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ACCORD – Austrian Centre for Country of Origin & Asylum Research and Documentation

Query response on Egypt: Information on death penalty: legislation, responsible courts, appeal process; Information on criminal court in Zagazig, issuing of death penalty; Duration of such criminal trials, defendant being informed about trial proceedings [a-11540]

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Non-English language information is summarised in English. Original language quotations are provided for reference in the document or upon request.

Legal provisions that proscribe the death penalty

The Washington-based think tank Tahrir Institute for Middle East Policy (TIMEP) explains that “[a] number of crimes are punishable by death in Egypt per legislation including the Penal Code, Counter-terrorism Law, Code of Military Justice, and Law No. 182 of 1960 Concerning Narcotics” (TIMEP, 17 June 2019). According to the US Department of State report on human rights practices, “[t]he law provides a broad definition of terrorism, to include ‘any act harming national unity or social peace’,” adding that “[h]uman rights observers expressed concern that authorities used the ambiguous definition to stifle nonviolent speech and nonviolent opposition activity” (USDOS, 30 March 2021, section 2). For the year 2019, Amnesty International (AI) recorded 435 death sentences, including for terrorism-related offences, attempted murder and inciting violence. (AI, April 2020, p. 36)

The non-governmental Egyptian Initiative for Personal Rights (EIPR), which has been working to strengthen and protect basic rights and freedoms in Egypt, in January 2018 published a report on the imposition of the death penalty in Egypt in the year 2017. It briefly outlines the different pieces of legislation that contain capital punishment and explains how politically motivated criminal cases usually differ from regular criminal cases in that they deal with several defendants together and all of them are charged for various counts:

“The Egyptian civil legislation contains more than 100 crimes punishable by the death penalty, including 35 crimes stipulated in the Penal Code, relating to threatening of the security of the State internally and externally and inflicting damage on individuals, and 10 crimes in anti-drugs laws. The largest number of offences punishable by death is in the Military Code, which provides for at least 41 offences punishable by death. The Counter-Terrorism Law, passed in 2015, also punishes the perpetrators of at least 15 other crimes by hanging. Political cases can be distinguished from criminal cases by a number of features. For example, while criminal cases involve a small number of defendants, a relatively larger number of defendants are prosecuted in cases of a political nature. The defendants are also tried on several counts, including the charge of: ‘establishing, leading, or joining a group founded in violation to the provisions of the law, which is intended to call for the disruption of the provisions of the Constitution and laws, and to prevent state institutions and public authorities from carrying out their duty and attacks on the personal freedom of citizens, and endangering the safety and security of society. Terrorism was one of the means used by the group to carry out its purposes and to acquire firearms and ammunition.’” (EIPR, January 2018, pp. 7-8)

In a statement of October 2017 regarding the use of the death penalty in Egyptian Law, EIPR gives a detailed overview of the different kinds of criminal offences stipulated in the anti-terrorism law that require a death penalty sentence:

“The anti-terrorism law cites the death penalty as punishment for establishing, forming, organizing or managing a terrorist group, or holding a leadership position in such a group; coercing another to join a terrorist group, or preventing someone from leaving a group if this coercion or prevention has fatal results; financing a terrorist group or act; seeking to or actually spying for a foreign state or any association, body, organization, group, gang or other entity based inside or outside Egypt, or with any person acting in the interest of a foreign state or any of the said entities with the aim of committing or planning a terrorist crime inside Egypt or against any of its citizens, interests, property, or the premises or offices of its missions or institutions abroad, or against anyone employed in such a mission or institution, or against any person enjoying international protection – if the offense is committed or attempted.

The death penalty is also stipulated for seizing, attacking or entering by force, violence, threat or intimidation premises belonging to the president, Parliament, the Council of Ministers, ministries, governorates, armed forces, courts, prosecutors, security directorates, police stations, prisons, security bodies, oversight bodies, archaeological sites, public facilities, places of worship, education, hospitals or any public buildings or facilities for the purpose of committing a terrorist offense, and for placing devices or materials in any of these premises when such devices or materials are capable of destroying or causing harm to them or any persons present in or using them, or threatening to commit such acts, if any of the above results in a person's death; as well for committing a terrorist act if it results in a fatality.

Arresting, abducting, detaining, imprisoning or depriving a person of liberty in any form, if the purpose is to compel a state authority or body to undertake or refrain from an action, or to achieve an aim or facilitate a gain of any kind, if this results in the death of a person; or making or designing a weapon, possessing such a weapon or giving one away or facilitating the acquisition of one to be used or prepared for use in a terrorist crime, is punishable by the death penalty if its use results in the death of a person.

