or dissolve their boards of directors or their boards of trustees except by a judicial ruling, and all of that as regulated by law.”

The case registered in the Supreme Constitutional Court’s schedule No. 160 of the 37<sup>th</sup> constitutional judicial year.

And in the same sense there are:

The case listed in the Supreme Constitutional Court’s schedule No. 88 for the 36<sup>th</sup> constitutional judicial year.

The case registered in the Supreme Constitutional Court’s schedule No. 196 of the 35<sup>th</sup> constitutional judicial year.

The case registered in the Supreme Constitutional Court’s schedule No. 17 of the 28<sup>th</sup> constitutional judicial year.

In the case registered in the Supreme Constitutional Court’s schedule No. 17 of the 28<sup>th</sup> constitutional judicial year.

**The Court of Cassation:**

“It is one of the basic principles in criminal code procedures- in implementation of what successive constitutions have guaranteed of the right to a fair trial- that every defendant enjoys the presumption of innocence until a final judgment have declared him guilty in a fair trial in which he has been guaranteed his defense. It is also a right stipulated in the Universal Declaration of Human Rights in articles 10 and 11, and it is also a principle that has been applied consistently in democratic countries. Within its framework lies a set of basic guarantees that include integrity a basic concept of justice, which all civilized nations do not disagree upon, regardless of the nature of the crime and regardless of its severity. Based on these principles comes the right of the accused to defend himself which has become a sacred right that transcends the rights of any social entity that will not be harmed by the defendant’s acquittal but will be harmed, and the judiciary system as well, by the conviction of an innocent person. The Egyptian constitution imposes, in the last paragraph of Article 54, the presence of an authorized or delegated lawyer with the accused during the trial for crimes that are punishable by imprisonment. The law also requires the presence of a lawyer to defend any person accused of a felony that has been referred to the Criminal Court in light of the provisions of Articles 375 and 377 of the Criminal Code - in order to guarantee a real defense.”

Appeal No. 27017 of Judicial Year 84.

And in the same sense came the sentences in the following cases:

Appeal No. 8792 for the Judicial Year 72

Appeal No. 15279 of the Judicial Year 62

### **Supreme Administrative Court:**

“The Universal Declaration of Human Rights disclosed this idea in Article (15) stipulating that everyone has the right to a nationality and this right is derived from the internal law in every country. The state is authorized to determine under which conditions its nationality could be acquired, withdrawn or dropped. Withdrawing the nationality is a procedure that is taken by the state authorities to face a national in order to avoid a damage estimated by the administrative body when a person becomes evidently not worthy of belonging to the country that granted him its nationality. Dropping the nationality can happen if the original citizen committed a deed that deems him not worthy of belonging to his original homeland.”

Appeal No. 26969 of the Supreme Court for the judicial Year 55

And in the same sense comes the following sentences:  
Appeal No. 15381 of the Supreme Court for the judicial Year 53  
Appeal No. 2362 of the Supreme Court for the judicial Year 40  
Appeal No. 515 of the Supreme Court for the judicial Year 39

### **The International Covenant on Civil and Political Rights -B**

Several judicial verdicts considered the International Covenant on Civil and Political Rights issued by the United Nations General Assembly resolution on December 16, 1966, to which Egypt became part in 1982 under Presidential Decree No. 536 of 1981, as part of the Egyptian legal system.

**In this regard, the verdict of the Supreme Administrative Appeal No. 515 of the Judicial Year 39 states:** The constitutional legislator, implementing human rights in accordance with the Universal Declaration of Human Rights and in the International Convention on Civil and Political Rights which Egypt ratified, and became part of its legal system and to achieve the rule of law by subjecting the state to its provisions, it guaranteed the right of every citizen to resort to his natural judge, and has made litigation a safeguarded and guaranteed right for all people. It also obliges the state to bring the judiciary closer to litigants, speed up the litigation process, and prohibits to immunize any act or administrative decision from judicial oversight (Article 88). It also made the right to defense an authentic right guaranteed by the state and ensured for those financially unable to achieve the means of resorting to the judiciary and defending their rights according to the law – this should be granted at the expense of the society and its interests represented in the public treasury (Article 69).

Several rulings have also confirmed the same meaning, such as:  
Supreme Administrative Appeal No. 515 for the judicial year 39. ●  
Supreme Administrative Appeal No. 1290 for the judicial year 36 ●  
Supreme Administrative Appeal No. 2431 for the judicial year 33 ●

**“The Constitutional Court also ruled in the case No. 116 of the constitutional court judicial year 29 that:**

Article (93) of the current constitution stipulates that “the state shall abide by the international human rights conventions and covenants that

Egypt ratifies. It shall have the force of law after its publication in accordance with the established conditions.” Article (11) of the International Covenant on Civil and Political Rights, stipulated that; “no person may be imprisoned solely on the basis of his inability to fulfill a contractual obligation”; which means it is not permissible to impose imprisonment on a person simply for breaching a contractual obligation, in the event that the two contested texts - specific in scope as the foregoing - do not determine the penalty of imprisonment and the fine that may be associated with it, on the basis of breaching a contractual obligation. But rather that the punishment is decided for committing a criminal offense. Such as embezzlement of things that are judicially seized. Therefore, the text of Article (11) of the International Covenant for Civil and Political Rights is not considered a law that is more favorable to the accused, because the act in the two texts being challenged is different from the inability to fulfill a contractual obligation that is mentioned in article (11) of the International Covenant”.

