The Criminal Justice System in Qatar and Protection of Human Rights: Ambitions and Realities

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Abstract:

In this article, I study the criminal justice system in Qatar to determine to what extent the human rights in the various phases of the criminal procedure process Are respected. Does this system observe the international standards for preserving human rights? Are the various organs of the criminal justice system performing their roles in the criminal procedure process in line with the safeguards of due process of law? What are the ambitions of the authorities and what is the reality? What are the defects and how can they be remedied? These are some of the questions raised in this article that tends to trace the positive and negative aspects of the functions of the criminal justice system in regard to the recognized standards of human rights. As a conclusion, this study sets out the defects and flaws that render the criminal system less respecting for human right. Further, the study ends up with important recommendations with the aim of improving the performance of the Qatari Criminal System with regard to human rihgts.

1. Introduction

In spite of its recent history, the state of Qatar could assure for itself a prominent place in the world. Since it gained independence in 1971, the Qatari authorities were not satisfied with a modest place despite the recent establishment of the state. On the contrary, they rushed to create a legal environment in which the rule of law prevails, and without which it could not attain its ambitions.

In fact, the Qatari authorities planned to have the most recent legislation conforming to the most recent legal developments in the world. Qatar gave special attention to the protection of human rights. When it comes to the criminal procedure law, Qatar enacted a law in 2004 (No 23), to reflect the most recent trends in comparative law concerning the protection of human rights.

It is true that the criminal law, whether it is the penal law or criminal procedure, is the mirror that reflects the extent of respect for human rights in any society as well as the commitment of the authorities to a democratic system(1).

In this regard, the state of human rights in Qatar is determined by two importlant considerations; first, Qatar is a small state whose legal system is based on traditions in addition to law. Second, Qatar is an Islamic state influenced by Islamic law in many aspects especially in the domain of the crimes of Hodood (those crimes are the principal crimes punished by Islamic Law).

Nevertheless, Qatar vowed to be a modern state adopting the international standards for protecting human rights through the enactment of one of the most recent penal codes, which was promulgated in 2004/ 11 and the criminal procedure code promulgated in 2004 / 23.

2- Protecting Human Rights by Limiting the Police Powers during Criminal Investigation;

The Qatari criminal law guards against many forms of violations of human rights that could be committed in the stage of investigation by the police. To achieve this goal, the Qatari legislature adopted the following provisions;

2-1-Supervision of the Public Prosecution during the Investigation;

While performing the criminal investigation, the police in Qatar are under the supervision of the Public Prosecution in accordance with Art.

(1) BASSIOUNI, M. CHERIF, THE PROTECTION OF HUMAN RIGHTS AND THE ADMINISTRATION OF CRIMINAL JUSTICE, Denver Journal of International Law and Policy 1995(615).

(28) of the Criminal Procedure Code. Then the police officer is placed under both the dependence of the Ministry of Interior and the Public Prosecution. This double dependency makes the police officer accountable to the Ministry of Interior without denying the authority of the Public Prosecution to solicit the Ministry of Interior to impose a disciplinary sanction for misconduct committed by him.

Undoubtedly, this shows how the Qatari law respects human rights in accordance with the internationally adopted standards. In fact, many legislation created a special Judicial Police administration as an independent unit from the ministry of interior to be hierarchally dependent of the ministry of justice such as the French law (Art.14 of the Criminal Procedure Code). In fact, according to the French law, the attorney general has the power to evaluate the performance of judicial police, hence the promotion of its members. In spite of the subordination of the police in France to the Ministry of Interior, the administration of judicial police has its autonomy within the national direction of the police(2).

Similarly, the Tunisian law has the advantage of giving the judicial police certain autonomy and placing it under the hierarchy of the Ministry of justice, namely the attorney general (Art. 10 of Criminal Procedure Code). It is obvious that the establishment of such an independent unit constitutes an important step toward observance of human rights in this important stage of the criminal procedure process and the task of the police in respecting individual liberties.

2-2-A warrant or Flagrante Delicto is required for the Arrest and Search for Offences;

Contrary to many laws, the Qatari law requires a warrant or a flagrante delicto for the arrest and search of persons and premises.

While the Kuwaiti Criminal Procedure Law (K.C.P.) authorizes the police to arrest the suspect in cases other than the flagrante delicto and without warrant, the Qatari Criminal Law excludes this power. In fact, Art. (54) of the Kuwaiti law provides that "The police may arrest the

(2) Gildas ROUSSEL, Police judiciaire, septembre 2014 (actualisation: janvier 2016) Répertoire de droit pénal et de procédure pénale, www.Dalloz.fr/documentation

suspect in the following cases: First, if he is accused of committing a felony with enough presumptions against him. Second, if he is accused of committing one of the following misdemeanors: resisting or obstructing a public officer while in performing his duties, theft, concealing stolen goods, fraud, aggravated assault and illegal detention of weapons. Third, if the person escaped from legal order of arrest issued against him." In addition, the Kuwaiti law permits the arrest without flagrante delicto and without warrant of the person accused of an offence punishable by imprisonment if he has no known residence and if he refuses to give his name and address (Art. 55 K.C.P.).

The same powers of public officers are adopted by other legislations such as the Criminal Procedure Law in United Arab Emirates. This law gives judicial officers the right to arrest persons without flagrante delicto and without a warrant in case of accusation for felonies and for certain misdemeanors such as theft, fraud, breach of trust and resistance of a public officer in addition to escaping from a legal order of arrest. If there is probable cause for the police officer to believe that the suspect has committed one of these crimes, he is then authorized to arrest the suspect (Art. 45).

