



CAIRO INSTITUTE  
FOR HUMAN RIGHTS STUDIES  
Institut du Caire pour les études des droits de l'homme  
مركز القاهرة لدراسات حقوق الإنسان

## 20 questions on pardons in the Egyptian judicial system

### The definition and forms of pardon and its importance

**Q: What does 'pardon' mean in the Egyptian judicial system and what kinds of pardons are there?**

**A:** A pardon in Egyptian law can refer either to an individual exemption from punishment (a personal pardon) or an exemption from prosecution or conviction for a crime (a general amnesty). A personal pardon according to Article 74 of the Penal Code is “setting aside all or part of the sentence or commuting it to a lesser sentence.” In other words, a pardon is a means for a convicted person to contest his sentence by petitioning for a full or partial reprieve from punishment or a lesser sentence.

According to Article 76 of the Penal Code, amnesty entails “refraining from or suspending criminal proceedings or expunging a conviction.” An amnesty is issued by the legislative authority in the form of a law. A general amnesty may be issued at any stage of criminal proceedings, even in the investigation phase; it is not conditional on having served a certain period of the sentence.

**Q: What is the distinction between a personal pardon and an amnesty?**

**A:** Article 155 of the 2014 constitution distinguishes between the two types as follows: “The president of the republic, after consulting with the Cabinet, has the right to issue a pardon or reduce a sentence whereas general amnesty shall be granted solely by a law, approved by a majority of members of the House of Representatives.” In other words, all such decrees issued by the president are personal pardons; only a law issued by the legislative parliament can grant a general amnesty.

In addition, a personal pardon does not expunge the criminal record of the pardoned person, but simply sets aside or commutes his sentence. In contrast, a general amnesty applies to the offense itself (or more than one offense as specified by the law) by negating its criminal nature, thus eliminating all trace or consequence of the crime for the persons amnestied.

***Q: Can a convicted person refuse a pardon? Can a fugitive or person convicted in absentia be pardoned?***

**A:** A pardon is compulsory. That is, a convicted person cannot refuse to take advantage of it, for it is considered an act in the public interest that the convicted person cannot squander with his individual will.<sup>1</sup>

Neither the Penal Code nor the Code of Criminal Procedure sets restrictions or conditions for a pardon, such as a requirement that the pardoned person be present or that the sentence be implemented. Similarly, the constitution gives the president unfettered authority in this realm. A fugitive from justice or a person sentenced in absentia may be either pardoned or covered by a general amnesty.

***Q: When must the Prisons Authority release a prisoner who has been pardoned?***

**A:** The rule is that all persons serving sentences are to be released the afternoon following the day their sentence has been completed,<sup>2</sup> but a pardon or general amnesty is implemented pursuant to the terms of the law or decree. For example, Presidential Decree 386/2015 was ratified by the president on September 23, which is the same date specified by the decree for execution with the phrase, "It shall enter into force on September 23, 2015." The Prisons Authority is thus obligated to execute the decree on the date specified therein.

***Q: Must pardons or amnesties be issued on a certain date?***

**A:** Neither personal pardons nor general amnesties are required to be issued on certain dates or occasions because this type of legislation is not obligatory for the president or the parliament. Nevertheless, it has become customary to issue such decrees on certain religious or national holidays, like those issued on the anniversaries of the July and January revolutions or during the month of Ramadan or the feasts.

***Q: If a person is charged with more than one crime, can he be pardoned for all his crimes? Is the pardon issued in the name of the convicted person or are all defendants in a certain case pardoned?***

**A:** In the case of a general amnesty, persons are amnestied for the crimes specified in the amnesty law. In the case of a personal pardon issued for a specific person(s), the convicted person benefits from the pardon even if convicted for more than one crime unless the decree exempts certain crimes.

