Court of Cassation Rejects a Human Rights-Based Challenge to Terrorist Listing

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Appeal No. 11 of Year 2023

Court of Cassation

Judgment of 24 January 2024

On 24 January 2024, the Court of Cassation addressed the relationship between Egypt's domestic counter-terrorism legislation and international human rights instruments.

The case arose from criminal proceedings relating to the inclusion of several individuals on the terrorist entities list pursuant to Law No. 8 of 2015 on the Regulation of Terrorist Entities Lists, as amended by Law No. 14 of 2020. The Cairo Criminal Court had ordered the listing of the appellants on the basis of their involvement in activities connected with a terrorist organization. The defendants subsequently challenged this decision before the Court of Cassation.

The first appellant contended, *inter alia*, that the decision was issued in violation of the International Covenant on Civil and Political Rights, the Universal Declaration of Human Rights, and the African Charter on Human and Peoples' Rights.

The Court rejected this argument, and grounded its rejection by referring to the constitutional framework governing the status of international human rights treaties in Egyptian law. It noted that **Article 93 of the Egyptian Constitution** provides that: "The State shall be bound by the international agreements, covenants and conventions on human rights ratified by Egypt, and they shall have the force of law after publication in accordance with the prescribed procedures."

The Court further examined the international instruments relied upon by the appellant. It highlighted that the **Preamble to the International Covenant on Civil and Political Rights (ICCPR)—to which Egypt acceded pursuant to Presidential Decree No. 536 of 1981, issued on 1 October 1981 and published in the Official Gazette on 15 April 1982—demonstrates that the states parties aim at promoting universal respect for and observance of recognized human rights and freedoms, while acknowledging the obligations and duties incumbent upon individuals and their responsibility to strive for the promotion of**

those rights and freedoms. It further referred to Article 19(3), which provides that: “The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but only such as are provided by law and are necessary: (a) for respect of the rights or reputations of others; (b) for the protection of national security or public order, or of public health or morals.” It also referred to Article 20(2) of the Covenant, which states that: “Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.”

The Court further highlighted that paragraphs (1) and (2) of Article 29 of the Universal Declaration of Human Rights –adopted by the United Nations on 10 December 1948 and approved by most Member States at that time, including Egypt – provides that: “Everyone has duties to the community in which alone the free and full development of his personality is possible. In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.”

The Court also referred to the African Charter on Human and Peoples’ Rights, to which Egypt acceded pursuant to Presidential Decree No. 77 of 1984, issued on 27 February 1984 and published in the Official Gazette on 23 April 1992. It noted that Article 29, paragraphs (2) to (5) of the Charter provides that the individual shall: “serve his national community by placing his physical and intellectual abilities at its service; not compromise the security of the State of which he is a national or resident; preserve and strengthen social and national solidarity, particularly when it is threatened; safeguard and strengthen national independence and the territorial integrity of his country, and generally contribute to the defence of his country in accordance with the conditions laid down by law.”

Against this backdrop, the Court stated that:

> **“ whereas the aforementioned international treaties and conventions constitute merely an invitation addressed to States Parties, in their capacity as subjects of public international law, to undertake coordinated action aimed at promoting civil and political rights for the individuals of their peoples; these conventions expressly stipulated that, in promoting and ensuring respect for the civil and political rights of individuals, such individuals are required to assume particular duties and responsibilities toward other persons, the community to which they belong, and the State of which they are nationals or in which they reside and affirmed the right of the States Parties concerned to impose limitations on those rights as may be necessary**

through the enactment of laws intended to preserve public order and morals and to protect themselves from dangers that may threaten social peace or national security."

Upon that, The Court emphasized that the legislator, being mindful of the dangers facing the Egyptian State as a result of the spread of terrorist crimes, enacted Law No. 8 of 2015 on the Regulation of Terrorist Entities Lists—published in Official Gazette No. 7 bis (H) on 17 February 2015 and entering into force on the day following its publication—as a precautionary measure aimed at enhancing the effectiveness of measures to combat terrorism and its financing, thereby contributing to the reduction of such crimes that threaten the Egyptian social peace and national security.

In that context, The Court highlighted that Law No. 8 of 2015 has subsequently been amended, most recently by Law No. 14 of 2020, published in Official Gazette No. 9 bis (A) on 3 March 2020; and **that the explanatory memorandum to the draft law submitted by the Government states that these recent amendments were enacted in compliance with the international agreements to which Egypt has acceded and which it has ratified, and in fulfilment of their standards.**

Accordingly, The Court rejected the contention that the listing decision was in breach of the aforementioned human rights instruments.

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