However, the Qatari legislation has not followed many American and European laws that allow arrest and search of the suspect on ground of probable cause, as is the case in the American law(3) and the English law(4). In fact, the Fourth Amendment to the American constitution allows for arrest as well as searches on ground of plausible cause(5). That is English and American courts content themselves with the existence of the plausible cause in order to allow the police to exercise its power of arrest, since this arrest was recognized by common law(6). Furthermore,

(3) United States v. Watson, 423 U.S. 411 (1976). See also United States v. Santana, 427 U.S. 38, (1976).

(4) MARC L. MILLER, Criminal Procedures, Casese, Statutes and Executive Materials, Wolters Kluwer, 2007, Third Edition, p.319; See Devenpeck v. Alford, 543 U.S. 146 (2004).

(5) Ex parte Burford, 7 U.S. (3 Cr.) 448 (1806); Giordenello v. United States, 357 U.S. 480, 485- 86 (1958); United States v. Watson, 423 U.S. 411, 416-18 (1976); Payton v. New York, 445 U.S. 573, 583-86 (1980); Steagald v. United States, 451 U.S. 204, 211-13 (1981).

(6) 1 J. STEPHEN, A HISTORY OF THE CRIMINAL LAW OF ENGLAND 193 (1883). At common law warrantless arrest was also permissible for some misdemeanors not involving a breach of the peace. See the lengthy historical treatment in Atwater v. City of Lago Vista, 532 U.S. 318, 326-45 (2001).

the American and the English laws have extended the power of the police to arrest the persons in terrorism cases upon the existence of reasonable doubts. For instance, the Serious Organized Crime and Police Act of 2005 in England allowed an arrest without warrant on reasonable grounds that a person is about to or is in the act of committing an offence, or anyone they have reasonable grounds to suspect of committing or being about to commit an offence. They may also arrest anyone the police have reasonable grounds to believe is guilty of an offence they suspect has been committed. These powers to arrest apply only if one or more of the following reasons are met:

1 - To enable the name of the person in question to be ascertained (in the case where the constable does not know, and cannot readily ascertain, the person’s name, or has reasonable grounds for doubting whether a name given by the person as his name is his "real name")
2 - As reason (1) but in respect to the person’s address.
3 - To prevent the person in question from:
    - Causing physical injury to themselves or any other person
    - o Suffering physical injury
    - o Causing loss of or damage to property
    - o Committing an offence against public decency (but only where members of the public going about their normal business cannot reasonably be expected to avoid the person in question)
    - o Causing an unlawful obstruction of the highway
4 - To protect a child or other vulnerable persons from the person being arrested
5 - To allow the prompt and effective investigation of the offence or of the conduct of the person being arrested
6 - To prevent any prosecution for the offence from being hindered by the disappearance of the person being arrested

This perspective is obviously meant to protect public order and security. However, it runs contrary to human rights since it provides police officers with the power of arrest and search without warrant and without the existence of flagrante delicto. The margin of discretion left to the police officers is certainly arbitrary.

Under the English law on terrorism of 2000, amended in 2003 and 2006, the police may arrest a person suspected of terrorism for up to 7 days (section 41).

Under Schedule 8 of the Terrorism Act 2000, the detention of a terrorist suspect may be increased upon application of a warrant for further detention by a Crown Prosecutor (England & Wales), The Director of Public Prosecutions (NI), the Lord Advocate or procurator fiscal (Scotland), or a Police Superintendent (any part of the United Kingdom)(7).

In 2004, the House of Lords had previously ruled that indefinite detention of foreign terrorism suspects under section 23 of the Anti-Terrorism Crime and Security Act 2001 violated the Human Rights Act and the European Convention on Human Rights(8).

Similarly, the American law called the "Patriot Act" permitted indefinite detention of immigrants (section 412) and President Obama signed into law the National Defense Authorization Act of 2014 in December 26, 2013, permitting this kind of arrest and detention in spite of efforts to ban this power because of its violation of human rights(9).

On the contrary, while the Qatari legislature has enacted special laws on terrorism, namely the law No. 3/ 2004, it did not widen the power of the police to arrest persons upon suspicion.

In this respect, the Qatari law No. 3 of 2004 on Fighting Terrorism did not give police officers any more powers in arrest or search than the general rules allowed in ordinary situations. That is to say, in order to arrest a terrorist or search him, there must be a warrant or a flagrante delicto.

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(7) https://www.liberty-human-rights.org.uk/human-rights/countering- terrorism/extended-pre-charge-detention

(8) Mark Elliott, United Kingdom: The " war on terror, " U.K.-style - The detention and deportation of suspected terrorists, 2010. Oxford University Press and New York University School of Law, p.133

(9) http://www.salon.com/2013/12/27/obama_signs_ndaa_2014_indefinite_detention_re mains/; http://www.thenewamerican.com/usnews/congress/item/17248-ted-cruz- indefinite-detention-retained-in-ndaa-2014

Regarding the length of detention in case of a terrorist charge, the Qatari Law did not opt for a derogation to the general rule governing the arrest and the search of a terrorist. The Qatari legislature was not affected by the general trend in favor of extending the time of arrest of suspected terrorists by the police.

Nevertheless, the Qatari Law on Fighting Terrorism No. 2 (2004) allowed the Public Prosecution to detain the accused on remand for a period of 15 days renewable one or more times and not exceeding 6 months (Art. 18) except by order of the court hearing the case.

Unlike the English law called the Criminal Justice Act of 2003 and the Terrorism Act of 2006, the Qatari law followed the general rules giving the police officer only 24 hours of arrest before presenting the suspect to the Public Prosecution.