The penalty is also applied for deliberately damaging, vandalizing, destroying, disrupting, cutting or breaking a network, tower, line, building or installation of electricity, petroleum, natural gas or water, or forcibly assuming possession of any such installations if any of these crimes result in a person's death; and for attacking enforcers of the implementation of the provisions of the Anti-Terrorism Law, or using force, violence or intimidation to resist during or because of the law's enforcement, resulting in the death of a person.” (EIPR, 10 October 2017)

Courts responsible for trials resulting in death penalties, appeal process

Egypt Justice Project is a project by a former US-diplomat who worked in the diplomatic service in Egypt until 2015. The aim of his project is to explain the Egyptian judicial system to an international audience. It briefly outlines the court system and mentions that criminal cases are tried before criminal courts that are in fact a circuit of the Court of Appeals. The Court of Cassation serves as the Court of Appeal in criminal cases:

„The common or general court system has three basic levels: Courts of First Instance, Courts of Appeal, and the Court of Cassation. In criminal cases, those three levels take the form of summary courts (misdemeanors and petty offenses), criminal courts (felonies), and the Court of Cassation. [...] Felony cases are tried before criminal courts, which are a circuit of the Court of Appeals and consist of panels of three judges of the Court of Appeals sitting as trial judges. (In felony cases, Court of Appeals judges do not act as appellate judges as their title implies, but rather as trial judges, which can be confusing.) Misdemeanor and criminal court judges have the authority to conduct their own supplemental investigation into the facts if they are not satisfied with the evidence presented by the public prosecution and defense, or if new factual issues arise in the course of the trial. At the other extreme, trial judges can accept the evidence as presented by the parties in the court file without any requirement to hear live testimony from witnesses if not requested to do so by a party. In that manner, a large number of misdemeanor and even some felony cases can be and routinely are fully tried in a single day. Other trials may unfold over the course of months, with trial sessions being held only one or two days a month, all in the discretion of the court. The Court of Cassation is the supreme court of the common court system, and is comprised of a President and about 450 Vice-Presidents who hear criminal and civil appeals in panels of five. Appeals before the Court of Cassation are limited to issues of law, not fact. But, 'law' means more than just procedure. For example, criminal convictions lacking sufficient supporting evidence to justify a finding of guilt can be (and often are) reversed as erroneous as a matter of law for violating fundamental standards of due process.” (Egypt Justice Project, undated)

According to the January 2018 EIPR report, the appeal procedure was changed by presidential decree in April 2017. While before there was a possibility for two appeals, now a death sentence is issued by a criminal court and an appeal can be filed with the Court of Cassation within 60 days. The Court of Cassation then issues the final verdict:

“In 2017 some articles in the Code of Criminal Procedures were amended. President Abdel Fattah al-Sisi issued Decree No. 11 of 2017 on 27 April on the amendment of appeal procedures, whereby cases can only be tried once before the Criminal Court and only once before the Court of Cassation where the latter addresses the subject matter. [...]

Prior to April 2017, the Court of Cassation could have annulled the criminal verdict and re-tried the defendant before another criminal circuit. Once referred to a new criminal court, the defendants could appeal for a second time to the Court of Cassation. As such it was possible for the defendants to appeal twice before the Court of Cassation. However, since the adoption of these new amendments, the stages of litigation for death sentences have become as follows:

The first death sentence shall be issued by a criminal court after the defendants have been referred to the Grand Mufti of the Republic according to Article 381 of the Code of Criminal Procedures, the second paragraph of which reads: ‘Criminal courts may only issue a death sentence by the unanimous decision of all the members of said court, and prior to issuing such sentence the court must solicit the opinion of the Mufti of the Republic after dispatching the said case file to the same. If the opinion of the Grand Mufti is not received by the court within ten days following the dispatch of the case file, the court shall decide the case. In the event of the post vacancy or absence of the Grand Mufti, or any other hindrance, the Minister of Justice shall commission by a decree a person to act on behalf of the Grand Mufti.

After a death sentence has been handed down by the criminal court, the accused can file an appeal within 60 days. The Court of Cassation examines and adjudicates the case: either by upholding the death sentences against the accused, or by considering the case itself and issuing irrevocable judgements.” (EIPR, January 2018, pp. 8-10)

TIMEP similarly explains that after a death sentence has been issued in a court of first instance, a defendant can file an appeal before the Court of Cassation:

“According to Article 381 of the Criminal Procedure Code, all criminal courts must solicit the opinion of the Egyptian grand mufti when they intend to issue a death sentence in a case. The opinion of the mufti is not binding and is not made public. If the mufti does not give an opinion within 10 days, the criminal court is to issue its verdict regardless. Following the issuing of a death sentence by a court of first instance, a defendant has 60 days to file an appeal before the Court of Cassation that will either result in the upholding of the death sentence or the vacating of it.” (TIMEP, 17 June 2019)

In a May 2018 press release, EIPR gives several examples illustrating the system described above. The press release describes cases monitored by the NGO, where death sentences were issued in a criminal court (felony court) and appeals were filed with the Court of Cassation. It is mentioned that in one case the Court of Cassation denied an appeal and upheld the death sentence in another case. (EIPR, 10 May 2018)

Information on the criminal court in Zagazig, issuing of death penalty

Several Arab news outlets report on instances in which the criminal court in Zagazig (Mahkamat Jinayat Az-Zagazig) issued death sentences.

