

NIHR's visions regarding Decree-by-Law No. (68) of 2014 on amendment of some provisions of Law No. (58) of 2006 on Society Protection from the Terrorist Acts

Introduction:

In appreciation of the efforts exerted by the esteemed Council of Representatives in relation to the issues of Human Rights considering it as the legislative entity charged with protecting the rights and public freedoms; and with all due respect to the considerations sought by the Decree-by-Law No. (68) of 2014 on amendment of some provisions of Law No. (58) of 2006 on Protection of Society from Terrorist Acts; and based upon the request of the Council Committee on Foreign Affairs, Defense and National Security, the National Institution for Human Rights hereby refers to you its visions on the proposed law taking into account the related provisions of the Constitutions, international and regional conventions on human rights.

Thereupon, the National institution believes that, although the protection of society from terrorist acts that would undermine security and stability and terrorize innocent citizens and residents is one of the supreme responsibilities of the Kingdom, and it obliged to take all measures that prevent any threat toward peace and security, but that should not be a cause in prejudice or violate human rights and freedoms protected by the general provisions of the Constitution and international conventions and human rights treaties related.

According to that, the NIHR will hereby summarize its opinion on provisions of Decree-by-Law, which contains the preamble and four articles. The first article thereof replaced the stipulations of articles Nos. (8), (15), (26), (27) and (28); the second article thereof replaced the phrase "Terrorist Crimes Prosecution" with the phrase "Public Prosecution"; the third article thereof approved the addition of two articles No. (2, bis) and (27, bis) and the fourth article is executive.

This is detailed as follows:

First article

Article No. (8)

Stipulation as stated in the original law

Life imprisonment or imprisonment for a period of no less than 7 years shall be inflicted upon every person who trains one person or more on the use of weapons and explosives or such other items with the intent of using them in committing any of the crimes provided for in this Law.

Imprisonment for a period of no less than 5 years shall be inflicted upon every person who is trained on the use of weapons, explosives or such other training with the intent of committing any of the crimes provided for in the preceding Paragraph.

Stipulation as stated in the Decree-by-Law:

Life imprisonment or imprisonment for a period of no less than 7 years shall be inflicted upon every person who trains one person or more on the manufacture or use of weapons and explosives or such other works that facilitate or prepare for the use thereof with the intent of using them in committing any of the crimes provided for in this Law.

Imprisonment for a period of no less than 5 years shall be inflicted upon every person who is trained on the manufacture or use of weapons, explosives or such other training on works that facilitate or prepare for the use thereof intent of committing any of the crimes provided for in the preceding Paragraph.

The same penalty provided for in the preceding paragraph shall be inflicted upon every person commits collective violence acts or combat operations abroad not addressed to the Kingdom or participates in the same in any way.

NIHR's Opinion:

National Institution for Human Rights hereby thinks that the essence of the amendment mentioned in provisions of the above stipulation is for purpose of augmenting the determined penalties or creation of other criminalized acts. In addition, the augmentation adopted by the Decree-by-Law in the crimes is for purposes and objectives represented in establishing a case of security and social stability and deterring from the commission of such type of crimes. This augmentation doesn't influence the enjoyment of the individuals with their basic rights and freedoms and doesn't prejudice or breach the human rights as stipulation in the related International human rights instruments.

Thereupon, NIHR hereby accepts the amendment made to the stipulation of the above article as mentioned in the Decree-by-Law.

Article No. (15)

Stipulation as stated in the original law

A prison sentence for a period of no less than one year and no more than 5 years shall be the penalty for each one who commits an assault against the officers in charge of enforcing the provisions of this Law or resists them by force, violence or threat in the course of carrying out his job duties or by reason thereof.

The penalty shall be imprisonment for a period of no less than 5 years if the assault or resistance results in permanent disability or if the offender carries a weapon or kidnaps or takes hostage any of the officers in charge of enforcing the provisions of this Law, his spouse, in-laws, offsprings or a relative up to the fourth degree of relationship.

Stipulation as stated in the Decree-by-Law:

A prison sentence shall be the penalty for each one who commits an assault against the officers in charge of enforcing the provisions of this Law or resists them by force, violence or threat in the course of carrying out his job duties or by reason thereof.

The penalty shall be imprisonment for a period of no less than 7 years if the assault or resistance results in permanent disability without intention to cause the same or if the offender carries a weapon or kidnaps or takes hostage any of the officers in charge of enforcing the provisions of this Law, his spouse, in-laws, offsprings or a relative up to the fourth degree of relationship.