2-3- Restricted Duration of Arrest by the Police in the Qatari Law;

The Qatari legislator has the authority to restrict the power of the police to arrest the suspect in flagrante delicto for a period of 24 hours, after which the suspect must be presented to Public Prosecution. The latter has the duty to interrogate the defendant within another 24 hours; otherwise, the defendant must be released (Art. 43). This maximum duration for the police and for the Public Prosecution is obviously shorter than the duration adopted by many other laws such as the French or the British laws.

2-4- Delegation of Power to Investigate is Restricted;

Being of vital importance because it can lead to confession, interrogation according to Qatari law is the exclusive privilege of the Public Prosecution. That is why Art. (68) of Criminal Procedure law prevents the Public Prosecution from delegating its power of investigation to the police. On the contrary, delegation of the power to make a search of persons or premises and to arrest persons may be given by the Public prosecution to the police. It is clear that these provisions are designed in the interest of individual liberty and protection of private life.

2-5- The Administrative Detention as a Violation of Human Rights;

Although the Qatari law offers multiple safeguards in protecting human rights, it did however adopt the idea of administrative detention.

Under the Qatari law No. 17/2002 on the Protection of Society, the Minister of Interior is authorized to arrest and detain any suspect of a crime against the security of the State or against public decency on grounds of plausible reasons. This detention is ordered for a period of two weeks, renewable for many times not exceeding 6 months, except for another period of 6 months with the approval of the prime minister. This period is doubled in case of a charge against the security of the State.

In addition, the minister of interior may order the closure of premises used for the commission of the previous crimes (Art. 5). Nevertheless, the previous law enabled the suspect to petition against the decision of the minister to arrest and detain the suspect or to close the premises. This petition may be made to the cabinet. It is clear that this sort of petition does not constitute a judicial review and hence the due process of law is not guaranteed. The fact that the minister of interior and not a judicial officer has the power to arrest and detain the suspect on grounds of suspicion and that the suspect does not enjoy the right to appeal shows the limits of protection of human rights in the Qatari law.

The detention of foreigners awaiting deportation is not regulated in a satisfying way in Qatari Law. The time limit required for administrative deportation must be fixed and the deportee shlould have the right to appeal against the decision of deportation before the court. This right of appeal is lacking in Qatari Law. Conversely, many comparative legislations provide for this right such as the English Law. Furthermore, the House of Lords held, in A. Secretary of State for the Home Department (2004), that the Anti- terrorism Crime and Security Act 2001 was incompatible with the Human Rights Act 1998 Sec. 1 Part 1 Art. 5 and Art. 14 in so far as it permitted the detention of suspected international terrorists on grounds of nationality[(10)]. For the House of Lords, this measure was discriminatory for it would apply to the aliens not the nationals. Nevertheless, the European Court of Human Rights reversed this decision - in A. and Others v. the United Kingdom,.confirming that the state has the right to detain the aliens whose stay represents a threat to national security[(11)].

(10)) A. Secretary of State for the Home Department (2004) UKHL 56; (2005) 2 W.L.R.87.

(11) European Court of Human Rights, A. and Others v. the United Kingdom (Application no. 3455/05), STRASBOURG, 19 February 2009.

Furthemore, the House of Lords held, in MT (Algeria) v. Secretary of State for the Home Department (2009), that the deportation of aliens was not allowed if there was a substantial risk that the alien would face unfair trial in his country[(12)].

2-6- Rules of Search and Human Rights:

The Qatari Criminal Procedure law adopted some rules that are consistent with the recognized rules of due process of law such as: prohibition of search at night and designing special rules for the search of houses, as follows;

2-7- Special Respect for Search of Houses:

The Qatari Criminal Procedure law paid special attention to the search of houses in cases of flagrante delicto. First, the flagrante delicto justifies the search of premises but within respect of traditions. For instance, if there were veiled women at home and they were not involved in the search, a warning must be issued in order to enable them to hide or to leave the place without prejudice to the search (Art. 55). Second, the search of houses is only permitted for serious crimes. These crimes are the offenses against the internal and external security of the State, terrorism, murder, illegal detention of weapons and drug dealing (Art. 50). So, public officers are not allowed to search the houses in cases of flagrante delicto outside these offenses. This stance of the Qatari law runs contrary to what is adopted by the Kuwaiti Law and the law of the United Arab Emirates that do not differentiate between offenses with regard to searching houses in flagrante delicto. Nevertheless, the public prosecution is not bound by this restriction; a warrant can be issued for searching a house for any felony or misdemeanor (Art. 75).

2-8-Consent to House Searches:

The Qatari Criminal Procedure law adopted a special and unique position when it did not validate the search of premises on the sole condition of consent of the person. In this respect, Art. 52 provides that the search of persons and of premises with the consent of the person may

(12) in MT (Algeria) v. Secretary of State for the Home Department (2009) UKHL 10; (2010) 2 A.C.110; (2009) 2 W.L.R 512; (2009) 4 ALL ER 1045; (2009) H.R.L.R. 17.

be permitted on condition that consent is written, given before the search and with the full knowledge of the defendants of the charge. The search is illegal without their consent.

These previous conditions of consent to search, whether search of persons or premises, constitute important safeguards not known to many Gulf laws. In fact, these safeguards are lacking in the Kuwaiti Criminal Procedure law (Nº 17/1960), in the law of Criminal Procedure of Arab Emirates (Nº 35/1992) and in Bahraini law of Criminal Procedure (Nº 46/ 2002). Neither the French law of Criminal Procedure (of 2 mars 1959 amended) nor the Egyptian law (Criminal procedure Law Nº 150/1950) knew this guarantee for the protection of private life.

In fact, these safeguards are important for the consent to be efficient in order to prevent eventual abuse from the police while searching persons or premises. Any suspicion of coercion or pressure would be in this way averted.