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<sup>1</sup> Salwa Hussein Hassan Rizq, p. 266. The researcher cites several sources on this topic, including Dr. Samir al-Shenawi, *al-Nazariya al-'amma li-l-jarima wa-l-'uquba*, p. 317, and Mustafa Fahmi al-Gohari, *Tafriid al-'uquba*, p. 154.

<sup>2</sup> Article 49 of the prisons law.

In other words, a general amnesty covers a crime or crimes committed in a certain period of time, so every person convicted - or not yet convicted - of committing this crime in that period of time benefits from the amnesty. In the case of a pardon, it depends on the pardon decree. If the decree exempts certain crimes from the pardon, but the convicted person did not commit these, he can take advantage of the decree. Also, if a pardon is issued for certain people without conditions—for example, behavior in prison—or the convicted person meets these conditions, he can take advantage of the pardon.

**Q: Why does the constitution affirm the principle of amnesty?**

**A:** Amnesties and pardons are not issued out of pity or compassion for the convicted person, but because it is deemed in the interest of society that the sentence not be served. Pardons may also aim to correct some erroneous convictions or sentences when all avenues of appeal have been exhausted.<sup>3</sup> General amnesties are often issued for political reasons; an amnesty may be issued as a way for a political administration or regime to reconcile with the opposition or its enemies, or with the purpose of forgetting a certain period in the nation's history. A new administration may also issue a general amnesty to correct the errors of the former administration.

An example of this is Presidential Decree 89/2012 declaring a general amnesty for some crimes committed during the January 25 revolution. Article 1 of that decree states, “A general amnesty shall be granted for all felonies and misdemeanors, and attempts thereof, perpetrated with the goal of aiding the revolution and achieving its objectives in the period from January 25, 2011 to June 30, 2012, with the exception of felony murder. This amnesty shall cover convicted or charged persons whose cases are still under investigation or currently being heard before courts of all types.” The decree aimed to expunge all verdicts issued against supporters of January 25, 2011 and suspend all related criminal proceedings, whether investigations or trials. In this case, persons who rejected the revolution and committed these same crimes would not be covered by the amnesty.<sup>4</sup>

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<sup>3</sup> Salwa Hussein Hassan Rizq, *al-Dustur wa mabda' al-'afw 'an al-'uquba*, PhD thesis published in *al-Buhuth al-Qanuniya wa-l-Iqtisadiya*, p. 265. Rizq cites several sources on this topic, including Dr. Mahmoud Nagib Hosni, *Sharh qanun al-'uqubat, al-qism al-'amm* (Dar al-Nahda al-Arabiya, 1989), p. 915.

<sup>4</sup> Ali Maher, the prime minister after July 23, 1952, issued Decree 122 declaring a general amnesty for the crime of dishonoring the royal person, the queen, the prince, or a regent and the crime of censuring the king for an act of his government. He also issued Decree 241/1952 declaring a general amnesty for political crimes committed from August 26, 1936 to July 23, 1952, possibly with the goal of bolstering the popularity of the new regime.

## **I. Amnesty: details and consequences**

**Q: What are the consequences of a general amnesty?**

**A:** There are numerous consequences of a general amnesty, including:

- In regard to criminal proceedings:
  - If the amnesty is issued before a criminal case is filed—that is, before it is referred to court—the Public Prosecution may not file the case.
  - If the amnesty is issued after the investigating judge or Public Prosecution has begun investigation proceedings, the Public Prosecution must dismiss the criminal case. If no investigation has begun, the prosecution must close the case.
  - If the amnesty is issued after the case has been referred to trial, the court must suspend proceedings as specified by the amnesty law.
  - In all cases, the crime is expunged from the defendant's criminal record.
- In regard to the rights of others:
  - The rule is that a general amnesty does not prejudice the rights of others (to compensation, for example) unless the amnesty law states otherwise. If the amnesty law states that the consequences of the amnesty shall extend to the rights of others, such as civil plaintiffs or those harmed by the crime, then these rights do not apply. However, the law has not explained whether the state is responsible for compensation in such cases.

