



المركز العربي لاستقلال القضاء والمحاماة
THE ARAB CENTER FOR THE INDEPENDENCE OF
THE JUDICIARY AND THE LEGAL PROFESSION
(ACIJLP)



مؤسسة دعم العدالة
JUSTICE SUPPORT FOUNDATION (JSF)

January 18th, 2024. Cairo.

JSF Round Table discussing Law no.1 of 2024 of Criminal Two-Level Litigation Lawsuits at ACIJLP

Recommendations

The Justice Support Foundation (JSF) affiliated with the Arab Center for the Independence of the Judiciary and Legal Profession (ACIJLP) held a round table of law experts and human rights defenders, Tuesday, 16, 2024, discussing the law amending criminal procedures law in order to implement the right to litigate on two levels in criminal lawsuits approved by the Parliament on the 16th of January 2024.

Attended and spoke at the round table: Professor **Essam Al-Islambouli**, the cassation lawyer and constitutional expert, Mr. **Malek Adly**, the cassation lawyer and director of the Egyptian Center for Economic and Social Rights, and Professor **Hassan Al-Azhari**, the cassation lawyer and director of the Masar Foundation, spoke.

The audience analyzed the government's bill in the context of the standards of the right to a fair trial, and the legally as well as jurisprudentially established principles in the field of criminal justice. The participants agreed that the state of urgency that led to Parliament's prompt approval to the bill fell short of meeting the minimum philosophy of the right to litigation on two levels, and portends many legal and practical problems, especially without due community participation given the importance of this law as one of the complementary laws to the constitution, and also given its relation to the rights of felonies accused citizens to fair trial standards. The round table released a number of recommendations as follows:

First: The legislative amendment of article no.367 did not achieve its desired goal by making criminal cases heard at two levels, as it required appeals to be heard before a higher court, and not a court of the same level as the courts that issued first-instance rulings in order to achieve the goal of reviewing the rulings in favor of the convicted in accordance with the provisions of article no.14 of the International Covenant on Civil and Political Rights.

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Second: The necessity of addressing the absence of the organizational and material structure necessary to enforce the law, including human and administrative cadres, criminal dockets organization, and other necessary aspects, especially with the government negligence to this constitutional entitlement for a full ten years, which portends expected practical problems.

Third: The expected-to-be released law threatens the guarantees of a fair trial, including the law's failure to adhere to procedural legality within the scope of the law's temporal enforcement. Those convicted have the right to benefit from the right of appeal in accordance with article no.96 of the Constitution.

Fourth: Differentiating between those accused of a misdemeanor and those accused of a felony in terms of appealing rulings guarantees since according to article no.119 bis 9, the first-degree felony rulings become effective, although they are not final.

Fifth: Wasting guarantees for appealing rulings in absentia; in article no.419 bis 2, the law grants the Public Prosecution the right to appeal judgments in absentia, which is a provision that contradicts the philosophy of the law, and wastes the rights of the accused, as the convicted in absentia is deprived of his two-level litigation right. And in case of not being acquainted with it, he is completely deprived of the right to a fair trial.

Sixth: Infringement of the guarantee of the right to defence as article no.377 of the law gives lawyers the right to plead before the criminal court of first instance before the level of appeal, despite the seriousness of felony cases and the requirement that defence lawyers have the experience that enables them to carry out their role efficiently, which threatens the situation of the accused. The article also conflicts with the Law on Legal Profession, which limits the right to plead in criminal cases to lawyers registered with a high degree of appeal.

Seventh: The attendees agreed on the need for the Justice Support Foundation at the Arab Center for the Independence of the Judiciary and the Legal Profession to organize a conference in which all parties concerned with justice affairs, the Bar Association and civil society institutions participate in order to avoid the negative effects that will result from this legislation and to propose immediate and urgent solutions to address the absence of societal dialogue that should have preceded the issuance of this legislation by years.