
PARTICIPANTS' PAPER

THE ROLE OF THE EGYPTIAN PUBLIC PROSECUTION IN SUPPORTING THE TREATMENT AND REHABILITATION OF OFFENDERS WITH SUBSTANCE USE DISORDERS

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The Egyptian Public Prosecution in general and the Department of International Cooperation, Execution of Sentences, Care of Prisoners and Human Rights at the Office of the Prosecutor General in particular, support the reintegration and rehabilitation of drug users, so that it works to support treatment instead of punishment. This comes through its role as the trustee of the criminal case, and in light of the national strategy of the Egyptian State to confront the drug problem taking into account the recommendations of the United Nations, as the Arab Republic of Egypt is a member of the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988 and one of the first signatories to the Convention on 20 December 1988.¹

The Egyptian Public Prosecution has a societal and preventive role, where the law empowers it to harmonize and appropriate in terms of working to support the treatment of drug users instead of bringing the accused to criminal trial. It also works to propose general policies and plans for the treatment and combating of addiction, which originates from its role as a member of the National Council and the Fund for Combating and Treating Addiction, which will be clarified in more detail, but it must first be clarified: I. What is the Egyptian Public Prosecution, and II. What is the Department of International Cooperation Execution of Sentences and Care for Prisoners and Human Rights?

I. THE EGYPTIAN PUBLIC PROSECUTION

Article 184/¹ of the Constitution of the Arab Republic of Egypt² stipulates that “The judiciary is independent”, and Article 189/¹ added that “The public prosecution is an integral part of the judiciary.”

The Public Prosecution is a branch of the judicial authority, and it is the representative of society, and it acts in the public interest. It seeks to fulfil the obligations of the law and has the powers of investigation, accusation and pleading. It is exclusively competent to file criminal cases and initiate its procedures within the Arab Republic of Egypt before the competent authorities and courts. Its mission ends with the issuance of a final judgment, whether of conviction or innocence. The Prosecutor General of the Arab Republic of Egypt shall, in person or through a member of the Public Prosecution Office, initiate the criminal case as prescribed by law.

In addition, the Public Prosecution supervises prisons, judicial enforcement officers, and other places where criminal judgments are executed or designated for the detention of detainees, by visiting them, examining their books, and contacting any imprisoned therein. As stipulated in Article 27 of the Judicial Authority Law, “The Public Prosecution is responsible for supervising prisons and other places where criminal sentences are executed”.

A. Functions of the Public Prosecution

Being a branch of the judiciary and a pillar of justice, the Public Prosecution is specialized in the following tasks:

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¹ https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=VI-19&chapter=6&clang=_en

² <chrome-extension://efaidnbmninnibpcjpcglclefindmkaj/https://www.sis.gov.eg/UP/Dustor/Dustor-English002.pdf>

- Conducting the preliminary investigation in the criminal case, referring it and following it up before the court.
- Supervising the judicial police officers.
- Supervising the implementation of criminal judgments issued in criminal cases.
- Supervising reform and rehabilitation centres (prisons).
- Monitoring the application of the provisions of the Penal Code in an optimal manner in order to achieve respect and protection of human rights.

II. DEPARTMENT OF INTERNATIONAL COOPERATION, EXECUTION OF SENTENCES, AND CARE OF PRISONERS AND HUMAN RIGHTS IN THE OFFICE OF THE PROSECUTOR GENERAL

The Department of International Cooperation in the Office of the Prosecutor General is concerned with two tasks that are no less important than each other, one related to international cooperation and the other related to the implementation of sentences and the care of prisoners within the Arab Republic of Egypt. We refer to some of them as follows:

A. Competences Related to International Cooperation

- Preparing requests for the extradition or trial of the accused, and those sentenced to conviction who are abroad, in cases of felonies or misdemeanours.
- Issuing international arrest warrants.
- Preparing mutual legal assistance requests to take legal or investigation procedures in a foreign country.
- Representing the Public Prosecution in national, regional and international committees, meetings and conferences.