#### **Article 14 of the International Covenant on Civil and Political Rights:**

Article 14 of the International Covenant on Civil and Political Rights is considered part of the national laws, and it is permissible to adhere to the rights and guarantees contained therein before the national judiciary. The article goes even beyond what is mentioned in Article 54 of the Constitution and can explain it, as the article includes the following rights:

All people are equal before the courts. It is the right of every individual -1 to take his case to a fair and public hearing by a competent, independent, and impartial court, established by virtue of the law.

Every person accused of committing a crime has the right to be -2 considered innocent until proven guilty by law.

Every defendant is entitled, while hearing his case, to the following -3 minimum guarantees:

To be informed promptly and in details, in a language he (a understands, of the nature and causes of the accusation against him.

To be given sufficient time and facilities to prepare his defense and (b to contact a lawyer of his own choice

To be tried without undue delay, (c

To be tried in his presence and to defend himself in person or (d through a lawyer of his choice. And to be notified of his right in the presence of someone to defend him if he has no lawyer, and for the court to provide him, whenever needed, with a lawyer to defend

him, without charging him for that if he does not have the means to pay this fee.

To discuss the witnesses, personally or through others, and to (e) obtain approval to summon defense witnesses under the same conditions applicable in the case of accusation witnesses.

To be provided with a translator free of charge if he does not (f) understand or speak the language used in the court.

Not to be compelled to testify against himself or to confess guilt. (g)

In the case of juveniles, procedures have to be made suitable for their -4 age and conducive to the need to their rehabilitation.

Every person convicted of a crime has the right to appeal to a higher -5 court.

When a final judgment has been issued against a person convicting him -6 for a crime, and then this judgment was either annulled or a special pardon was issued for him on the basis of a new incident or a newly discovered facts bearing definitive evidence of a judicial error, the person who was punished as a result of that conviction must be compensated, according to the law unless it is proven that he bears, in whole or in part, the responsibility for not disclosing the unknown event in due time.

### **Fifth: Enforced disappearance the most prominent consequence of violating the social contract "Article 54 of the Constitution"**

Enforced disappearance is what is known as the detention of a person by state agencies or agencies connected with it, and denying that detention for a period or just conceal the person permanently. This could happen so that the person's whereabouts remains unknown for days, often up to several months, until he appears in one of the prosecution offices as a defendant.

Although most of the families and lawyers of the detained person send telegrams to the Attorney General and the Minister of Interior, reporting the arrest of a person, and the denial of the Interior ministry, there are no investigations being conducted by the Prosecution regarding what is included in the telegrams. Then the disappeared person usually appears after a period, which may be days or months, and the prosecution ignores the provisions of article 54 of the Constitution, and does not ask the victim or the accused the questions it should ask, which are:

Have you been informed of the accusations against you? -1

Did you sign on the accusations against you from the day you were -2 detained?

Therefore, the Public Prosecution, by neglecting to implement the text of this constitutional article, participates in breaching the contract and opens the door to the crime of enforced disappearance.

How can we believe those who forfeit the contract "Article 54 of the Constitution"? They deny the existence of enforced disappearance, while many of the disappeared persons appeared again, and have been deprived of the implementation of the article, which, if applied, would have eliminated this reprehensible phenomenon.

### **Sixth; “recycling” is another important consequence of violating the social contract**

“The recycling of charges” is when someone finishes his pre-trial detention, which is up to two years, then after the order to release him is made, he finds himself imprisoned again pending a new case. The accusations could include spreading false information which is against the law and also against the logic. Article 54 of the constitution necessitated informing the arrested person of any accusations, it can not be interpreted as not to inform the already detained person of the accusations against him. And when it mentioned the reasons of arrest it meant real valid reasons not fantasies.

### **Seventh: what is the way forward?**

It is not easy for a brief legal research on a constitutional issue to define a way to respect the constitution, because that deviates from the knowledge of law into the political sciences. What is possible is to work on stressing the importance of respecting the constitution as a valuable contract, and document every violation to its articles. Then those violations have to be repeatedly cited and documented during any criminal investigation or pleadings. The constitutional guarantees should be used effectively, regardless of the results. Then appeals should be filed against every law or regulation issued that detracts from or limits those rights and deals with The International Covenant on Political Rights provisions to fill any deficiency with the constitutional provisions or to explain ambiguities in its guarantee or in the complementary laws.