

# Protests at amendment 179

The amendment to Article 179 of the constitution has provoked a storm of controversy among legal experts and human rights activists, as **Gihan Shahine** explains

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Among the various amendments to the constitution introduced this week, none has provoked more controversy among legal experts and human rights activists than the amendment to Article 179, which is related to the new terrorism law slated to replace the current emergency law.

The amendment, which stipulates that, "the state will assume responsibility for safeguarding security and public order in the face of the dangers of terrorism" implies that suspects can be arrested, investigated and monitored without judicial supervision, approval or warrants.

This means, legal experts say, that anyone can be subject to arrest at any time, which constitutes, at best, a massive clampdown on personal freedoms and civil rights.

The new amendment also empowers "the president of the republic... to refer any terrorist crime to any of the judicial authorities stated in the constitution or in the law," which means that suspects may be denied the constitutional rights that go with appearing before a civilian court, and that they may instead be referred to a military or emergency court. In the latter, suspects do not usually have access to a lawyer, apart from during the trial procedure itself.

The amendment to Article 179 of the constitution would, experts say, embed the current emergency law, in place since 1981, in the constitution itself. More alarming still is the fact that the article in question in its amended version also impedes the application of articles 41 and 44 of the constitution, as well as the second paragraph of Article 45, all of which safeguard personal freedoms.

Mohamed Hamed El-Gamal, former president of the State Council, is highly critical of the amendment to Article 179, which, he says, "will make Egypt a large prison expanding from Alexandria to Aswan, in which people live at the mercy of a single individual and the executive authority".

A "real clampdown on personal freedoms," is how Ahmed Kamal Abul-Magd, secretary-general of the state-affiliated National Council for Human Rights, describes the amended article, saying that "it denies people their constitutional right to a fair trial."

Yehia El-Gamal, professor of constitutional law at Cairo University, is similarly alarmed, describing the amendment as "a crime" that will turn Egypt into "a police state in which citizens are held accountable for their intentions and not for any actual crimes of terrorism," since the article does not define what constitutes a terrorist crime.

El-Gamal added that the new amendment contradicted principles of human rights enshrined both in international law and in articles 41, 44 and 45 of the constitution.

"Those articles, drafted in the era of former president Anwar El-Sadat, stipulate that no one should be penalised except by the power of law, making judicial warrants mandatory in cases

of arrest, search, or being put under surveillance or having a telephone tapped," El-Gamal said.

The amendment also contradicts a whole chapter in the constitution on the sovereignty of law, which gives every citizen the right to appear before a civil court and not to be referred to a military or emergency court, he said.

However, in a lengthy interview with the Egyptian press, speaker of the People's Assembly Fathi Sorour asserted that the amendment to Article 179 of the constitution was meant to deal only with crimes of terrorism and not with any other crimes. He also made it clear that the article would only be invoked in "cases of necessity".

"It [the amendment to Article 179] is slated to strike a balance between safeguarding national security and public order on the one hand and protecting personal rights and freedoms on the other," Sorour said.

However, he conceded that there could be exceptional cases in which restrictions needed to be imposed on personal freedoms in order to guarantee state security and public order, as is the case in most other countries.

Sorour also said that the fact that this article overrode measures contained in articles 41, 44, and the second paragraph of Article 45, was meant to ensure that flexibility and speed could be attained in emergency situations. A judicial warrant would be obtained after arrest in emergency cases, such as terror attacks, again to achieve flexibility and speed. Sorour insisted that judicial supervision would never be simply ignored.

However, El-Gamal rejects claims that the amendment to Article 179 would only be used to fight terrorism, since this is not clearly stated. Many experts similarly argue that while the country's emergency law was originally designed to fight terrorism, it has been widely used to clampdown on political activists and demonstrators, while failing to achieve its primary role of curbing terror attacks.

Many reports, including a recent US report on human rights, have revealed how the emergency law has been used to arrest hundreds of individuals, including peaceful demonstrators, members of the outlawed Muslim Brotherhood, and Internet bloggers, without charge and without access to lawyers prior to trial.

Many such detainees may also be referred to an emergency or military court in which they do not receive many of their constitutional protections, as provided by the civilian judicial system.

Under the emergency law, the US report said, the security agencies are allowed to place political activists, suspected subversives, journalists, foreigners and writers under surveillance, and to screen their correspondence, search them and their homes and confiscate personal property without warrants. The emergency law has also imposed restrictions on freedom of assembly and allowed for the detention of protesters.

"The problem with the new amendments is that they make the state of emergency constitutional, depriving people of any legal means to defend themselves," El-Gamal says.

This, according to human rights activist Negad El-Boraai, is "unprecedented, having never occurred in any other country... It makes it possible for anyone to get arrested and detained for two months without being sent for prosecution," he said.

Tharwat Badawi, professor of constitutional law at Cairo University, also said that the only way to fight terrorist crimes is to define them in such a way that they are distinct from ordinary crimes. However, such a definition is now unlikely, he says.

For his part, El-Gamal expects that the new amendments to the constitution will have the effect of embarrassing Egypt before the international community, possibly for violating international treaties.

The human rights group Amnesty International for one has already criticised the proposed constitutional changes as the most "serious undermining of the people's rights in 26 years."

"Amnesty International recognises the threat posed to Egypt by terrorism, but respect for and protection of fundamental human rights cannot simply be swept away by a majority vote," said Hassiba Hadj Sahraoui, Amnesty's deputy director for the Middle East and North Africa.

Instead of "putting an end to the secret detentions, enforced 'disappearances', torture and unfair trials before emergency and military courts, Egyptian MPs are now being asked to sign away even the constitutional protections against such human-rights violations," she said.

The amendments, El-Gamal said, could also "spark domestic unrest," warning that "there will be no hope for people to get out of this police state except by means of a bloody demonstration, which is likely to occur in the near future."