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

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Court of Cassation

Appeal No.11505 of judicial year 88

Judgment of 2 November 2019

On 2 November 2019, the Court of Cassation held that the International Covenant on Civil and Political Rights (1996) (ICCPR) shall not prejudice the scope of application of the Egyptian penal laws in force, insofar as such laws provide for the death penalty. 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 2 November 2019, the Public Prosecution referred the defendant to trial on charges of the premeditated murder of two victims, the attempted premeditated murder of a third victim, and the unlawful possession of an unlicensed firearm and ammunition. The Criminal Court, after referring the case to the Grand Mufti for an advisory opinion, sentenced the defendant to death.

The defendant subsequently appealed before the Court of Cassation, advancing several grounds, including the contention that the death penalty contravenes the ICCPR.

The Court rejected this argument. While acknowledging that Article 93 of the Constitution of the Arab Republic of Egypt, as amended in 2014, provides that: “The State shall be bound by the international human rights agreements, covenants, and conventions ratified by Egypt, which shall have the force of law upon their publication in accordance with the prescribed conditions,” the Court held that it is a well-established principle that a legislative provision may not be repealed except by a subsequent legislation that expressly provides for such repeal, or contains a provision conflicting with that of the earlier legislation, or re-regulates the subject matter previously governed by that legislation.

Against this backdrop, the Court examined the ICCPR, adopted by the UN General Assembly on 16 December 1966, signed by the Arab Republic of Egypt on 4 August 1967 and incorporated into domestic law by Presidential Decree No. 536 of 1981 (published in the Official Gazette on 15 April

1982). **It held that the Convention amounts to no more than an invitation issued by States, in their capacity as subjects of public international law, to engage in coordinated action to guarantee the right to life. The Court further stated that it is evident from an examination of its provisions that it has neither repealed nor amended—either expressly or implicitly—the death penalty under domestic law. Rather, the Covenant leaves its imposition for the "most serious crimes," as confirmed by Article 6(2),** 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."

The Court further noted that Egypt has neither signed nor ratified the Second Optional Protocol to the ICCPR (1989), adopted by the UN General Assembly 15 December 1989, aiming at the abolition of the death penalty, and is therefore not bound by it. Accordingly, the Court decided that this ground of appeal is unfounded.

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