2-9- Prohibition of Search at night:

The Qatari Criminal Procedure Code elected to prohibit search of houses during the night to protect the right of privacy. This right is a real sign of respect for the inhabited premises. Art. (53) of the Qatari Criminal Procedure provides that "Search of houses is not allowed during night except in case of flagrante delicto or when justified by the interest of investigation. In this case, this must be mentioned in the investigation record".

This respect for inhabited premises is supported by the Qatari Constitution. Article (36) of the Constitution provides that "Individual liberty is guaranteed Arrest, deprivation of liberty and search, restriction on the persons' liberty of movement Are not allowed except according to the law." Hence Article (53) of the Qatari Criminal Code requires that search of inhabited premises should occur in daytime except in case of flagrante delicto and when the interest of the investigation requires. In this case, the investigation record should mention the reasons for the search of these premises at night; otherwise, the procedure will be null and void. This is what the Qatari Court of Cassation ruled in its decision 166/2013. The court reversed the decision of the Court of Appeal considering performing search in daytime a substantial condition, and hence requiring the judicial police and the Public Prosecution to state the reasons for the search of premises at night. In the view of the Court, this defense from the defendant was considered substantial and hence should have been examined before being accepted or denied by the court hearing the case. The Qatari Court of Cassation considered that it was not sufficient for the trial court to assert that considering the necessity of the search at night was a question left to the discretionary power of the court(13).

2-10-Search of Women:

The Qatari law adopts special rules governing the search of women in order to pay respect to their dignity. In fact, Art. (48) of the Criminal Procedure Code provides that when a woman is subject to search, she may not be searched except by a woman. The breach of this provision causes the procedure to be invalid. The evidence collected by this kind of search is illegal and may not be a ground for conviction.

2-11-Right to a lawyer during investigation by the police;

The Qatari law of the Criminal Procedure does not provide for equivalent guarantee, similar to Miranda Warnings in the American Law(14). Therefore, the confession expressed by the defendant during interrogations by the police without being advised of his right to a lawyer is admissible in court. In this regard, the Qatari law is still following the old tradition of considering the phase of police investigation as a secret phase. It gave the suspect the right to accompany his lawyer, but in the event when the suspect has no lawyer, the police has no duty to appoint one for him. Nor are the police obligated to give him the Miranda Warnings that he has the right to remain silent until his lawyer arrives and that he has the right to a lawyer of his election otherwise the police will appoint one for him. The Qatari law does not provide for the minimum guarantee that the police enable the suspect and his agent to be present during investigation. In this regard, Article (34) provides that the suspect and his agent, in addition to the victim, have the right to be present during the procedure before the police officer. Besides, Art. (40) of Qatari Criminal Code provides that the police officer arresting the

(13) Decision of the Qatari Court of Cassation nº 166 /2013, dated 4 November 2013.
(14) Miranda v. Arizona, 384U.S.436 (1966):

suspect must alert him of his right to remain silent and to contact any person of his election. These provisions are not sufficient to guarantee the right of the suspect to the assistance of a lawyer as long as the breach of these provisions does not give rise to the nullity of evidence.A change in the Qatari law is warranted.

3- Protection of Human Rights during the Phase of Prosecution;

The Qatari criminal system seems to respect the general safeguards of due process of law in the phase of prosecution by the Public Prosecution. However, some gaps and omissions in the Qatari Criminal Procedure law will be addressed below.

3-1- Impartiality of the Investigative Authority;

The Public Prosecution, as an investigative authority in Qatar, is the only authority authorized to exercise public action in the investigatory phase as well as in the trial phase. The Qatari law has the advantage of giving the Public Prosecution the monopoly of public action exclusively of any other authority. In doing so, the Qatari law has adopted a different stance from that of the Kuwaiti law that gives the Administration of Investigation and Accusation, a branch of Ministry of Interior, jurisdiction over the prosecution of misdemeanors.

The Public Prosecution has the advantage of being independent Vis-a Vis the Ministry of Justice. The Public Prosecution in Qatar is in fact an independent entity that is accountable directly to the Emir of Qatar. This status of the Public Prosecution helps to protect human rights more that when it is a dependent branch of the Ministry of Justice.

It is true that Public Prosecution in many countries such as France, U.K and the United States, is placed under the hierarchy of a Ministry of Justice. However, the Public Prosecution in these countries is not the original investigative authority since there is a grand jury composed of a jury (in US)[(15)] and the Committal Proceedings and the Crown Court composed of judges(in UK)[(16)] who are empowered to conduct the criminal investigation.

(15) MARC L. MILLER, Supra nº 3, p. 968.

(16) DANIELE E. HALL, J.D. Ed. D., Criminal Law and Procedure, Delmar Cengage Learning, 2012, p.492.

Jurists admit that the establishment of jurisdiction of investigation will ensure the rights of the defendant. It is obvious that the independence of this body is a component of the impartiality of investigation(17). So, I recommend that the Qatari lawmakers entrust judges with the mission of investigating the criminal cases, thus the Public Prosecution being a party to the criminal process. In addition, it is settled in the other laws, such as in French law, that the Public Prosecution keep some powers in the criminal justice process such as the power of arrest and search in the case of flagrante delicto.

It is settled that impartiality requires the separation between the function of accusation and the function of investigation. It is contrary to the principles of impartiality that the party to a lawsuit be having an authority to investigate. This also conflicts with the equality of arms as one of the necessary components of due process of law.

