Verdict before Conviction...
A Reading in The Application of Terrorist Entities Law
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Methodology

The paper is based on a review and analysis of the Terrorist Entities Law 8/2015, amended by Law 14/2020. In its analysis of the law’s application, the paper relied on a reading in the documents of the “Hope Coalition” case.

Introduction

The main purpose of being included in the lists of terrorist entities and terrorists is to impose precautionary measures, which are applied to some defendants who are accused of terrorism, but the current application of these measures has gradually turned into a punitive tool. This has happened and continues to happen in prolonged pretrial detention. Consequently, inclusion in terrorism lists has turned into a form of issuing a guilty verdict before a conviction is issued.

Article 237 of the constitution states that “The state commits to fighting all types and forms of terrorism and tracking its sources of funding within a specific time frame in light of the threat in represents to the nation and citizens, with guarantees for public rights and freedoms. The law organizes the provisions and procedures of fighting terrorism, and fair compensation for the damages resulting from and because of it.” The state fulfilled its constitutional obligation to combat terrorism by issuing Law 8/2015 regarding the regulation of lists of terrorist entities and terrorists, following it shortly by Law 94/2015.

The law regulating lists of terrorist entities and terrorists was issued in circumstances that differ from the promulgation of any other law, as President Abdel Fattah al-Sisi issued it in the absence of the parliament, with the power he enjoys to issue laws. The law regarding lists of terrorist entities and terrorists was presented to the State Council, which approved it in compliance with the requirements of Article 190 of the Constitution.

According to the explanatory memorandum of the law and its preparatory work, the aim of its promulgation is to define terrorist entities and terrorists as well as financial terrorist acts, with the intention of drying up the sources of terrorism, which means that this law is not a punitive law, as it does not define and prevent patterns of behavior nor does it decide the punishment for those who commit them, but the law confines itself to deciding only the precautionary measures pending the final criminal verdict, which may be issued with a conviction that confirms the characterization of an entity or an individual of terrorism, or a verdict of acquittal, which eliminates this description, and thus obliterates all its effects.
First: Q&A regarding the law of terrorism entities and terrorists

The Terrorist Entities Law was issued on February 17, 2015, and it came into effect on the following day, to be applied to entities as well as individuals, even if they do not belong to any organizational form. This law outlined a number of broad terms when defining terrorist entities or terrorist persons, in a way that neglected the constitutional guarantees concerned with the protection and promotion of rights and freedoms, as well as Egypt’s international obligations regarding the protection and promotion of human rights set forth in international covenants and treaties. Thus, resulting into a legalization that limits freedom of peaceful assembly and freedom of forming associations and political parties, in addition to freedoms of thought and expression.

The paradox is that the law, despite defining terrorist entities and terrorists, it did not set a definition for terrorism itself, which leaves room for interpretation and allows prediction to determine many things. It should be noted that the definition of terrorism is still ambiguous at the international level, which accredited the matter in the case of Egyptian law, which in turn has added terrorism to an avidly growing list that includes a great number of crimes and acts.

The definitions enshrined in the Terrorist Entities Law override terrorist acts themselves according to Article 86 of the Egyptian Penal Code, which gives space for threat and intimidation of opinions opposing the government. The expressions set forth in the text of Law 8/2015 were imprecise and insubordinate, tinged with obscurity and ambiguity when defining the terrorist entity or person. 1

- **What is the Terrorist Entity?**

The legislator was not interested in determining the legal form that the terrorist entity would take, as he initially defined the entities as associations, organizations, groups, gangs, cells, or other gatherings. Then the legislator continued to conclude the definition by saying that “whatever their legal or de facto form. they are exercising its purpose.” In March 2020, the definition of a terrorist entity was amended, according to Law 14/2020, as other types of entities that could be considered terrorist were added, which are cells, companies, or unions and the like.