The penalty shall be imprisonment for a period of no less than 10 years if the assault results in permanent disability intentionally.

The penalty shall be life imprisonment, if the assault results in death without intention to kill him.

NIHR's Visions:

The National Institution for Human Rights hereby thinks that the essence of the amendment mentioned in provisions of the above stipulation is for purpose of augmenting the determined penalties or creation of other criminalized acts. In addition, the augmentation adopted by the Decree-by-Law in the crimes is for purposes and objectives represented in establishing a case of security and social stability and deterring from the commission of such type of crimes. This augmentation doesn't influence the enjoyment of the individuals with their basic rights and freedoms and doesn't prejudice or breach the human rights as stipulation in the related International human rights conventions.

Thereupon, the NIHR hereby accepts the amendment made to the stipulation of the above article as mentioned in the Decree-by-Law.

Article No. (26):

Stipulation as stated in the original law

In investigating the crimes provided for in this Law, the Public Prosecution shall in addition to the powers vested therein be empowered to issue an order of rending in custody by the Attorney General or whoever acts for him for a period or for successive periods not exceeding sixty days in total.

Stipulation as stated in the Decree-by-Law

A prosecution called "terrorist crimes prosecution" shall be established and the members thereof shall be appointed upon proposal of the prosecutor, which shall be competent with investigating the crimes stipulated herein. Such prosecution shall be empowered to issue an order of rending in custody by the Attorney General or whoever acts for him for a period or for successive periods not exceeding sixty months in total.

NIHR's Visions:

The National Institution for Human Rights hereby finds that the stipulation mentioned in the above decree by law deals with establishing a prosecution competent with examining the terrorist crimes within the organizational structure of the public prosecution and this is a procedure of an administrative and organizational form. It is confirmed that such stipulation provided that the appointment of members of the terrorist crimes prosecution shall be by virtue of (a Royal Order) to ensure the independency of the work thereof. Thereupon, the amendment mentioned in the above Decree-by-Law doesn't prejudice or breach the human rights as stipulation in the related International human rights instruments.

Thereupon, the NIHR hereby accepts the amendment made to the stipulation of the above article as mentioned in the Decree-by-Law.

Article No. (27):

Stipulation as stated in the original law

If sufficient evidence is available for indictment of a person of committing one of the crimes provided for in this law, the judicial arrest officer shall be empowered to detain the accused for a period not exceeding five days. Where necessary he shall be empowered to request the Public Prosecution for Permission to extend the detention period. In such case, the Public Prosecution shall be empowered to extend the detention period and its action shall be substantiated and shall be necessitated by the investigation requirements and may grant permission for continuation of the detention of the accused for a period not exceeding a further 10 days.

The judicial arrest officer should hear the statements of the arrested accused and

shall refer him to the Public Prosecution upon the expiry of the period referred to in the preceding Paragraph.

The Public Prosecution should interrogate him within 3 days from the date of his reference thereto and then shall order his detention in custody or his release.

Stipulation as stated in the Decree-by-Law

If sufficient evidence is available for indictment of a person of committing one of the crimes provided for in this law, the judicial arrest officer shall be empowered to detain the accused for a period not exceeding twenty-eight days.

The judicial arrest officer shall hear the statements of the arrested accused and shall refer him to the terrorist crimes prosecution upon the expiry of the period referred to in the preceding Paragraph.

The Public Prosecution should interrogate him within 3 days from the date of his reference thereto and then shall order his detention in custody or his release.

NIHR's Visions:

The National Institution for Human Rights is of the view that the amendment mentioned in the above Decree-by-Law grants the judicial arrest officer (police) the power of arresting the accused in the crimes subject to the provisions of the law subject matter of discussion for period not more than (28) days. By reference to provisions of Article No. (9), item (3) of the International Covenant on Civil and Political Rights that the Kingdom of Bahrain has joined according to Law No. (56) of 2006; such article stipulated that it is necessary that "Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release." ¹

The "Human Rights Committee" entrusted with interpreting the provisions of the international covenant on the occasion of commenting on the stipulation of article No. (9), item (3) that: "it shall be considered in case of arresting or detaining any person in the criminal cases that he has be referred immediately to a judge or an officer legally authorized to practice the judicial power. In most member states, the law sets forth more accurate time limits and the committee thinks that the delay may not exceed few days"²

¹ Pursuant to its accession to the International Covenant on Civil and Political Rights, Kingdom of Bahrain shall be obligated according to article No. (40) thereof to present periodic reports on the measures taken, which represent the implementation of the recognized rights, show the progress achieved in enjoying such rights; especially, the extent of suitability of the valid national legislations thereof to the provisions of the international covenant.