3-2- Safeguards against Pretrial Detention;

The Qatari Criminal Law provides for a certain number of safeguards for pretrial detention. First, the authority entrusted to order the pretrial detention is the Public Prosecution (Art. 110). In this respect, the Qatari law is in line with other legislations of G.C.C that do not give competence to a judge in the matter of pretrial detention such as the Law of Kuwait (Art. 69 of Criminal Procedure Code), in the Arab Emirates (Art.106 Criminal Procedure Code), Bahrain (Art. 142 of Criminal Procedure Code) and even in Egypt (134 Criminal Procedure Code). Second, the pretrial detention may not be ordered unless the defendant has been interrogated in order to have the opportunity to defend himself. It is understood that in the case of the absent defendant, this measure is not necessary.

Second, the Qatari law made an important effort to avoid the pretrial detention when it provided for a number of alternatives to pretrial detention in Art. (110) of the Criminal Procedure Code. These elective alternatives are: 1- Obligation for the defendant not to leave his

(17) Katz, Lewis R, SYMPOSIUM: PROSECUTORIAL ETHICS AND THE RIGHT TO A FAIR TRIAL: THE ROLE OF THE BRADY RULE IN THE MODERN CRIMINAL JUSTICE SYSTEM, Case Western Reserve Law Review. Spring2007, Vol. 57 Issue 3, p521-529.

home or his residence. 2- Surveillance of defendant by the police, 3- Obligation for the defendant to present himself to the police station. 4- Proscription for the defendant to frequent certain places. 5- Proscription for the defendant to exercise certain professions.

Third, the Qatari legislature limited the time of pretrial detention. The Public Prosecution may order the pretrial detention of the defendant for 4 days, renewable for another 4 days at the end of which the Public Prosecution may ask the judge to renew the pretrial detention if necessary. This judge may renew the pretrial detention of the defendant for another period of 30 days, renewable for similar periods, unless the defendant is referred to the trial court. The total period of the pretrial detention should not exceed 6 months prior to this referral. But once the defendant is referred to the trial court, this latter court may renew his detention for a period of 45 days, renewable many times on condition that the total period of detention does not exceed half the maximum of the penalty provided for the offense (Art. 117 of Qatari Criminal Procedure Code).

These safeguards presented by the Qatari law concerning the length of pretrial detention are shown by the fact that this detention must not exceed six months before the case is referred to the court. Nevertheless, the trial court still enjoys an extended power to detain the defendant during procedure for a period not exceeding half the maximum of the imprisonment provided for the offense. The Qatari law is subject to criticism because it did not cover the situation when the penalty provided for the offense is life imprisonment or capital punishment. Even in the case of the other crimes, still the power of the trial court is exorbitant since it can reach half the maximum of the imprisonment. For felonies, it means that the pretrial detention may attain seven years.

Moreover, this extension of the pretrial detention runs afoul of the right of the defendant to a speedy trial. This right is not mentioned either in the criminal procedure or in the constitution. It is obvious that when the trial is prolonged, the defendant may be subject to the restraint of his rights to individual liberty and protection of private life.[(18)].

(18) Ghannam Mohamed, Rights of Prisoners, Dar ElFekr, Manosura 2015, p.20.

3-3- Rules governing Search and seizure of Correspondences in a Post Office:

Based on its respect for written correspondences in the form of letters and any sort of packages, the Qatari law of criminal procedure provided that these means of communication may not be searched and seized in a post office except on an order of the attorney general himself. Another member of the Public Prosecution may not issue such an order; he should refer to the attorney general (Art. 77). This kind of guarantee protects letters, packages, telegrams and all kinds of printed correspondence to safeguard private life.

To further its protection of private life the Qatari law requires that the attorney general issues the warrant in one of the following offences only: felonies against the internal and external security of the state, felonies of drug trafficking and felonies in violation of the laws on the detention of weapons (Art. 77). In relation to other offences, the Qatari Law of Criminal procedure requires that the warrant be issued by a judge (Art. 77/2) as in other felonies and in matters of misdemeanors.

Article 77 added an additional guarantee with regard to wiretapping of private communication. This latter may be admissible upon the issuance of a warrant from the judge and for a period not exceeding 30 days renewable for one or more periods as long as this measure is justified.

Once seized, the correspondences should be examined only by a member of the Public Prosecution in pursuance to Art. (78) of the Criminal Procedure Code. Hence, the police officer is not authorized to get acquaintance of the content of correspondence. It is clear that the Qatari legislature has intended to guarantee a better protection of private life. According to Article (78), correspondences are examined, as much as possible, in the presence of the accused.

Papers and correspondences in the office of a lawyer enjoy much more protection in order to guarantee the right of defense. In fact, Article 79 of the Criminal Code prevents the Public Prosecution from searching the office of a lawyer and from seizing documents or correspondence necessary for the defense of a defendant, unless these papers constitute the body of the offence itself.

3-4- Monitoring and Wiretapping the Communication;

Regarding its intimate relation with private life, the wire and wireless and electronic communication have already drawn the attention of many laws in Europe, the US[(19)] and the Arab countries[(20)]. One of these laws is the Qatari Criminal Procedure Code that made the monitoring and wiretapping of wire and wireless communication the privilege of attorney general. According to Article (77), the attorney general may give a warrant on monitoring and wiretapping of this kind of communication if necessary concerning certain serious offences. These offences are felonies against the internal and external security of the state, felonies of dealing with drugs and felonies related to possession of weapons. With regard to other crimes, a warrant must be issued by the judge. The Qatari Law on Combating Electronic Crimes of 2014 provided for a similar guarantee when it required in Art. (17) a warrant from the Public Prosecution for the monitoring and surveillance of electronic communication for all crimes. So, the intervention of a judge is not required in certain offenses.