The Terrorist entity: Associations, organizations, groups, gangs, cells, companies, unions or other entities or the like, whatever their legal or de facto form, whenever they practice or intend to advocate by any means inside or outside the country to harm individuals or spreading terror among them or endangering their lives, freedoms, rights, or security or wreak havoc upon the environment, natural resources, antiquities, communications, land, air, or sea transportation, money or other assets, buildings, or public or private properties, or occupying or seizing them, or preventing or obstructing public authorities, entities, judicial bodies, or government interests, or local units, places of worship, hospitals, institutions and institutes of education, or other public facilities, diplomatic and consular missions, or regional and international organizations and bodies in Egypt from carrying out their work or practicing all or some aspects of their activities, or resisting them, disrupting public or private transportation, preventing their movement, obstructing them, or exposing them to danger by any means, or if the purpose of which is to advocate by any means to disturb the public order, endanger safety, interests, or security of society or disrupt the provisions of the constitution or laws or prevent one of the state institutions or one of the public authorities from exercising its work or assaulting the personal freedom of citizens or other public freedoms and rights guaranteed by the constitution and the law, or harming national unity, social peace or national security. This applies to the aforementioned entities and persons whenever they practice or target or have their purpose to carry out any of those actions even if they were not directed at the Arab Republic of Egypt.

**From Article (1) of Terrorist Entities Law**

• **Who is the terrorist?**

As for an individual, even if he does not belong to a specific group, he can be described as a terrorist according to the law, if he meets the definition of the first article, which states “every natural person who commits or attempts to commit, incite, threaten, or plan locally or internationally a terrorist crime by any means, even individually, or participating in this crime within the framework of a joint criminal enterprise, or assuming leadership, authority, management, establishment, foundation, or participation in membership of any of the terrorist entities stipulated in Article (1) of this law, or if he funded or contributed in its activity with his knowledge of that.”

• **How to be included in a terrorist list?**

There are two types of terrorist lists, the first is designated for entities which the public prosecution requests to be inscribed on the “Terrorist Entities List”, while the second type is for individuals, if the relevant department stipulated in Article (3) of the law decides to include them in the list. The description of terrorism becomes in force until final criminal rulings are issued in respect of any of them that confers it.

Inclusion in either one of the lists takes place according to a request submitted by the public prosecutor to the competent chamber, accompanied by investigations and documents supporting this request to the competent court, which is from the criminal chambers of the Cairo Court of Appeal, and determined by the court’s annual general assembly. Here it should be noted that the jurisdiction of this court is exclusively specific, and listing decisions may not be issued by other courts, as it is exclusively competent to consider and decide on listing applications, and it is also competent to adjudicate decisions to extend the listing decision according to the text of Article (4) From the law itself.

The inclusion in the terrorist lists has turned from a temporary precautionary measure to an extended punishment as there is no real clear date for accusing a number of political opponents and those working in the public sphere with it. In addition to the extension of the pretrial detention periods, exceeding two years, in what has come to be known as “recycling cases”, as the security services and the public prosecution office have become accustomed to accusing those detained in pretrial detention in new cases, which makes their imprisonment endless, without a court ruling maintaining that they have in fact violated the law.

This pattern of pre-conviction verdicts occurred with former presidential candidate Abdel Moneim Abul-Fotouh, who was detained in pretrial detention for over two years. This precautionary measure has become a customary pattern with other activists and politicians. The proceeding of being included in terrorist lists begins by depending mostly on anonymous inquiries from the national security sector only, allowing for bypassing the law, which infringes on the freedoms guaranteed by the Egyptian constitution, in Articles 62, 14, and 35, regarding the right to property and the right to assume public jobs and the right to property, by freezing funds, bans on travel, and deprivation of holding public office. 2

Thereafter, more measures were applied to others such as Ziad Al-Eleimy, Rami Shaath, Alaa AbdelFattah and Mohamed Al-Baker, 3 such as being denied from practicing their professions and being disbarred and written off their syndicates, without a conclusive evidence or a court verdict, following the amendments to the Terrorism Entities Law in early 2020.