**Q: In the absence of a parliament, does the president also have the right to issue a general amnesty? Does the parliament have the right to subsequently repeal it?**

**A:** The president may issue decrees with the force of law—including decrees for a general amnesty—in the absence of a parliament under Article 156 of the constitution, but these decrees must be put to the parliament, discussed, and approved within 15 days of the parliament being called to session, if there is a parliament, or after the election of the new parliament, if it does not exist at the time the law is issued.

If the decrees are not discussed or they are discussed and not ratified, they are considered revoked retroactively without need for a special decree to that effect, unless the assembly decides to enforce their consequences in the previous period or otherwise settle the consequences. In other words, the parliament can repeal laws by decree issued by the president, including general amnesty laws.

***Q: Has the president previously issued a general amnesty by decree in the absence of a parliament?***

**A:** Yes, there are many examples of amnesty decrees with the force of law issued in the absence of a parliament based on the legislative power vested in the president in such times. For example, Ali Maher, in his capacity as prime minister, issued Decree 122/1952 on August 2, 1952. President Gamal Abd al-Nasser issued Decree 142/1960 on May 15, 1960 and Decree 6/1968 on February 1, 1968. The most recent such decree was that issued by President Mohammed Morsi as Decree 89/2012 of October 8, 2012.

## **II. Pardons: details and consequences**

***Q: What are the consequences of a personal pardon?***

**A:** The consequences of a personal pardon are as follows:

- The original sentence for the crime is revoked, whether it is a sentence of death, life imprisonment, hard imprisonment,<sup>5</sup> imprisonment,<sup>6</sup> or jail, whether simple jail time or with labor<sup>7</sup> or a fine, if the decree specifies this.
- If a decree is issued commuting or reducing the sentence, it must specify the lesser or different sentence that the convicted person will serve. If the decree reduces a death sentence without specifying the lesser sentence, it is automatically commuted to life imprisonment.
- If a person sentenced to life imprisonment is pardoned or his sentence commuted, he is automatically placed under police probation for a period of five years, unless the pardon decree states otherwise.
- The sentence remains on the pardoned person's criminal record until such time as his status is rehabilitated.
- The rights of others resulting from the crime remain in force and the pardon has no effect on them, such as the right of a civil party or person harmed by the crime to compensation.
- The pardoned person must be released if the original sentence or what remains of it is lifted or if the pardon reduces the sentence to time served.

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<sup>5</sup> Under life imprisonment and hard imprisonment, the convicted person is placed in a specially designated prison and works in the prison in work specified by the government, for the duration of his life if the penalty is life imprisonment and for the duration of his sentence otherwise. A sentence of hard imprisonment can be no less than three years and no more than 15 years except in special cases set forth in law.

<sup>6</sup> Under imprisonment, the convicted person is placed in a general prison and works in or out of the facility in work specified by the government for the duration of his sentence. The sentence may be no less than three years and no more than 15 years except in special cases set forth in law.

<sup>7</sup> A jail sentence can be no less than 24 hours and no more than three years. A simple jail sentence cannot exceed one year, while jail with labor means that the convicted person works in prison if his sentence is one year or more.

- Pardons cover only original sentences and do not extend to other subsidiary penalties unless the pardon decree states otherwise. Otherwise, the convicted person must serve the part of the sentence that was not revoked by the pardon decree. For example Decree 386/2015 states, “One hundred (100) convicted persons shall be pardoned of the original sentence or what remains of it and of the subsidiary sentence...” This decree revoked subsidiary penalties (such as police probation) as well as the original sentence. If one of the pardoned persons had been sentenced to police probation, that penalty would be revoked under the pardon.