3-5- Administrative Surveillance of Wire communication:

In spite of the respect showed by the Qatari law for private telephone conversation, the owner of a telephone set may be a victim of harassment and hence he deserves an appropriate protection. This protection was guaranteed by Article (83) of the Criminal Procedure Code which authorized the attorney general or his deputy, in case of plausible cause to order that the phone be placed under surveillance upon a complaint of the victim. The aim of this measure is to protect the owner of the telephone set against an offense perpetrated through a wire communication. The surveillance is ordered for a period of 30 days, renewable for one or more times as long as the reasons persist. Certainly, the fact that the Attorney General is authorized to decide the monitoring of the set constitutes a guarantee for the respect of private life.

(19) http://ec.europa.eu/justice/data-protection/article-29/documentation/opinion- recommendation/files/2014/wp228_en.pdf
(20) Shaimaa Attallah, Criminal Protection of Electronic transactions, Thesis, Mansoura University, 2005, p. 110.

3-6- Right to a Lawyer during Preparatory Investigation:

As in the phase of investigation by the police, the defendant has no right to a lawyer i.e. he has the right to the assistance of a lawyer of his choice, but he does not have the right to an appointed lawyer. No obligation exists on the State to appoint a lawyer to assist him if he cannot afford to have one. But as long as he has an elected lawyer, the public prosecution cannot separate him from his lawyer. On the contrary, if the lawyer is not present when the investigation starts, the Public Prosecution is not obligated to delay the investigation until the lawyer appears. In addition, if this investigation commences, it is not invalid for the sole fact that the interrogation of the defendant started without the presence of the lawyer. It was so decided by the High Court of Qatar[21].

The obligation of the Public Prosecution toward the accused is to inform him of the day of interrogation to enable his lawyer to be present in pursuance to Article (65) of the Qatari Code of Criminal Procedure and not to delay the investigation until the presence of the lawyer is secured. Nor is the Public Prosecution obligated to appoint a lawyer to assist the defendant even in case of felonies. According to Art. (101) of Qatari Criminal Law, the public prosecutor has the duty to inform the defendant of the charges laid against him before he starts to interrogate him. Except in case of emergency, the previous Article states expressly that the public prosecutor may not start the interrogation without the presence of the lawyer to the defendant. Nevertheless, the interpretation of this text by the High Court reduces the value of this guarantee offered by the law in deciding that the absence of the lawyer does not invalidate the procedure and hence the confession by the defendant during this interrogation is valid.

This latter attitude was adopted by many legislations such as the American law (Sixth Amendment to the constitution and its interpretation in Miranda v. Arizona, 384 U.S. 436 (1966). Art. 114 of the French Criminal Code opted for a similar position. Finally, the Egyptian law by the reform of 2007 made the presence of an elected or an appointed counsel mandatory in case of felony and misdemeanors punishable with

(21) Decision of the Qatari Court of Cassation nº 166 /2013, in date of 4 November 2013.

imprisonment (Art. 124 Criminal Procedure). Hence, if an elected lawyer does not assist the defendant, the public prosecution has to appoint one to assist him.

The Qatari law did not strengthen the role of the defense when it permitted in Article (65) the public prosecutor to proceed with the interrogation even in the absence of all the parties in case of emergency. Once this state of emergency is terminated, the parties are entitled to the communication of the acts of procedure taken in their absence.

Even if in case of arrest or pretrial detention, the defendant has the right to be advised of the charges against him and to have the assistance of his elected lawyer, but not to have a right to the assistance of a counsel. Therefore, he does not have the right to an appointed lawyer by the government (Art. 113 Qatari Criminal Procedure Law).

3-7- Adoption of the Policy of Diversion;

The Qatari legislature embraced the policy adopted by modern legislation concerning the policy of diversion according to which the criminal procedures are diverted to other forms of conciliation. This leads to the resolution of conflict at the inspection of the offence rather than to follow the paradigm of the penal system with all its societal inconveniences, for the offender and the victim.

To reach this goal, the Qatari legislature adopted the following measures; First, it made the penal action conditional for many offences on complaint of the victim. In multiples offences, the Public Prosecution cannot initiate the procedure unless the victim complained in person before it. The victim or his special agent are the sole persons entitled to complain before the Public Prosecution. Among these offences enumerated by Article (3) of the criminal procedure code are the offence of battery and assault, insult and defamation, giving a check without balance, breach of trust, fraud, theft between siblings and between spouses, destruction of property, etc. The corollary of requiring a complaint is to permit the victim who complained to renounce the criminal proceedings. This is a tactic aimed at promoting conciliation without having recourse to the constraint pertaining to the penal prosecution. Less constraints mean more respect for individual liberty since the risk for individual liberty inherent in the criminal procedure initiated by the police, by the Public Prosecution or taken by the court is avoided.

Second, the Qatari law allows for a bargain presented by the offender to the relatives of the victim of homicide. In case of pardon or if the relatives accept the compensation, the capital punishment is excluded in cases of murder and a decision of imprisonment of 7 years is delivered by the court instead (Art. 302 Penal Code), in case of non-aggravated homicide. This maximum sentence is brought to 15 years in case of aggravated murder (Art. 300 Penal Code).

Third, the Qatari law provides for ‘‘composition’’ between the defendant and the administration in certain contraventions. The public action is prescribed by a bargain that consists of the payment of half the maximum of the fine or the minimum of this fine, whichever is greater. According to Article (16) of the Procedure Code, the defendant as well as the Public Prosecution and the judicial officer can take the initiative to propose the bargain. This latter can even be accepted during procedure or even after the judgment became definitive. In this case, the execution of the decision is suspended.