² General comment No. (8), article (9) right of the individual to the freedom and security personally – issued by the Human Rights Committee – Document No. (HRI/GEN/1/Rev.9 (Vo1.1)) – page 182.

In the same regard, during the examination of some reports submitted by the member states of the international covenant, Human Rights Committee has expressed by end of its recommendations for such states its grave concern about the laws in some countries that allow the detention of the persons in custody of the (police) for around (72) hours or more without presenting them to the judicial officer. It considered this violation to article No. (9), item (3) of the International Covenant³. On another occasion, the same occasion confirmed that the emergency cases may not be utilized as excuse as well as the ordinary case in restricting the right of the arrested person or the accused to appear before the judicial authority as soon as possible.⁴

In confirmation on this approach, the "UN Reporter concerned with enhancing and protecting the human rights and freedoms within context of combating the terrorism" showed that even in case of the crimes related to the terrorism, the opportunity shall be given to each detained person to examine before a judge or another judicial officer the admissibility of detaining him within period of (48) hours at most⁵.

In this regard, during hearing the case of (Broghan and others against the United Kingdom) in 1988, the judgments passed by European Court for Human Rights concluded that the delay in the detention (for period of four days and six hours) before bringing the person suspected in a terrorist crime before a judge is deemed as excessive delay⁶.

Therefore, in 2008, the United Kingdom was incited to amend its Law of Terrorism, so that the detention period granted to judicial arrest officer (Police) became from (28) days, which may reach at some times to (48) days to become (48) hours only and the accused shall be presented to the competent court after expiry of such period⁷.

³ Final comments of the Human Rights Committee during its examination of the periodic reports of the member states of the International Covenant for Civil and Political Rights including (Uzbekistan), document No. (CCPR/CO/83/UZB), (Ukraine): Document No. (CCPR / C / CR / CO / 6), (Moldova) Document No. (CCPR / C / MDA / CO / 2).

⁴ General Comment No. (29): Article No. (4) failure to adhere to the Covenant Provisions during the emergency cases – issued by the Human Rights Committee, Document number: (HRI / GEN / 1 / Rev.9 (Vo1.1)) –Margin No. (9) - Page 238.

⁵ Report of UN Reporter concerned with enhancing and protecting the human rights and freedoms within context of combating the terrorism, submitted to General Assembly of United Nations in round thereof No. (63), document No. (A/63/223).

⁶ Judgment passed by European Court for Human Rights in case of (Broghan and others against the United Kingdom) in 1988, published on the following link: <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-57450>.

⁷ Report of UN Reporter concerned with enhancing and protecting the human rights and freedoms within context of combating the terrorism, submitted to General Assembly of United Nations in round thereof No. (63), document No. (A/63/223), margin (42).

Thereupon, the NIHR hereby thinks that the period granted by the Decree-by-Law above for the Judicial Arrest Officers isn't in agreement with the provisions of article No. (9) of the International Convention for Civil and Political Rights absolutely as well as the related international standards adopted by it in this regard.

This amendment to provisions of the Law represents gross breach to the human rights in terms of the right to the personal freedom and security and the right to the fair trial.

Article (28):

Stipulation as stated in the original law

Information submitted by the security sources for obtaining an extension of the detention period provided for the first in the Paragraph of Article 27 of this Law shall remain confidential with the Public Prosecution. Such information shall not be disclosed nor shall the names of their providers be divulged without prejudice to the provisions of Article (61) of the Criminal Procedure Law.

Stipulation as stated in the Decree-by-Law

Information submitted by the security sources regarding the crimes provided for in this Law shall remain confidential with the Terrorist Crimes Prosecution. Such information shall not be disclosed nor shall the names of their providers be divulged without prejudice to the provisions of Article (61) of the Criminal Procedure Law.

NIHR's visions:

The National Institution for Human Rights thinks that the stipulation mentioned in the Decree-by-Law above is to apply the confidentiality feature to all information submitted by the security sources in relation to the crimes provided for. However, the stipulation mentioned in the original law limits such information to what is presented to procure extension for the detention period. This issue is required by the interrogation interest in all aspects thereof and NIHR confirms, at the same time, that the accused shall be entitled to allow his lawyer to review such information. Thereupon, the mentioned amendment doesn't prejudice or breach the human rights as stipulation in the related International human rights instruments.