***Q: What happens if subsidiary penalties are not included in the pardon?***

**A:** If the pardon does not annul subsidiary penalties, the pardoned person may be denied some rights and privileges (acceptance to any government service whether directly or as a contractor or franchisee, regardless of the importance of the service; eligibility for state ranks or medals; membership in a probate council, directorate council, municipal or local council, or any public committee; eligibility to be a member of any of these bodies or an expert or witness in contracts if he was sentenced to life or hard imprisonment). In addition, such persons may be dismissed from state positions, placed under police probation, and have any devices or funds used in the crime confiscated.

***Q: So the president issues pardons. Can these pardons later be repealed?***

**A:** Article 155 of the constitution gives the president the authority to issue pardons. Such decrees therefore cannot be repealed by the legislative and judicial authorities, but they can be repealed by another decree from the president, whether the same or another president. For example, interim President Adli Mansour, with Decree 183/2014, repealed Decrees 57, 58, 122, and 218 (all issued in 2012) and Decree 36/2013, all of which were issued by Mohammed Morsi, and these included pardons for some people.

***Q: What consequence does a repeal of a pardon have for the person concerned?***

**A:** The duration of time between the date on which the pardon was issued and the date on which the pardon was repealed is deducted from sentence of the convicted person. That is, the time between the two decrees is considered time served on the sentence.

This is what happened in the cases mentioned above. Article 3 of Decree 183/2014 issued by President Adli Mansour stated, “The duration of time between the date of the issuance of the pardon decree and the date of issuance

of this decree shall be deducted from the sentence of the convicted person.” But the Administrative Court has ruled that this period cannot be deducted from the sentence because the pardoned person’s legal status has been altered—he is no longer a convicted person, but a pardoned person. As such, this legal status cannot be infringed with any new order, in deference to acquired rights and the stability of conditions pertaining under a particular legal system.<sup>8</sup>

What the court meant is that the president may issue a decree repealing a pardon if the original decree has not yet been executed by the competent bodies. In other words, if the president issues a pardon that is to go into effect a week from the date of issuance, he may repeal this pardon within that week, but not after it. We thus believe that Adli Mansour’s decree contravenes the Administrative Court’s ruling. The pardoned persons should file a suit with the Administrative Court because they had acquired a new legal status in the year separating the original pardon from the order repealing it, and this status cannot be infringed. That is, they cannot be returned to prison to serve the remainder of their sentence.

***Q: Are presidential pardons subject to judicial oversight? In what way?***

**A:** Various courts have considered presidential pardons to be sovereign acts not subject to judicial review or comment.<sup>9</sup> But in attempting to circumscribe the scope of the theory of sovereign acts, the Administrative Court has reconsidered, affirming that it does not include these decrees in the realm of sovereign acts.<sup>10</sup> Nevertheless, the Administrative Court has limited the scope of judicial review of presidential pardons to a determination of whether the pardon seeks the public interest. If such decrees are determined not to target the public interest, the court may overturn them.

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<sup>8</sup> The Administrative Court in Appeal 4347/60JY, issued in the session of November 14, 2006, ruled, “Every presidential decree issued pardoning a convicted person sentenced to a liberty-depriving penalty has a time frame in which it is applied, and that is from the date in which it enters into force until the date it is repealed. During this period, its provisions and rules shall apply and incidents and statuses shall be arbitrated under its authority, and the administrative body is obligated to enforce it within its specified bounds. Every person who fulfills its conditions and rules shall benefit from it, and those who do not meet these conditions and rules shall not benefit. A person whose legal status has benefitted from it cannot be infringed with the issuance of any new, subsequent decree, and this in deference to acquired rights and the stability of conditions obtaining under a specific legal system.” The ruling was not appealed with the High Administrative Court.

<sup>9</sup> Criminal Cassation, Appeal 1290/36JY, issued in the session of March 7, 1967.

<sup>10</sup> Administrative Court, Appeal 251/57JY, issued on January 14, 2003, and Appeal 4848/58JY, issued in the session of May 3, 2005.