Fourth, the Qatari law decided an important advantage for the defendant in offences against public assets if he elects to restitute the embezzled funds. This provision applies not only in misdemeanors but also in felonies of this kind in order to encourage the defendants to compensate public treasury for the damage inflicted by offenses to the public economy (Art 18 of Penal Code). In case of restitution and compensation of public treasury before the case is referred to the court, the attorney general may order that the charges be dropped. This possibility does not apply once the public action is referred to the trial court. It is a sort of plea-bargaining in which the defendant acquiesces to pay and the public prosecution acquiesces not to prosecute. Anyhow, this deal is intended to preserve public liberty and to relieve the public treasure[22].

(22) See, Ddamulira Mujuzi, Jamil, Victim Participation in the Criminal Justice System in the European Union through Private Prosecutions: Issues Emerging from the Jurisprudence of the European Court of Human Rights, European Journal of Crime, Criminal Law 6 L. R. 134 Ayl. Parerg. 451; Dict. de Jur. h.t.; Merl. Repert. h.t.; vide Jacob’s Intr. to the Com. Civ. and

4- Respect for the Principles of Fair Trial in the Qatari Law;

The Qatari Criminal Procedure law has shown his respect for many aspects of fair trial(23). Among these aspects are the right of the defendant to public hearing except in cases where secrecy is justified (Art. 187 of the Criminal Procedure Code), the right to confrontation (Art. 232 of C.P.C), respect for presumption of innocence (Art. 39 of the Qatari Constitution), the right to counsel in the limits previously enunciated (Art. 221 of Criminal Procedure Code). Nevertheless, the Qatari law does not provide for the right to a speedy trial(24). In regards to the right to jury, neither the Qatari constitution nor the Qatari criminal procedure code has provided for this right. I should say that many penal laws in the Middle East do not adopt this right because it is believed that it is not appropriate to the social environment.

In order to ensure fair trial, the Qatari law states that the judge should be fair, therefore it gave the defendant the right to recuse the judge if there are reasons to believe that he would not be fair. These reasons for unfairness may be probable if there was a conflict of interest for the judge. It is settled that a person may not be a good judge in his own case, as in the case when the offence was committed against him (20). According the Qatari law, if the offence was perpetrated against the judge himself, there is a clear conflict of interests barring him from hearing the case (Art. 214 C.P.C).

Consequently, if there is either animosity or friendship with one of the parties to the lawsuit, the judge will be disqualified to hear the case. In addition, the judge would be disqualified if he is kin of the defendant or the victim, if he gave his opinion about the case or if he investigated the case as an attorney general or judicial police or if he played a role in the referral of the case to the court. And if he participated in judging the case, he would be disqualified to sit for appeal. Art. (214) of Qatari Code of Criminal Procedure expressly enumerated all these cases of disqualification of judges. Hence, the parties are entitled to move to

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Can. L. 11; 8 Co. 118 Dyer, 65. Dall. Diet. h.t.

(23) (CEDH 13 févr. 2001, Krombach c/ France, req. no 29731/96, D. 2001. 3302, note Marguénaud; RSC 2001. 429, obs. Massias.

recuse the judge in pursuance of Art. (215) of the Qatari Criminal Procedure Code.

The separation between the function of accusation and that of judgment is a necessary safeguard for the due process of law. It forbids the court from indicting the defendant for new facts not referred to it by the public prosecution. According to Article (235) of the Qatari Criminal Code, the court may not exceed the facts or the persons charged by the Public Prosecution. In this case, the court shall refer the new facts and the new persons to the Public Prosecution for investigation and eventually for indictment. Being contrary to the fairness of trial, the confusion between the function of prosecution and that of judgment was averted by the Qatari Criminal Law.

One of the main pillars of the due process of law is the principle of confrontation, according to which the defendant may not be judged without being confronted with the pieces of evidence presented against him. No decision is taken by the court based on a piece of evidence that was kept away from the defendant and consequently he was not able to debate it. According to Article (232) of the Qatari Criminal procedure, the judge may rely in his decision only on pieces of evidence disclosed to the defendant based on his right to discovery(25). The previous Article reasserts the principle that evidence for conviction must be legal and that any confession obtained by force or pressure is excluded.

4-1- Respect for Right to Counsel during the Trial in Qatari Law;

Respect of the right of defense during the trial phase in the Qatari law, is guaranteed but exercised within certain limits. It is guaranteed because whether in felonies or misdemeanors, the defendant has the right to counsel. It is illegal to separate the defendant from his lawyer. Nevertheless, in respect of the right to a lawyer, the Qatari law makes the distinction between felonies and misdemeanors. With regard to felonies, the defendant has the right to an appointed lawyer if he has not elected one. The defendant may not be able to afford the assistance of a lawyer. Then the court should appoint one to assist him preparing his defense

(24) Cass., ass. plén., 2 mars 2001, no 00-81.388, Bull. ass. plén. no 6; D. 2001. 1899, note Prade.
(25) Cloé FONTEIX - juin 2015, Jugement par défaut, Répertoire de droit pénal et de procédure

(Art. 221 of the Criminal Procedure Law). This appointed lawyer should assume his charge diligently and if he refrains from assisting the defendant, he will be fined by the court (Art. 222 of the Criminal procedure Law).

On the contrary, with regard to misdemeanors, the right of the defendant to an appointed lawyer is not recognized by the Qatari law. This rule should be amended in order to ensure better protection of the right of the defendant to an effective defense. Anyhow, the right to a lawyer in misdemeanors would lead the court to postpone deciding the case to enable the lawyer to assist the defendant.