B. Competences Related to the Implementation of Sentences and the Care of Prisoners within the Arab Republic of Egypt

- Correspondence related to addiction and drug treatment facilities and placement orders therein to take the necessary action in their regard, as well as the decisions issued to release the accused detained in the mentioned facilities; Follow up on addiction and abuse treatment facilities in which detainees are kept and inquire about their recovery.
- Deciding on detainees who committed crimes during the period of placement in addiction and abuse treatment facilities for presentation to the competent court.
- Correspondence related to mental health facilities and orders of placement in them to take the necessary action in this regard, as well as decisions issued to release suspects who are detained in the mentioned facilities.
- Examination and deposit papers for the accused who were afflicted with a psychological or mental illness after the commission of the crime and before sentencing to implement the procedures of placement and follow-up with the mental health facility in which the accused is detained, to inquire about his or her recovery, and to notify the competent prosecution to deal with the case.
- Requests to postpone the execution of the penalty restricting freedom if the convict suffers from a

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psychological or mental disorder before starting the execution.

- Representing the Public Prosecution in the presence of a committee reviewing the justifications and reasons for placing people with mental or mental illness in mental health facilities, as well as those placed in addiction and abuse treatment sanatoriums.
- Competence in everything related to complaints of conditional release at the level of the Republic to consider and examine them and take the necessary actions in this regard.

III. THE ROLE OF THE PUBLIC PROSECUTION IN SUPPORTING TREATMENT AND REHABILITATION

The Public Prosecution believes that treating and following-up on an addict until his or her recovery is an inherent human right. In this regard, the Egyptian Public Prosecution is one of the most important guarantor authorities for the effective enforcement of all international conventions, covenants, instruments and protocols related to the promotion and protection of human rights to which Egypt is a party. The Public Prosecution plays a vital and essential role in taking due criminal measures regarding investigation of the perpetrators and bringing them to criminal trial, while taking all necessary measures to assist and protect the victims – both Egyptians and foreigners – as permitted by law and Egypt's international obligations, taking into account the balance between the requirements of the security of society and the impunity of the perpetrators on one hand, and human rights and the principles of fair trial on the other hand.

The Public Prosecution has a role in working on rehabilitation and integration into society, and it stems from its authority to assess the appropriateness of referring the criminal case to trial or not, and the Public Prosecution has a supervisory role, as in the case of conditional release, in addition to its membership on the committee concerned with supervising those deposited in addiction treatment sanatoriums, adding to that, its role in participating in setting public policy regarding the treatment and combating of addiction and abuse.

The previous items will be covered below.

A. The Role of the Public Prosecution in Working to Rehabilitate and Integrate Drug Abusers into Society

The Public Prosecution in Egypt is the trustee of the criminal case and has the appropriate discretion to refer the criminal case or not. From this point of view, the Public Prosecution works according to this authority to rehabilitate and integrate the abuser back into society, through the following:

The Public Prosecution Office works in cases of drug abuse to inform drug users of their rights and duties and to support their treatment instead of bringing them to criminal trial, by interrogating them as patients and not as suspects and encouraging them to speak and express their desire for treatment. When expressing a desire for treatment, no criminal case shall be instituted against them, and in this case the drug user will remain under treatment in one of the sanatoriums established for this purpose to receive medical, psychological and social treatment until the committee decides otherwise, which has been stipulated in Article 37 bis (a) of the amended Law No. 182 of 1960 regarding drug control and regulation use and trade thereof.

It is clear from the foregoing that the Public Prosecution has the power not to file a criminal case against a drug user in the event that he expresses a desire for treatment, as the Public Prosecution is keen to support treatment instead of punishment, because treatment is more beneficial for the drug user and to society than punishment.

B. The Role of the Public Prosecution in Conditional Release

Conditional release means the release of a person sentenced to a penalty that restricts the person's freedom before the expiration of the entire period of the sentence, subject to conditions represented in obligations imposed on the person and restricting the freedom, and this freedom depends on the fulfilment of those obligations.

In this sense, the conditional release is not considered an end to the sentence, but rather a mere modification of the method of its implementation, in that the convict who is finally sentenced to a custodial sentence is released if part of the term of the sentence imposed is spent and certain conditions specified by the law are fulfilled and there is no danger to public security from the person's release.