Thereupon, the NIHR hereby accepts the amendment made to the stipulation of the above article as mentioned in the Decree-by-Law.

(Second Article)

Stipulation as stated in the original law

There is no corresponding stipulation in the original law.

Stipulation as stated in the Decree-by-Law

The phrase "Terrorist Crimes Prosecution" shall be replaced with the phrase "Public Prosecution" wherever mentioned in Law No. (58) of 2006 on Society Protection from the Terrorist Acts.

NIHR's Visions:

The National Institution for Human Rights thinks that the stipulation mentioned in the Decree-by-Law above is a creation required ordinarily, after establishing a specialized prosecution under the name "Terrorist Crimes Prosecution", which is competent with investigation in such crimes and the meaning thereof is related thereto. Thereupon, this issue doesn't prejudice or breach the human rights as stipulation in the related International human rights instruments.

Thereupon, the NIHR hereby accepts the amendment made to the stipulation of the above article as mentioned in the Decree-by-Law.

(Third Article)

Article (2), bis:

Stipulation as stated in the original law

There is no corresponding stipulation in the original law.

Stipulation as stated in the Decree-by-Law

Provisions hereof shall be applicable to each citizen or foreigner committed an act outside Kingdom of Bahrain, which causes him to be actor or participant in one of the crimes provided for herein.

NIHR's Visions:

The National Institution for Human Rights thinks that the stipulation mentioned in the Decree-by-Law above is a creation with purpose of applying the provisions of this law to each citizen or foreigner commits any act outside the regional borders of the Kingdom of Bahrain, according to which he is actor or participant in one of the crimes provided for in this law. The purpose of such creation is to protect the external security of Kingdom of Bahrain. Therefore, the creation of such stipulation doesn't prejudice or breach the human rights as stipulation in the related International human rights instruments.

Thereupon, the NIHR hereby accepts the amendment made to the stipulation of the above article as mentioned in the Decree-by-Law.

Article (27), bis:

Stipulation as stated in the original law

There is no corresponding stipulation in the original law.

Stipulation as stated in the Decree-by-Law

If a terrorist crime is committed or if there are sufficient evidence on possibility of commission thereof, the judicial arrest officer shall be entitled to take – within the spatial scope of the crime and for purpose of arresting the committers thereof or to prevent the occurrence thereof – any of the following procedures:

1. Inspecting the persons, who has satisfied sufficient evidences to be accused and inspecting their luggage.
2. Stopping and inspecting the public and private vehicles.
3. Banning the movement of means of transportation and traffic and pedestrians.
4. Disconnecting the communications and correspondences in the crime spatial scope and the locations, where the anti-terrorism measures are being undertaken for period doesn't exceed twelve hours and such period may be extended by resolution of the terrorist crimes prosecution for period doesn't exceed twenty four hours.
5. Preventing any persons that there are strong evidences against him that he has participated in a terrorist act from access to specific areas or location at specific time and days by virtue of an order to be issued by Head of Public Security for period not more than fifteen days. This order may be complained before the competent court and the complaint shall be decided within three days as of date of submittal thereof.

NIHR's Visions:

The National Institution for Human Rights thinks that the stipulation mentioned in the Decree-by-Law above has granted the judicial arrest officers powers represented in the authority to inspect the individuals and the public and private vehicles, to ban the movement of means of transportation and traffic and even extended such authority to the possibility to disconnect the communication and correspondences reaching to the authority to prevent any person from access to specific areas or location at specific time and days. These measures in total represent gross breach to the main human rights and freedoms.

In spite of the full belief of the NIHR that the judicial arrest officers should undertake their role in protecting the society from terrorist acts that undermine the security and stability, terrorize innocent citizens and residents, and threaten national security and peace, such powers granted to them should not be loose and without restriction. However, all measures should be taken by order and under the supervision of a judicial authority whether on part of the competent court or the terrorist crimes prosecution at least.

Therefore, the National Institution for Human Rights hereby finds that the powers granted by the Decree-by-Law above to the judicial arrest officers aren't absolutely in agreement with the general and basic principles of human rights. Granting such powers to the judicial arrest officers without order or supervision by a competent judicial entity represents a gross violation of the individual's basic human rights and freedoms.