Egypt’s Court of Cassation Rejects a Double Jeopardy Argument under ICCPR in a Money Laundering Case

Mostafa Korayem
Human rights | May 10, 2023

Appeal No. 6707 of Judicial Year 91
Court of Cassation
Judgment of 10 May 2023

On 10 May 2023, the Court of Cassation addressed and dismissed a double jeopardy argument in proceedings related to money laundering. The appellant had been charged with laundering substantial sums in Egyptian pounds and foreign currencies, derived from a prior felony, through a range of activities including the purchase of vehicles, bank deposits, real estate acquisitions, and the retention of cash, with the intent of concealing and disguising the illicit origin of the proceeds.

The Cairo Economic Court (Criminal Circuit) convicted the appellant under the Anti-Money Laundering Law *No. 80 of 2002.* The appellant lodged an appeal before the Court of Cassation, advancing several legal grounds, *inter alia*, a plea of double jeopardy. **He invoked the principle of *ne bis in idem*, as enshrined in Article 14(7) of the ICCPR**, which provides that “no one shall be liable to be tried or punished again for an offence for which he has already been finally convicted or acquitted in accordance with the law and penal procedure of each country.” The appellant contended that this principle precluded his prosecution, as he had already been convicted and sentenced for the same offence for which the impugned judgment was issued. He argued that a prior judgment had been rendered against him for the offence of human trafficking and the unlawful transfer and transplantation of human organs, as well as for other offences arising therefrom, which, in his submission, encompass the offence of money laundering. Thus, the imposition of a second sentence for the same offence is impermissible.

The Court of Cassation dismissed this argument holding that it is well established that the conclusiveness of a final judgment (*res judicata*) is predicated upon the unity of parties, subject matter, and cause. For the cause to be regarded as identical, the act for which the accused is being prosecuted must be the very same act that formed the basis of the prior judgment. It is insufficient, for the purposes of establishing unity of cause between two proceedings, that the acts merely constitute successive links in a chain of conduct committed by the accused in pursuit of a single objective, where each act is characterized by its own distinct elements and particular circumstances that differentiate it from the other, thereby precluding any finding of unity of cause as

between the two. The Court further emphasized that it is well established that, for a plea of *res judicata* to be upheld, the subject matter of the second case must be identical to that previously adjudicated. In the present case, it is evident that the felony of human trafficking and the unlawful transfer and transplantation of human organs—being the offence for which the appellant was previously convicted—differs in subject matter from the present proceedings, which concern the laundering of the proceeds derived from that offence. This distinction precludes any finding of unity of cause. Accordingly, the plea advanced in this respect is devoid of any basis in fact or law.

In that context, the Court reaffirmed the autonomy of criminal law, stating that

> Whereas it is well established that criminal law is a punitive body of law with an independent system, distinct from other legal systems and guided by its own intrinsic objectives—where punishment is intended to safeguard the security of the State, and its primary mission is the protection of fundamental interests—it is therefore not merely a legal system whose function is limited to serving the objectives pursued by those other systems. **Accordingly, when a court applies criminal law to an offense expressly provided for therein, and where its constituent elements and conditions are satisfied, it must adhere to the will of the legislator as expressed in this domestic law, and observe the provisions addressed by the legislator to the criminal judge, as these are to be given primary consideration, irrespective of the rules or principles imposed by international law and addressed to the States of the international community.**

Accordingly, the Court found that *Law No. 80 of 2002* on Combating Money Laundering independently defines both the elements of the offence and the applicable penalties, and that its scope of application differs from that of the relevant international convention. **As a result, the Court decided that the claim that the impugned judgment violated the ICCPR was unfounded.**

Printed from EGYPIL.com