***Q: Can a pardon be issued if the convicted person still has an avenue of appeal available? In other words, can a pardon be issued to a person whose sentence is not yet final?***

**A:** Yes, even though a pardon is theoretically the final refuge for a convicted person, used by the president to offer reprieve to a person for certain reasons. It thus should not be used as long as all avenues of appeal, which may result in an acquittal (an acquittal is considered better than a pardon) have not been exhausted. Nevertheless, there is no condition in the Penal Code requiring a pardoned person to have exhausted all appeal options, meaning that the president can issue a pardon even if a person has not yet been given a final sentence.

This was affirmed by the Court of Cassation, which has ruled, “If a petition for pardon has been made and the convicted person has in fact been pardoned before the appeal of his sentence is resolved, this pardon takes the matter out of the judiciary’s hands. As such, the Court of Cassation may not proceed in consideration of the case and must rule that it cannot hear the appeal.”<sup>11</sup>

In turn, a pardon may be issued while the convicted person’s appeal is being considered at any stage of appeal. This is the case of the pardons granted by Decree 386/2014, which was issued even though most of those covered by the pardon had appealed to the Court of Cassation, which has thus far not considered their appeals.

***Q: Must a decree for pardon include the names of the convicted persons? Or can it include a set of general conditions that may apply to many convicted people?***

**A:** Either is possible. A pardon may explicitly state the names of the persons it is pardoning, as is the case with Decree 286/2015 and others. A pardon may also contain no names, but cover certain crimes under certain conditions. This is true of Decree 18/2015, issued to mark Police Day and the January 25 revolution. That decree granted pardons under the following conditions:

1. Persons sentenced to life imprisonment, if time served as of January 25, 2015 is 15 years. The released person shall be placed under police probation for a period of five years, pursuant to Article 75(2) of the Penal Code.
2. Persons sentenced to liberty-depriving penalties prior to January 25, 2015 when the convicted person has served, as of this date, half of his sentence, provided that the time served is no less than six months; and persons sentenced to multiple liberty-depriving penalties in crimes they committed prior to their entry to prison and when they have spent in prison half the duration of the

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<sup>11</sup> Criminal Cassation, Appeal 1/8JY, issued in the session of November 29, 1937, and Appeal 2037/48JY, issued in the session of April 9, 1979.



combined penalties. The released person shall not be placed under police probation unless it is affirmed by force of law or he was sentenced to such, and provided the duration does not exceed five years or the period covered by this pardon, whichever is less.

When pardons like this are issued, which do not specify names, the body responsible for implementation is the Ministry of Interior, which examines the files of convicted persons around the country to identify those eligible for pardon and release.

***Q: Can a pardon include special conditions for the convicted person?***

**A:** Yes. Presidential Decree 18/2015 enumerated conditions for eligibility in Article 3: “To be eligible for pardon, the convicted person must meet the following conditions: 1) his conduct while serving his sentence should instill confidence in his reformation; 2) his pardon should constitute no danger to public security; and 3) payment of all the convicted person’s financial obligations unless he is unable to do so.”

***Q: Can some crimes be exempted from pardons?***

**A:** Yes. Even if the convicted persons fulfill all the aforementioned conditions, the text of Presidential Decree 18/2015 exempts some crimes from eligibility for pardon, including felonies and misdemeanors damaging to external government security, felonies and misdemeanors damaging to internal government security, explosives, bribery, felony fraud, and crimes of obstructing transport, etc.

***Q: Does a pardon cover all persons convicted in one case? Must the convicted persons have served some particular duration of their sentence?***

**A:** When a pardon is issued that specifies certain names, like the most recent pardon, it is issued for those specific individuals and does not cover others, even if they all participated in one “crime.” Pardons issued in particular cases or those that do not specify names apply to all if they meet the conditions set forth above.

There is no provision in the constitution or Penal Code that requires or places conditions on pardons. In turn, the matter is left to the president, but many pardons do set these conditions.