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2 Ahmed Hossam, Legal Agenda, Inclusion on Terrorism Lists in Egypt: Confused Texts, Confused Interpretations, and Lost Justice, 12 April 2018, last visited December 31, 2020, link: [https://cutt.ly/Mjyyxax](https://cutt.ly/Mjyyxax)

• **How to appeal being listed on the terrorist lists?**

It is assumed that being added to the terrorism lists is a decision and not a verdict, in the sense that the competent criminal court department, which is held in the counseling room, does not consider the criminal case, but rather the application submitted to it regarding listing the person being added to the terrorist lists. The appeal against these decisions shall be in accordance with the provisions of Article (6) of the law, which states that “the concerned parties and the public prosecution office may appeal the decision issued regarding listing on either of the two lists referred to within sixty days from the date of publication of the decision before the Criminal Chamber of the Court of Cassation which is determined annually by the court’s general assembly, according to the customary appeal procedures.

• **What are the consequences of being on the Terrorist Lists?**

Article (7) of the law provides for an alarming array of consequences that become in effect by force of law through merely including the name of an entity or person in one of the terrorist lists.

• **Regarding Terrorist Entities:**

1. Banning the terrorist entity, and suspending its activities.
2. Closing the places designated for the entity and prohibiting its meetings.
3. Prohibition of financing or collecting funds or effects for the entity, whether directly or indirectly.
4. Freezing funds or other assets owned by the entity, or by its members when they are used in the practice of terrorist activity
5. Prohibition of joining the entity, advocating for it, promoting it, or raising its slogans.

• **Regarding Terrorists:**

1. Inclusion on travel ban lists and anticipation of arrival, or banning a foreigner from entering the country.
2. Withdrawing or cancelling the passport, or preventing its issuance or renewal.
3. Loss of the condition of good reputation and conduct necessary to assume public, representative jobs.
4. Freezing the terrorist’s funds when used in the exercise of his terrorist activity.

On March 3, 2020, Law 14/2020 was issued to amend the law of terrorist entities, these amendments overwrought Article 7 regarding the effects of being add to the terrorism lists, whereby the phrase “Whenever funds were used in the practice of terrorism” was omitted, which is the sentence that the Court of Cassation used to revoke the verdicts for the inclusion of suspects on terrorism lists and freezing their funds, making the freeze order no longer related to the exercise of terrorist activity.

The amendment added new consequences for being included in the terrorism lists, such as freezing funds or assets owned by a person, wholly or incompletely, prohibiting him from engaging in civil activities or collecting funds or donations, and even stopping his membership in unions, companies, quasi-governmental associations, and even clubs and sports federations. The amendment states further the prohibition of transferring or receiving any money.⁴

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At the early hours of June 25, 2019, the security forces arrested lawyer and former parliamentarian Ziyad El-Eleimy, followed by the arrest of a number of persons who were described in the media as members of the “Hope Coalition”. The Public Prosecution accused them, in the Supreme State Security Case 930/2019, with a number of charges among which is being part of a group that was established in contravention of the law with the purpose of calling for suspending the constitution and laws and preventing state institutions and public authorities from practicing their work. Also, they were accused of deliberately publishing false news, information and statements about the political and economic conditions of the country, with the intention of disturbing the peace and destabilizing confidence and stability in state institutions.

**Including “The Defendants of Hope” on the Terrorism Lists:**

In April 2020, the first decision to be included in the lists of terrorism was issued, after the amendment of Law 8/2015 in accordance with Law 14/2020, whereby the Fifth Circuit in the Cairo Criminal Court listed 13 defendants out of 82 defendants as terrorists, pending the Hope case in Supreme State Security Case 571/2020 of Request 1/2020, for a period of 5 years starting from the date of pronouncement of this decision.5


