



A legal paper Clustered Legislations Five Years on the Anti-Terrorism Law

The Egyptian government issued the Anti-Terrorism Law 94/2015, claiming the law is meant to deal with the exceptional circumstances Egypt had undergone at that period. The law sought to identify terrorist crimes and regulate the procedures of detaining and trying suspects. It also contained a number of provisions on infringing on basic rights stipulated in the Egyptian constitution and international charters.

Five years after the law was issued, the Arab Centre for the Independence of the Judiciary and the Legal Profession has published a legal paper titled “Cluster Acts: Five Years on the Anti-Terrorism Law”.

The paper focuses on the repercussions of the regulations stipulated by the law in light of the international standards related to legislation issued in exceptional circumstances. The paper tackles the direct effect of the law on constraining basic rights and freedoms, and the impact the law has left on other laws. The Anti-Terrorism Law founded a new legislative philosophy, which resulted in issuing legal articles bearing the same provisions in other legislation. The paper closes with conclusions of the most significant points and a number of recommendations necessary to halt the repercussions of applying the Anti-Terrorism Law.

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Conclusions

- 1- The climate in which the Anti-Terrorism Law was approved was exceptional. The law was passed amid many violent incidents, which reflected on the formulation of the law that expanded on restrictions on rights and procedural guarantees. Now that the circumstances have changed, the law must be reviewed, just as the repealed NGOs law of 2017 was revised. The Egyptian authorities declared that the reasons for approving the NGOs law had changed, which required amending the law.
- 2- The exceptional Anti-Terrorism Law was issued through a presidential decree in the absence of parliament. The articles of the law were not revised because it was approved without being discussed in parliament. The law was presented for debate amid hundreds of laws that had to be approved during the first parliamentary round.
- 3- The legislative philosophy adopted by the Anti-Terrorism Law relied on detailed formulas, shunning from substantive wording, to meet the state's demand to impose limitations to restrict the execution of terrorist crimes – from the viewpoint of the legislation – which led to expanding the range of criminal acts covered by the law.
- 4- The legislator extensively used inaccurate phrases and terminology that are banned according to judicial precedents by the Supreme Constitutional Court, such as “danger” and “harming the economy and national interests”.
- 5- The law mentioned some expressions that were canceled according to Law 147/2006 which removed unspecified phrases from the Penal Code, such as “felonies violating government security.”
- 6- The Anti-Terrorism Law expanded on the description of criminal acts, contravening the principles of the Supreme Constitutional Court, which ruled “It was therefore imperative that the punitive text not be loaded with more than one meaning, burdened with the shackles of multiple interpretations, flexible in its formulation, ignoring and infringing on – through its loose wording – constitutional rights.”
- 7- The law expanded the definition of a criminal behavior constituting a terrorist crime, particularly the definition in the second paragraph of Article 2 of the Anti-Terrorism Law. The law did not differentiate between the positive and negative behaviors in a crime, which may result in penalizing both citizens and law enforcement officials.

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8- The Anti-Terrorism Law includes many criminal acts that were previously regulated in the Egyptian Penal Code, especially in the second chapter on crimes related to public interests. It includes felonies and misdemeanors against individuals, which is stipulated in Chapter Two. The result was legislative duplication for the same criminal acts.

9- Passing the law in such manner founded a new legislative philosophy, which resulted in issuing legal texts bearing the same provisions in other legislation, such as the Law on Combating Information Technology Crimes.

10- The Anti-Terrorism Law has become a permanent alternative that allows getting around procedural guarantees stipulated in the Criminal Procedure Law and the Egyptian constitution, unleashing the hands of various law enforcement authorities in the procedures of arrest, custody and pre-trial detention, and expanding the scope of criminalization without minimum restrictions.

11- Applying the Anti-Terrorism Law with these legislative problems resulted in broadening the scope of prosecuting thousands of people for crimes that do level up to terrorist crimes as identified by international standards.

12- In this form, the Anti-Terrorism Law abrogates the provisions of the emergency law. Accordingly, the exceptional, temporary rules have become permanent and their application is no longer linked to the declaration of a state of emergency.

Recommendations

1- Inviting the new parliament, with its two chambers – the House of Representatives and the Senate – during their first rounds to review the articles of the Anti-Terrorism Law and their amendments, just like Law 70/2017 concerning NGOs was canceled due to the change in the circumstances that resulted in issuing it.

2- Calling on the prosecutor-general to avoid the extensive use of the articles of the Anti-Terrorism Law, and to replace it by articles in the Egyptian Penal Code until the Anti-Terrorism Law is amended.

3- Given that the Anti-Terrorism Law is one of the most dangerous laws, due to its implications, when drafting the text of the law, the legislator must abide by accuracy and clarity and avoid vague terms and phrases, in a manner that does not allow misinterpretation. The legislator must also define the elements of the crime in a clear manner to identify it from other crimes.

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4- It is necessary to define precisely the elements of the terrorist crime, so that words and phrases are not used in a way that makes it difficult for the judge to reach specific regulations to know its scope.

5- When reviewing the Anti-Terrorism Law and its amendments, the legislator must adhere to the principles approved by the Supreme Constitutional Court regarding the formulation of punitive texts that must not carry more than one meaning, restraining from the use of expressions that lead to encroachment on rights and freedoms guaranteed by the constitution.

6- It is necessary to define the scope of the criminal acts in terrorist crimes, to be limited to acts associated with the use of force or organized violence for political purposes, and to adhere to the relevant international standards.

7- While reviewing the Anti-Terrorism Law and its amendments, the legislator should also review other legislation affected by the legislative philosophy of the law or based on its provisions.