In September 2020 The New Arab and Ahram Online, the website of the Egyptian state-owned newspaper, report that the criminal court in Zagazig sentenced six members of the Muslim Brotherhood to death for the killing of two policemen in 2016 (The New Arab, 30 September 2020; Ahram Online, 30 September 2020). The New Arab adds that five of the six defendants were tried in absentia (The New Arab, 30 September 2020). According to Ahram Online, the prosecution had brought charges against the members of the Muslim Brotherhood for “joining the outlawed group, attempting to overthrow the government, fomenting chaos, and murder and attempted murder of policemen”, adding that the verdicts can be appealed (Ahram Online, 30 September 2020).

The Egyptian newspaper Shorouk reports in March 2021 that a driver for a petrol factory was sentenced to death by Zagazig criminal court for killing a co-worker in 2020 (Shorouk News, 16 March 2021). The Egyptian Newspaper Elwatan reports in March 2021 that the criminal court in Zagazig issued a death sentence for a defendant charged with murder committed in 2019, after receiving the approval from the Mufti regarding the case (Elwatan, 10 March 2021). The Egyptian Daily Youm7 reports in February 2021, that three defendants charged with robbery and murder were sentenced to death by hanging by the criminal court in Zagazig (Youm7, 23 February 2021). The online news outlet Masrawy mentions in January 2021 that the criminal court in Zagazig sentenced a young man to death by hanging for kidnapping and raping a girl in 2020 (Masrawy, 21 January 2021).

Duration of such criminal trials, defendant being informed about trial proceedings

The EIPR report of January 2018 presents some politically motivated cases in which the death penalty was issued and subsequently appealed before the Court of Cassation. In the first case, the crime happened in 2012, the death sentence was issued by the criminal court in 2015 and upheld by the Court of Cassation in 2017 (EIPR, January 2018, p. 11). In the second case, the crime happened in 2013, the criminal court issued the death penalty in 2016 and the Court of Cassation upheld the judgement in 2017 (EIPR, January 2018, p. 12). Several more cases like this are described on the following pages with the proceedings taking several years until the final verdict.

In the above-mentioned case of six members of the Muslim Brotherhood sentenced to death in first instance by the criminal court in Zagazig in September 2020, the crime they were sentenced for happened in 2016. (The New Arab, 30 September 2020; Ahram Online, 30 September 2020)

The Egyptian Law Firm Youssry Saleh & Partners in September 2020 published an article in the online journal

Lexology on trial proceedings in criminal cases, in which it outlines the system of notification for court hearings:

“Procedures of Notifying the Persons Accused and Witnesses:

The Accused:

Upon the request of the public prosecution or the civil plaintiff, the persons accused shall be summoned to appear before the court one full day before holding the hearing in contraventions, three full days, at least, before holding the hearing in misdemeanors, and eight full days, at least, before holding the hearing in felonies, excluding travel time. If the accused resides outside Egypt, the committal order and the summons notice shall be served upon him at his residence address, if known, at least one month before the date set to hear the case, excluding travel time. In the event that the accused is caught in the act, or provisionally detained for a misdemeanor, the summons may be issued without specifying a date.

The summons document should be served upon the notified party in person or to his/her place of residence through the methods prescribed in in the civil and commercial articles of Procedural Law. If search did not lead to knowledge of the accused's place of residence, the process shall be handed over to the administrative authority where the accused person had last resided in Egypt. The process of imprisoned persons shall be delivered to the prison governor or whoever in his place. Procedures and methods of serving summons to appear before the court, of the litigants and parties to a lawsuit, are regulated by Articles 157, 232 to 236, Articles 374, 384, 387 of the Egyptian Criminal Procedures Law.” (Youssry Saleh & Partners, 1 September 2020)

Article 238 of the Egyptian Criminal Procedure Code stipulates that a court is allowed to postpone the case to a next hearing rather than pronounce a verdict in absentia, by ordering to re-notify the absent party at his place of residence and alerting him that if he fails to appear at the next hearing, the judgment issued is considered to be a judgment in praesentia. (Law No. 150 of 1950, Article 238)

Within the time constraints no further information could be found on the subject of court notification procedures. The search terms used included: Egypt, court, trial, notification, absence, criminal procedure, مصر, محكمة الجنائيات, اعلان, المتهم, غياب

References: (all links accessed 2 April 2021)

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Austrian Centre for Country of Origin and Asylum
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Wiedner Hauptstraße 32, 1041 Wien
T (Telefon) +43 1 589 00 583
F (Fax) +43 1 589 00 589
info@ecoi.net

Contact
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