A conditional release does not turn into a final release unless the remaining period of the sentence expires without being cancelled. It is not a right for the convict, but rather a discretionary decision for the authority authorized by the law to issue it, which is the Director General of Prisons.

The Public Prosecution is not the authority to issue the conditional release, but it is the one that works to supervise its cancellation or not, in the event that the convict violates the conditions of the conditional release, as stipulated in Article 59/1 of the Prisons Regulation Law No. 396 of 1956, "If the released person violates the conditions set for release and does not fulfil the duties imposed on him / her, he / she will be returned to prison to complete the remaining period of the sentence imposed".

The Public Prosecution, if the prison administration is able to request the cancellation of the conditional release, may refuse the cancellation if it finds out that the convicted person did not violate the requirements of the conditional release.

It should be noted that the Department of International Cooperation and Human Rights in the Office of the Prosecutor General is the one concerned with everything related to complaints of conditional release at the level of the Republic to consider, examine and take the necessary action in this regard.

IV. SUPERVISING COMMITTEE FOR THOSE DEPOSITED IN ADDICTION SANATORIUMS

The aforementioned drug control law, pursuant to Article 37, established a committee specialized in supervising those admitted to addiction treatment sanatoriums, and the formation of the committee was specified in Article 37 bis thereof, which states: "The committee shall be formed in each governorate headed by at least one counsellor at the Court of Appeal and a representative of the Public Prosecution Office at least with the rank of Chief Prosecutor and representatives of the Ministries of Health, Interior, Defense and Social Affairs". The formation of these committees and the determination of their terms of reference and the system of work for them shall be issued by a decision of the Minister of Justice.

The committee performs the following tasks:

- The committee receives requests for treatment from a drug user, his or her spouse, one of his or her ascendants, or one of his or her descendants.
- The committee decides on the request after examining it and hearing the statements of the concerned parties, and it may request the Public Prosecution to investigate the request and provide it with a memorandum of its opinion.
- The release of the detainee after his/ her recovery.
- If the committee finds that detention is useless, or the maximum period prescribed for it expires before the convict is cured, or if the detainee violates the duties imposed, or if the detainee commits any crimes during the term of detention, the aforementioned committee shall refer the matter to the court, through the Public Prosecution, by requesting the ruling to cancel the stay of execution.

A. The Role of the Public Prosecution in the Supervising Committee for Those Placed in Addiction Sanatoriums

The Public Prosecution Office is represented, according to the law, in the supervising committee for those placed in addiction sanatoriums through the Department of International Cooperation and Human Rights in the Office of the Public Prosecutor.

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The Public Prosecution has an important role in the aforementioned committee, which is represented as follows:

- Supervising the implementation of sentences in general is an inherent competence of the Public Prosecution, which is the one that supervises, and since placing the drug user in sanatoriums is considered a modification of the method of implementation, so the public prosecution supervises it, which works to reduce the period spent by the convict in the sanatorium.
- If a drug abuser, his or her spouse, one of his or her ascendants, or one of his or her descendants submits to the committee a request to receive treatment, the committee shall decide on the request after examining it and hearing the statements of the concerned parties. It may request the Public Prosecution to investigate this request and provide it with a memorandum of its opinion and, after fulfilling the necessary requirements, order that there are no grounds for filing a criminal case against the drug user, and raise the opinion of the committee to place him or her in one of the treatment sanatoriums to receive medical, psychological and social treatment, as it is more beneficial for the drug user and to the society instead of punishment.
- If the drug user commits a crime during his or her placement, the Committee raises the matter to the court through the Public Prosecution, requesting a ruling to cancel the stay of execution.
- The Public Prosecution works to preserve all data related to the treatment of addicts or drug users, which reaches the knowledge of those in charge of it, as it is secret and those who divulge it are punished with a prison sentence.

The role of the Public Prosecution does not stop there; rather, the Public Prosecution has a role in setting policies related to abuse and combating addiction, through its membership in the Fund for Combating and Treating Addiction and Abuse, which was established under Article 37 bis (d) of the Drug Control Law, which stipulates that “a special fund is established to combat and treat addiction and abuse shall have a legal personality, and a decree of the President of the Republic shall issue its organization, affiliation, financing, and competence, based on a proposal by the National Council for Combating and Treating Addiction, among its competences shall be the establishment of sanatoriums and treatment homes for addicts and drug abusers”. Also, among its resources are the fines adjudicated in the crimes stipulated in this law and the funds that are ordered to be confiscated.

