Court of Cassation rejects ICCPR-based challenge to conviction rendered through single-Instance proceedings

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Court of Cassation

Judgment of 14th May 2023

Appeal No. 14102 of Judicial year 91

On 14 May 2023, the Court of Cassation addressed the relationship between domestic criminal procedural law and the guarantees provided under International Covenant on Civil and Political Rights (ICCPR), particularly the right to a double degree of jurisdiction in criminal matters.

The case arose from criminal proceedings brought against the Chairman of the Board of Directors of a youth center affiliated with the Directorate of Youth and Sports, concerning acts allegedly committed between 2014 and 2016. According to the Prosecution, the accused, in his official capacity, unlawfully obtained financial benefit by constructing and leasing commercial shops within the youth center without obtaining the required administrative approvals, thereby collecting rental income for his personal benefit. He was further accused of intentionally damaging property belonging to his employing authority by demolishing parts of the youth center and carrying out excavation works, causing significant financial harm to the institution.

On that basis, the accused was prosecuted for offences related to abuse of public office, unlawful profit, and damage to public property. The Criminal Court convicted the accused and sentenced him to five years' rigorous imprisonment, ordered restitution of the unlawfully obtained sums and compensation for the damage caused, imposed a fine equal to those amounts, and dismissed him from his position. The convicted person subsequently filed an appeal before the Court of Cassation.

The appellant contended, *inter alia*, that the trial proceedings were null and void on the ground that they had been conducted before the Criminal Court in a single instance, in violation of the guarantees provided under international conventions, in particular Article 14(5) of the ICCPR.

The Court of Cassation rejected this plea. It began by recalling that **Article 93 of the Egyptian Constitution**, 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 after publication in accordance with the prescribed conditions," adding that it is well established that a legislative provision may not be repealed except by subsequent legislation that expressly provides for such repeal, contains a provision inconsistent with the earlier legislation, or re-regulates the subject matter previously governed thereby.

Turning to the specific right invoked, the Court noted that **Article 14(5) of the International Covenant on Civil and Political Rights** — adopted by the UN General Assembly on 16 December 1966, signed by Egypt on 4 August 1967, and promulgated by Presidential Decree No. 536 of 1981, published in the Official Gazette on 15 April 1982 — provides that *"everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law."*

The Court **then clarified the effect of this provision, holding that it constitutes merely an invitation addressed to States, as subjects of public international law, to undertake coordinated action to ensure the right of a convicted person, in accordance with domestic law, to have his conviction and sentence reviewed by a higher tribunal — and that a review of its terms shows it has neither expressly nor implicitly repealed or amended the rules of criminal procedural law in force in the States Parties.**

On this basis, the Court concluded that the appellant's contention that the impugned judgment was invalid on this ground was without merit.

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