Egypt’s Court of Cassation reaffirms ICCPR does not bar the death penalty

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Appeal No. 13312 of Judicial Year 91
Court of Cassation
Judgment of 22 Feb 2024

On 22 February 2024, the Court of Cassation held that neither the International Covenant on Civil and Political Rights (ICCPR) nor any other binding international instrument ratified by Egypt abolishes or restricts the application of the death penalty under Egyptian law. The ruling was delivered in the context of reviewing a criminal case in which the death penalty had been imposed following a conviction for premeditated murder.

On 3 July 2021, the Naga Hammadi Criminal Court rendered its judgment in Felony Case No. 21853 of 2020 (Naga Hammadi), concerning charges of premeditated murder and unlawful possession of firearms and ammunition. The court sentenced one of the convicted persons to death by hanging after referring the case to the Grand Mufti for an advisory opinion. The convicted person subsequently appealed the judgment before the Court of Cassation, while the Public Prosecution sought confirmation of the death sentence.

The appellant contended, *inter alia*, that the imposition of the death penalty contravened the normsenshrined in international human rights conventions.

The Court of Cassation rejected this plea, stating that:

> Whereas Article 93 of the Constitution of the Arab Republic of Egypt of 2014, as amended, provides that: “The State shall be bound by the international human rights agreements, covenants and conventions ratified by Egypt, and which shall have the force of law after publication in accordance with the prescribed conditions”; and whereas it is well established that a legislative provision may be repealed only by subsequent legislation that either expressly provides for such repeal, contains a provision conflicting with that of the earlier legislation, or re-regulates the subject matter previously governed by the latter.
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> Whereas the International Covenant on Civil and Political Rights (ICCPR), adopted by the United Nations General Assembly on 16 December 1966, signed by the Arab Republic of

Egypt on 4 August 1967, and incorporated into domestic law pursuant to Presidential Decree No. 536 of 1981 (published in the Official Gazette on 15 April 1982), constitutes an instrument through which States, as subjects of public international law, are invited to undertake coordinated action to safeguard the right to life ; **and whereas a review of the Covenant's provisions demonstrates that it neither expressly nor implicitly repeals or amends domestic penal laws of States Parties that provide for the death penalty , but rather leaves the application of capital punishment for the most serious crimes to domestic legal systems.** This is affirmed by Article 6(2) of the Covenant, which provides that: "In countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime and not contrary to the provisions of the present Covenant and to the Convention on the Prevention and Punishment of the Crime of Genocide. This penalty can only be carried out pursuant to a final judgement rendered by a competent court."

Therefore, the Court concluded that:

Consequently, the application of ICCPR does not affect the applicability of Egyptian penal laws insofar as they provide for the death penalty. Moreover, the Arab Republic of Egypt has neither signed nor ratified the Second Optional Protocol to the ICCPR, adopted by the United Nations General Assembly on 15 December 1989, which aims at the abolition of the death penalty. As such, the Protocol is not binding upon Egypt. Accordingly, this ground of appeal lacks legal merit.

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