Court of Cassation Clarifies the Scope of Criminal Law vis-à-vis International Legal Norms.

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Court of Cassation

Judgments of 20th Oct 2021 & 1st Oct 2022

Appeals No. 13805 of Judicial Year 88 & No. 8381 of Judicial year 89

The Court of Cassation, in its judgments of 20 October 2021 and 1 October 2022, addressed the relationship between domestic criminal law and international legal norms where it held that domestic criminal law operates within a distinct normative framework from international covenants and conventions. **It affirmed that, in determining the elements and conditions of criminal offenses, the criminal judge must give effect to the will of the national legislature as expressed in domestic law, irrespective of existing international legal norms.**

1. Factual Background

(a) Appeal No. 13805 of Judicial Year 88 (Judgment of 20 October 2021)

The issue first arose in the context of a criminal case concerning events that occurred at the Faculty of Science, Alexandria University, where several defendants were charged with participating in an unlawful assembly involving the use and display of force against students and visitors. According to the Prosecution, the defendants had joined a group established in violation of the law and participated in a gathering exceeding five persons with the purpose of committing acts of intimidation and violence. During the incident, some participants allegedly used fireworks and other tools capable of causing harm, which were launched toward students and visitors, thereby endangering their safety and disturbing public security.

On that basis, the defendants were prosecuted for offences including unlawful assembly under Law No. 10 of 1914, possession of fireworks and tools used for assault without authorization, and possession of printed materials promoting the objectives of the group.

The Alexandria Criminal Court convicted several defendants and sentenced them to three years' rigorous imprisonment, police supervision, and confiscation of the seized items. Three of the convicted individuals subsequently appealed the judgment before the Court of Cassation.

The appellants contended, *inter alia*, that the provisions of Law No. 10 of 1914 on unlawful assembly could not be applied on the ground that they had been implicitly repealed by the International Covenant on Civil and Political Rights (ICCPR), ratified pursuant to Presidential Decree No. 536 of 1980 in accordance with Article 2 of the Civil Code.

(b) Appeal No. 8381 of Judicial Year 89 (Judgment of 1 October 2022)

The issue was further addressed in a subsequent appeal concerning a criminal case arising from events that occurred on 31 January 2015 in Giza, where the appellant among others were charged with participating in a gathering of more than five persons that attacked the Monib Police Station. According to the Prosecution, the participants used firearms, explosives, and incendiary devices, resulting in damage to the police facility and the use of force against police personnel.

On that basis, the appellant was prosecuted for offences including unlawful assembly under Law No. 10 of 1914, destruction of public property, use of force against a public official, participation in an unlawful demonstration, and possession of firearms, ammunition, and explosives without license.

On 26 August 2018, the Cairo Criminal Court rendered its judgment in Felony Case No. 1604 of 2015 (Giza), concerning charges related to unlawful assembly, use of force against public officials, destruction of public property, and possession of firearms, ammunition, and explosives. The court sentenced the accused to five years of rigorous imprisonment, imposed criminal costs, and ordered police supervision for a period of one year, while acquitting him of the charge of forming a gang.

The convicted person subsequently filed an appeal before the Court of Cassation. The appellant contended that the provisions of Law No. 10 of 1914 on Unlawful Assembly had been repealed by virtue of the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), and the Universal Declaration of Human Rights (UDHR).

2. The Court of Cassation on the Relationship between Domestic Criminal Law and International Norms

In addressing this plea in both cases, the Court of Cassation explained the relationship between domestic criminal law and international legal obligations, stating:

> Whereas it is well established that criminal law constitutes a punitive legal system possessing autonomy from other legal regimes and pursuing its own objectives, as it aims, through the imposition of penalties, to safeguard the security of the State and to protect essential interests. It is not merely a legal regime whose function is confined to serving the

aims pursued by other legal systems.

> **Accordingly, when a court applies criminal law provisions to an offense defined therein and whose constituent elements and conditions are fulfilled, it must adhere to the will of the legislature as expressed in this domestic law and give effect to the provisions addressed by the legislator to the criminal judge, irrespective of any rules or principles of international law addressed to States as members of the international community.**

On this basis, the Court concluded that:

> Since the provisions of Law No. 10 of 1914 concerning unlawful assembly set forth the conditions required for the offense of assembly to be established, as well as the applicable penalties, it follows that the provisions of that law must be applied to the case at hand, given that the scope of its application differs from that of the international conventions.

For the reasons aforementioned, the Court held in both cases that the appellants' argument that the Law on Unlawful Assembly had been repealed by relevant international conventions was devoid of merit.

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