In respect of the defendant judged in absentia for felonies, the Qatari law required that the defendant be present at the trial together with his counsel. If absent, the defendant will be given a decision in absentia, i.e., this decision is quashed and the trial is recommenced de novo, when he is arrested or elected to attend before the court. During the hearing of the case in absentia, the question is raised as to whether the absent defendant has the right to lawyer. The wording of Article (O180) of the Qatari Criminal Procedure does not seem to give him this right. According to this Article, the court delivers its verdict based on the file of the case. So, it does not hear the lawyer if the defendant is absent in case of indictment for felonies. This rule is contrary to the ruling of the European Court of Human Rights that condemned France because the French law did not permitted the court to hear the defense of the absent defendant(26). This urged the French legislature to change Articles 270 and 379-2 to 379-6 in order to give the absent defendant the right of defense by permitting the lawyer to present his defense to the court(27)(28).

As for the role of the defense in the phase of preparatory investigation, its task is not really active in the sense that the attorney for the defendant has no right to speak unless he is allowed by the public prosecutor. However, he has the right to present the ways of defense in

pénale, nº 113.

(26) Cass., ass. plén., 2 mars 2001, nº 00-81. 388 , Bull. ass. plén.no 6; D. 2001. 1899, note Pradel.

(27) Cloé FONTEIX - juin 2015, Jugement par défaut, Réertoire de droit pénal et de procédure pénale ,nº113.

(28) Cass.crim.,28avr.1987,Bull.crim.,n173;Cass.crim.,11fÕvr.1992,Bull.crim.,n66;

favor of the defendant (Art. 66 of the Qatari Code of Criminal Procedure). If the attorney was not allowed to speak during the interrogation, it should be mentioned in the procès-verbal (the minutes).

4-2- Respect for Right to Appeal in Qatari Law;

The Qatari law observes the principle of a fair trial by inserting the right to appeal in many forms in the Criminal Procedure law. First, the right to opposition provided in Article (264). Second, the right to appeal whether in misdemeanors or felonies under Article (271) that deals with the challenge of the decision delivered by the court of appeal and the court of cassation. The Qatari Court of Cassation must review the judicial decision of capital punishment (Art. 302 of Qatari Code). The challenge by way of petition was also adopted by the Qatari law as a remedy to some judicial mistakes such as the case where the victim of a presumed murder was found alive (Art. 304 of the Qatari Criminal Code).

4-3- Exclusion of illegal Evidence:

Being in line with modern laws of Latin origin, the Qatari legislature elected to exclude the evidence obtained by illegal means. In this regard, the Qatari law did not make the distinction between illegal evidence obtained by public agent and that obtained by individuals. Contrary to French(29) and American laws(30), the Qatari law excludes the evidence when obtained by illegal means whether obtained by a public agent or an individual not exercising public authority(31).

In fact, the Qatari Criminal Procedure Law forbids the court from basing its decision on invalid evidence. Under Article (232) of the Criminal Procedure Code, the judge forms his conviction on the merits according to a valid proof discussed before the trial court. There is no distinction whatsoever made between the way this proof is produced by a public officer or an ordinary individual.

(29) Cass. crim., 28 avr. 1987, Bull. crim., nº 173; Cass. crim., 11 févr. 1992, Bull. crim., nº 66; D. 1992, IR p. 175; Cass. crim., 23 juill. 1992, D. 1993, Somm. p. 206, obs. J. Pradel (la production, par le plaignant, d'un enregistrement vidéo réalisé à l'insu des personnes suspectées d'avoir commis une infraction ne constitue pas un acte d'information susceptible d'annula-

5- Conclusion;

Based upon my analysis of the Qatari criminal justice system I have reached the following conclusions;

First; The Qatari Criminal Procedure Law contains many provisions that are designed to guarantee better protection of human rights that are consistent with the internationally recognized standards.

- Among these provisions are the following:
  A- The Qatari law provides for a number of conditions designed to limit the powers of the judicial police in arrest and search of persons and premises.
  B-Arrest and search of persons and premises are only permitted upon a warrant or flagrante delicto. The judicial police do not have this power except on the basis of a probable cause.
  C-The Qatari law requires that the search of houses be carried out during daylight and not at night except in case of flagrante delicto or an emergency.
  D-The search of houses is only permitted on the basis of flagrante delicto of certain felonies. This rule is obviously intended to provide protection for the private life.
  E-The Public Prosecution is charged with initiating and exercising the criminal investigation and prosecution as an independent organ.
  F-The Qatari law recognizes the right of the defendant to a lawyer in the phase of investigation by the police as well as in the phase of preliminary investigation by the public prosecution.
  G-The Qatari law extends the scope of conciliation to embrace many offences. This extension of conciliation is designed to limit the intervention of criminal law and reduce the inherent risks for the individual liberty and private life.
  H-T he Qatari law guarantees enough number of safeguards for a fair trial. Among these safeguards the right to lawyer, the right to a judge, the impartiality of a judge, and the right to appeal.

Second- The Qatari law encompasses a number of gaps and omissions that should be considered in order to render it consistent with the internationally recognized standards for the protection of human rights.

- Among these imperfections are the following;

  A. The Minister of Interior has the privilege to detain persons without a charge in what is called administrative detention.

  B. The prosecution and investigation of crimes are entrusted to the Public Prosecution and not to a judge as it is the case in French and English laws.

  C. The Qatari law does not provide for the right of the defendant to a lawyer i.e. the right to an appointed lawyer in case the defendant does not have one during investigation by the public prosecution.

  D. The Qatari law needs to provide for the right of the defendant to a lawyer before the court in cases of misdemeanors and not only in cases of felonies.

  E. The Qatari law needs to decide the right of a defendant to a lawyer even in case of trial in absentia.

  F. The Qatari law needs to treat the electronic communication in a way similar to the wire and wireless.The monitoring and the surveillance of both should be ordered only upon obtaining a warrant from a judge.

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