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المحامى بالنقض نجاد البرعي، المجموعة المتحدة للقانون

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Ambiguous Punitive Legal text

The Assault Crime of family principles and values in the Egyptian society

"Article 25 of the law 175 of the year 2018"

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Series of legal papers (12)



These conclusions and recommendations are part of a legal paper prepared by the United group that tackles "The assault crime of family principles and values in the Egyptian society " article (25) of law 175 of the year 2018. It is originally published in Arabic and consists of 12 pages discussing the definition of " Family principles and values", and the principle of the legitimacy of crime and penalties as the main principle of the constitutionality of the criminal code.

Conclusions

This paper concludes that article (25) of the law 175 of the year 2018 , with regard to what is stated as a Penalty for whoever violates Egyptian family principles and values, is flawed and partially unconstitutional. For the following reasons:

- It is contrary to the text of Article 10 of the Constitution, which talks about the foundation of the Egyptian family, not the values of the Egyptian family, and there is a difference between the two. Values are matters that have value. However, family foundation reflects the system of relations that governs among family members. Therefore, it is not possible to rely on article (10) of the Egyptian constitution just to grant a false constitutional advantage to the text of the article.
- Article (25) is contrary to the principle of legitimacy of crime and penalties ; This principle was interpreted by the constitutional court as " the importance of ensuring that any legal provision must preserve a person's personal freedom, and ensure clear and precise wording of the legal provision to avoid any misinterpretation". Two factors that were absent in the term " Family principles and values", thus make it ambiguous and unconstitutional..
- Moreover, the aforementioned article (25) is lengthy as it consists of 163 words and 868 letters. while it is well known that in the ideal legal drafting of the penal laws, it is imposed that the penal text be specific and concise according to what the Supreme Constitutional Court has concluded.
- Article (25) is also contrary the an important legislative principal which is " proportionality between crime and punishment". Article (25) t includes five offences varying in its severity and differ in theircauses motivation and offended parties. yet the punishment for all crimes is the same. .



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Recommendations

1- Lawyers

It is recommended that lawyers continue challenging the constitutionality of this article, as it violates article (95) of the constitution in two aspects :

1-1 With regard to the crime of assaulting any of the principles or values of the Egyptian family, it can be argued that it is unconstitutional for contradicting Article 95 of the Constitution due to the dilution of words and the inability to identify the material element of the crime so as to change the concept of family values and principles residing within different social classes, different places as well as different time. .As decided by the Egyptian constitutional court and the Egyptian court of cassation.

1-2 Regarding the general and unspecific text of Article 25, it can be argued that it is unconstitutional for violating Article 95 of the Constitution because it consists of a mismatch between the crime and the punishment. As article 25 includes five crimes that vary in different aspects such as; the subject matter, or in the victim, or in the extent of their severity, yet they all receive the same punishment. This constitutes a waste of the principle of proportionality of crime with Punishment and leads to a conclusion of its unconstitutionality according to the rulings of the Supreme Constitutional Court.



2- The parliament

2-1 The next Parliament that is expected to be elected in November 2020, should reconsider the wording of article (25) of the law no.175 of the year 2018 by omitting the crime of " Violating family principles and values" and create more articles , each addressing a specific offence to ensure the proportionality between crime and sanction.¹

2-2 Seek the technical assistance of consultants/advisors from outside the members of the constitutional and legislative committee to review the legal drafting of provision. All draft laws should be passed over to the council of state for review to ensure its compliance with the constitution. It is notable, that most provision that have been passed in the last few years had clear flaws that challenged their constitutionality.

3- Judges

This paper urges judges deciding cases demanding the application of article (25) to consider the following:

3-1 The importance of broadly interpreting the text of Article 25, in the interest of the accused. For as previously set by the Egyptian Court of Cassation long and steady ruling that "The general rule in interpreting the criminal law is, that if the penal text is incomplete or ambiguous, then it should be interpreted broadly in the interest of the accused and narrowly against his interest" the court also added " that in estimating the presence of criminal intent, the court does not isolate itself from the incident subject to accusation , which is based on clear and conclusive evidence, but rather the court must look deeply into it, and reveal through its elements what the perpetrator

¹Article 25 stipulates the sanctions of four offence other than the crime of breaching "the principles and values of the Egyptian family", namely:

1- The offence of violating the sanctity of private life.

2-The offence of sending a large amount of messages to a person without their consent.

3- The offence of disclosing a person's personal data to a system and/or website for promoting goods, without this person's consent.

4-The offence of publishing personal information, news, pictures,..etc through the information network or by any means of information technology. And thus violating the privacy of a person without their consent. Whether the information in the publication is correct or incorrect.



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really intended from their actions and then these elements reflect an external and material expression by conscious will."²

3-2 Judges should use their authority and refer the aforementioned legal text to the Supreme Constitutional Court on their own initiative , without waiting for it to be challenged as unconstitutional, for the defects of its unconstitutionality are apparent and clear. Thus whenever a court is deciding upon a case in which the application of Article 25 of Law 175 of 2018 is required, it shall instead refer the case to the Constitutional Court to look into its constitutionality, as it is known that referrals are a mean to deliver the claim to the constitutional court to determine the constitutionality of the legal provisions invoked.

According to the law of the court " if it appears to one of the courts or the competent bodies of the judicial authority, during the deciding processes upon a case, the unconstitutionality of a legal provision or a regulation necessary for settling the dispute, the court proceeding shall be put on hold and the case shall be referred to the Constitutional Court to decide the matter."

3-3 Excluding the application of the text of Article 25 of Law 175 of 2018 upon the presentation of any accused. The Court of Cassation had previously decided to exclude the application of the text of Article Two of the Illicit Gain Law before its amendment, considering that this text was an unconstitutional, the court also stated that " the article lead to the overturn of the burden of proof making it the responsibility of the accused and not of the public prosecution, therefore the court excluded its application and decided upon the dispute without referring it to the constitutional court."³

²Appeal No. 27354 of the Judicial Year 59 - Group of Cassation Provisions - Technical Office - Criminal Year 45 - p. 1001

³The judgment of the Egyptian Court of Cassation on April 28, 2004 revocating of the judgment issued by Giza Criminal Court No. 4836 for the year 1989 Agouza and registered under No. 616 of 1989 Giza, where the late governor of Giza Dr. Abdel-Hamid Hassan and others were under investigation by the Public Prosecution due to his unusually inflated fortune by a value of 556 thousand pounds and 22 thousand Dollars