Court of Cassation Holds That Alleged Violations of International Law in Referral Orders Do Not Affect the Validity of the Trial

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Appeal No. 2721 of Judicial Year 89.

Court of Cassation (Criminal Circuit)

18 October 2020

On 18 October 2020, the Court of Cassation held that the appellant's plea that his referral for trial alone — while other companies operating in the field of television broadcasting were not referred —violated the principle of non-discrimination enshrined in the Constitution and international treaties and the principle of non-discrimination was unavailing, as the potential inclusion of other entities would not have negated his criminal liability for established monopolistic practices.

The case concerned the legal representative and CEO of a media group charged with abusing a dominant position in the market for live satellite broadcasting of sports tournaments in Egypt. It was established that the group held a 100% market share with no alternative products or competitors. The group was found to have implemented "Tying Arrangements" by conditioning subscriptions to major sports tournaments on the purchase of unrelated broadcasting packages, in violation of Article 8(d) of Law No. 3 of 2005 on Protecting Competition and the Preventing Monopolistic Practices (as amended by Laws No. 190 of 2008 and No. 56 of 2014).

The Economic Court convicted the appellant and imposed a fine of 400,000,000 Egyptian Pounds. This was later upheld by the Economic Court of Appeal; thus, the appellant subsequently filed an appeal before the Court of Cassation. The appellant argued, *inter alia*, that his referral alone for trial, while other companies operating in the same market were not referred, violated the Constitution of the Arab Republic of Egypt which criminalizes all forms of discrimination as well as international law and the international treaties to which Egypt is a party.

The Court rejected this argument stating that

> **The appellant’s argument that his referral alone, while other companies operating in the field of television broadcasting were not referred, violated the Constitution of the Arab Republic of Egypt which criminalizes all forms of discrimination, and violated international law and international treaties, is unavailing, since the inclusion of those companies would not have negated his liability for the offence of which he was convicted.**

It further held that

> **The referral order is an act of investigation. It is not subject to the rules of nullity applicable to judgments. Therefore, even assuming that the referral violated the Constitution, international law and international treaties, such violation would not nullify the trial or affect the validity of its procedures. Moreover, annulling the referral order after the trial court has become seized of the case would require returning the case to the referral stage — which is impermissible, given that this stage is nothing more than an investigative authority, and the case may not be returned to it once it has come within the court's purview.**

Accordingly, the Court decided to dismiss the challenge and uphold the conviction.

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