



Questions and Answers around latest changes to the Code of Criminal Procedures

On 11 November, President Abdel Fattah al-Sisi enacted Law 138 of 2014 amending the Code of Criminal Procedures, setting a time limit for investigative judges carrying-out investigations into felonies or misdemeanors. Some have considered this law to be a positive development given the excessive length of time taken to complete criminal investigations and the prolonged periods of preventive detention for defendants in cases of a political nature. However, a closer look at the changes and ongoing practice raises questions about the potential positive consequences of these changes. The Q&A below explains the amendments and their perceived impact on ongoing investigations and criminal cases.

1. What were the main substantive amendments to the Code of Criminal Procedures introduced by Law 138 of 2014?

Before the changes, investigative judges were not required to complete investigations into felonies or misdemeanors within a specific time-frame. Now, Article 66 stipulates that investigative judges should complete their investigations within six months unless the requirements of investigations demand otherwise. In that case, the General Assembly of the Court, which brings together all sitting-judges in First Instance in any given jurisdiction, can extend the investigation by the investigative judge for another six month term. Should the investigative judge fail to complete the investigation in the initial six month period for no justifiable reason or the General Assembly of the Court considers the conditions for extension not to have been met, the latter can mandate a different judge to complete the investigations. The General Assembly of the Court has a lot of discretion in deciding whether investigations require more time, as there are no clear benchmarks or standards stipulated by the law. All this means that investigations by investigative judges can still last for up to a year. This is a welcome change as before the amendments investigations by investigative judges could drag on indefinitely.



2. How are cases referred to investigative judges?

Following amendments to Law 138 of 2014, the Public Prosecution or the Minister of Justice can request from the competent Court of First Instance to delegate a judge to carry-out investigations in a specific criminal case [a role normally played by the Public Prosecution itself]. The General Assembly of the Court would then make a decision at the beginning of the judicial year (October) to delegate investigative judges. Until the decision is taken, the Public Prosecution would continue investigations into the case. The Public Prosecution has the authority to request investigative judges to take over the case at any stage of the investigations.

Before the latest changes, the decision to respond to requests by the Public Prosecution or the Minister of Justice was in the hands of the Presiding Judge of the Court of First Instance and not the entire General Assembly of the Court. Also, the law did not previously stipulate that such decisions should be taken at the beginning of the judicial year. This raises concerns that cases can only be delegated to investigative judges once a year.

Plaintiffs and defendants can also request for a case to be referred to investigative judges for investigation unless the case is brought against police officers or other public officials for crimes committed on duty. This exclusion – in force before and after the latest amendments – provides an additional layer of immunity for public officials, limiting the rights of victims.

3. Do investigations by investigative judges have a higher chance of being thorough, impartial and independent than those by the Public Prosecution?

Yes, in principle. EIPR has long supported the separation of investigative functions from prosecutorial ones, both currently entrusted to the Public Prosecution according to the Egyptian Code of Criminal Procedures and the Constitution. The combination of those roles undermines the impartiality of



fact-finding as public prosecutors have a clear conflict of interest in acting both as litigants prosecuting defendants as well as investigators responsible for collecting all evidence whether it was in the interest of or against the suspects in the case. This flaw is addressed when investigations are carried out by investigative judges, while the prosecutorial decisions fall back on the Public Prosecution. Also, judges have more guarantees of independence than prosecutors.

However, in practice, in the past few years, investigations by investigative judges have not always met the expectations of victims, lawyers and human rights workers in terms of their thoroughness and perceived independence and impartiality. For instance, an investigative judge was entrusted with investigations into the killing of some 50 protesters during the December 2011 Cabinet clashes, but to date the investigations are ongoing and no members of security forces have been referred to trial or convicted.

To be able to play their role effectively, it is crucial to ensure that investigative judges receive appropriate training on how to carry-out investigations including those addressing alleged abuses by public officials, as delegated judges frequently have been sitting-judges for long periods of time without the appropriate tools to carry-out criminal investigations including gathering and cross-referencing evidence, questioning witnesses and ensuring their safety, and mandating relevant experts to confirm the validity of evidence

4. Do the latest amendments mean that preventive detention will be shortened?

No. These amendments do not address preventive detention in any way. Provisions for preventive detention are set-out in Article 143 in the Code of Criminal Procedures, which sets the limits to six months for misdemeanors, 18 months for felonies, and two years for felonies punishable by life imprisonment or the death penalty. Preventive detention is indefinite for those cases where an initial sentence for life imprisonment or the death



penalty was pronounced by a felony court, and the case has been appealed in front of the Court of Cassation, even if the Court of Cassation seized the appeal and sent the case to re-trial.

5. Currently, are any ongoing cases of perceived political nature being investigated by investigative judges?

No, to the best of EIPR's knowledge. Cases that EIPR is following including those involving leaders and supporters of the Muslim Brotherhood and of activists accused of breaching the protest law are all being investigated by either the Public Prosecution, the Military Prosecution or the Supreme Security Prosecution.

6. Are there any time limits prescribed by the law for cases investigated by the Public Prosecution?

No. There continues to be no legal limits placed on the length of time for investigations by the Public Prosecution. Although it is advisable for cases to be referred to court within three months for misdemeanors and five months for felonies as per Article 143 of the Code of Criminal Procedures, no specific legal requirements for prosecutors to complete investigations are set. In fact, prosecutors have a lot of discretion and some cases investigations can drag for years.

7. Does anyone oversee the work of investigative judges?

Investigative judges are subject to the same code of conduct and rules like others judges, but in performing this function they are under the administrative oversight of the General Assembly of the Court which mandated them to carry-out the investigation and which has the role to ensure that their investigations are completed on time. Before this last amendment, the role was solely played by the Presiding Judge of the Court.



8. What will happen to this law once parliament is enacted?

All laws adopted by the President in the absence of parliament like Law 138 of 2014 must be reviewed within 15 days of the enactment of the new parliament. In practice, this means that the new parliament would have little time to thoroughly debate all legislation passed since the dissolution of its predecessor, rendering all such legislation permanent. For that reason, the Constitution stipulated that laws enacted in the absence of parliament must be of an exceptional nature.