V. FUND FOR COMBATING AND TREATING ADDICTION AND ABUSE

The Fund was established in 1991 based on Presidential Decree No. 46 of 1991 in implementation of what was stipulated in Amended Law 182 of 1960 regarding combating drugs and regulating their use and trafficking. The Fund works to confront the phenomenon through programmes and mechanisms that seek to besiege all its manifestations and pursue all developments that occur in its context in order to prevent Egyptian youth from falling into the clutches of drugs and protecting them from slipping into them and extending a helping hand to those among them who fall into addiction to return to it healthy and participating in the development of the community.

The Public Prosecution is one of the members of the Board of Directors of the Fund, along with several ministries and stakeholders, and the Public Prosecution is represented by a member of the Department of International Cooperation and Human Rights in the Office of the Prosecutor General.

The Fund follows a holistic, balanced and effective approach that combines prevention, treatment and full recovery efforts, as well as appropriate smart measures to reintegrate the recovered into society again through economic empowerment mechanisms.

The Fund's efforts, within the framework of its endeavour to achieve its objectives and principles, are concerned with the following activities:

- Developing and implementing general and specific policies in the field of combating and treating addiction.
- Developing the legislative system and building a knowledge base on the drug issue, while drawing up an integrated programme for evaluation and follow-up.
- Implementation of programmes and activities to prevent smoking and drugs, and to prepare young people and enable them to fight against smoking and drugs.
- Supporting the role of educational curricula for preventing smoking and addiction, by including an educational component that aims to do so.
- Availability, provision and support of free treatment and rehabilitation services for addicts, in cooperation with the concerned partners.
- The fund is based on a number of basic work principles, the most important of which is the involvement of youth and activating their role in prevention efforts.
- Focusing on the family as a basic input to protect young people from smoking and drugs, and supporting the role of the family in that, and relying on community dialogue.
- Mobilizing the efforts of the concerned authorities and its main partners such as the Ministries of Health, Justice, Interior, Education and other ministries, as well as civil society organizations concerned in this regard, in a way that can enhance the Egyptian initiative in this regard.

The Fund has an executive work in dealing with addicts, which is represented by operating a hotline numbered 1623, on which a specialist in prevention and treatment is present 24 hours a day, to consult with the addict and refer him or her directly to one of the hospitals of the Ministry of Health for free treatment without revealing any secrets related to addicts, and the Fund pays the fees of the treatment without notifying the addict of that, and the Fund has expanded in dealing with hospitals that have treatment departments, and has helped increase the number of families for addiction treatment in most government hospitals.

VI. THE ROLE OF THE PUBLIC PROSECUTION IN PROMOTING THE FIELD OF CRIMINAL JUSTICE FOR CHILDREN

Within the framework of the Public Prosecution's desire to activate the texts of laws related to criminal justice for children contained in the constitution and the international laws, conventions and covenants to which Egypt is a party, the Egyptian Public Prosecution Office signed a memorandum of understanding with the United Nations Children's Fund. In the context of this cooperation, a manual was developed to protect the rights of child victims and witnesses of crimes, as well as a manual for the application of restorative justice for children in contact with the law based on regional and international practices.

The Office of the Public Prosecutor continued to support this process by issuing binding instructions with the aim of activating the role assigned to members of the Public Prosecution Office in applying the restorative justice system and periodic follow-up on places of activating alternative measures to detention and places of detention.

VII. CONCLUSION

In the end, drug users are perpetrators of a crime in the first place, but criminal justice requires treatment for them, and it is important to direct attention to treatment rather than punishment, as punishment in itself may not be a means of deterrence that achieves its purpose, since imprisonment in itself is ineffective.

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Treatment may even create an opportunity to work to promote recovery from these disorders and reduce the criminal behaviour associated with them.

It should be noted that the same approach is being followed in Egypt according to what has been stipulated in Article 37 bis (a) of the amended Law No. 182 of 1960 regarding drug control and regulation of use and trade thereof.