**Aspects of invalidity of the decision to include defendants of the “Hope coalition” on the Terrorism Lists:**

Annulment is a procedural sanction determined by law as an effect of the failure of all or some of the procedural conditions, which must be provided explicitly or implicitly in a particular procedure. It is decided as a penalty for the violation of the substantial procedures, it takes place as one of the forms of penalties that are incurred by the procedural work which happens within the framework of criminal litigation, or in the stage preceding it and leading to it, which is the stage of inference. Whenever this work lacks one of its objective components or stripped of one of the formal conditions, it will be deemed null which will prevent the arrangement of legal effects that could have been arranged had it been valid. The aspects of the nullity of the decision can be summarized as follows:

**Insufficient causation of the listing decision as its reasons are stated in general terms and put in an obscure overview:**

Article 3 of the Terrorist Entities and Terrorist Law states that the public prosecutor must submit the request for listing to the relevant chamber, accompanied by investigations and documents supporting this request. The last paragraph of the same article stipulates that the competent chamber shall decide on the listing request with a reasoned decision, within seven days from the date of submitting the request accompanied by the necessary documents.

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5 Al-Shorouk, Al-Waqi` Al-Masria publishes the decision to include 13 accused on the terrorism list, April 18, 2020, last visit December 31, 2020, link: https://www.shorouknews.com/news/view.aspx?cdate=18042020&id=3c7f6729-eb4f-4a26-a5dd-c5f6ea4f7778
The verdicts of the Court of Cassation stipulate that, “In terms of what the appellants denounce of the contested decision is that when their names were listed on the terrorists’ list for a period of three years, it has been marred by failure in causation, as it came without stating the reasons on which the decision for being included in the lists was based, which deems is defective and revocable.”

According to Article 4 of the law, the decision issued for being listed on terrorism lists must include the causation on which the listing is based, otherwise it is void. What is meant by the causation that permeates the law, is to determine the reasons and arguments on which the decision is based and which produces this outcome whether in terms of de facto or legally speaking. In order for causation to achieve its purpose, it must be in a detailed statement, so that it is possible to find the rationale for the conclusion. As for settling for general and obscure statements that do not suffice the purpose intended for by the legislator to achieve the required causation for these decisions, they do not fulfil clarity and clarification, therefore the contested decision falls short, which necessitates its revocation and reinstatement for the appellants. 6

- Mistakes in law enforcement and iniquity in reasoning:

Article (4) of Law 8/2015 stipulates that “the listing decision on either of the two lists shall be for a period not exceeding three years. If the listing period expires without a final verdict conferring the criminal description stipulated in Article (1) of this law, the public prosecution must resubmit its request to the aforementioned chamber to consider extending the listing duration for another period, otherwise the name of the entity or natural person must be removed from the list from the date of the expiration of that period. Whereas the decision’s text issued against the defendants in the Hope Coalition case to include them in the terrorist list was in contravention to the law, as it stipulated that their listing should be for a period of five years starting from the date of this decision’s announcement, the court ordered the publication of the listing decision in the Official Gazette, which was in issue 91 of the Gazette on April 18, 2020.

Recommendations

Based on the explanatory reading of Law 8/2015 regarding the regulation of lists terrorist entities and terrorists, and its implementation in the case of the “Coalition of Hope”, AFTE recommends the following for the concerned parties:

First: The Fifth Circuit of Terrorism in the Cairo Criminal Court must extricate all defendants in the State Security Case 571/2020S from the list of terrorists, as the decision to include them lacked clear reasons for considering them terrorists, in addition to a clear mistake in the application of Law 8/2015.

Second: The Public Prosecutor must release the defendants in the Coalition of Hope case, especially after most of them have been held in pretrial detention for more than a year and a half, without completing investigations, or having a real legal need to restrict their freedom.

Third: The Association asserts the need to include the laws against terrorism and terrorist entities on the agenda of the new parliament, with the aim of reviewing, revising, and re-adjusting in a way that limits the reliance on the broad definitions included in the legislation that expands the scope of accusations and violates the rights of thousands of citizens.

6 Appeal No 3 for year 2016 Terrorist Entities