



For the first time in Lebanon: The Criminal Court of Cassation ratifies a decision implementing the provisions of Law 65/2017

On 14/12/2022, the Military Court's Investigating Judge issued the following decision: "In accordance with Article 4 of Law 65/2017 on the Punishment of Torture and Other Cruel, Inhuman or Degrading Treatment, and further to our decision No. 160/2022 on 29/11/2022, the prosecution of defendants A.A. and R.A. is prohibited under article 325 of the criminal code, as well as 5 and 6 of law 11/1/1958 and 72 for the lack of evidence".

Based on the facts of the case and the Bint Jbeil police record within the Nabatiyeh Regional Directorate of State Security, the defendants A.A. and R.A. were arrested on 24/08/2022 for drug promotion and abuse as well as suspected affiliation to ISIS.

When the Investigating Judge was briefed on the preliminary investigations, it was revealed that the defendants had confessed to everything.

However, during their interrogation before the judge, the defendants denied all that had been attributed to them in the preliminary investigation, claiming that beating and torture were used to extract their statements.

Furthermore, the same Investigative Judge had been entrusted with overseeing the case of Bashar Abdul Saud's death under torture at the same State Security Office. An officer and members of the Bint Jbeil office (where the preliminarily interrogation took place) had been charged under Article 1 of Law 65/2017 section B.4 and suspected under Article 1 of Law 65/2017 section B.1 and Article 166 of the military law. The Military Public Prosecutor documented the traces of torture on the defendants and assigned a forensic doctor to examine them as well as other detainees. The medical report established that all those arrested at the Bint Jbeil office were severely beaten and flogged and that the violent beatings left bruises on their bodies.



Having learned of the evidence and facts, the Investigating Judge of the Military Court nullified the defendants' initial statements in accordance with Article 4 of law 65/2017, as they were given under torture, which impedes the defendants from being prosecuted for terrorism in the absence of supporting evidence.

On a subsequent date, however, the Associate of the Military Public Prosecutor filed a cassation application against the decision of the Military Court's Investigating Judge before the Criminal Court of Cassation "for contravening the established criminal reality and the legal texts in order to disregard the gravity and extent of the offense... noting that the defendants confessed during the preliminary investigations", and ignoring the fact that a confession had been extracted under torture and in the absence of any evidence. The Associate of the Military Public Prosecutor referenced the gravity of the offense attributed to the defendants. It is important to note that the beating and torture had been confirmed by the Military Public Prosecutor after he had inspected the defendants and others and proved that they had been flogged on their backs and legs.

Taking into consideration the aforementioned, the Head of the Legal Department at the Lebanese Center for Human Rights represented the defendants "A.A. and R.A." before the Criminal Court of Cassation.

On 1/6/2023, the Court of Cassation of the Sixth Criminal Chamber issued a decision confirming and concluding the decision of the Judge of the Military Court, as it was determined that there existed no evidence supporting the alleged crimes against the defendants and that the invocation of the preliminary statement was not permissible under the provisions of Law 65/2017, given the established presence of torture inflicted upon them.

Unprecedented decisions:



Based on the above, the Judge's decision, particularly its affirmation by the Criminal Court of Cassation, is unprecedented in the legal and human rights spheres:

1. The implementation of the provisions of Law 65/2017:

Lebanon ratified the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in 2000 and its Optional Protocol in 2008.

Consequently, Law 65/2017 was passed in accordance with the requirements of the above-mentioned Convention on 19 September 2017.

However, despite the strengthening of protection measures against torture, whether through Law 65/2017, the establishment of the National Committee against Torture in 2019, or the amendment of article 47 of the Code of Criminal Procedure, practices of torture have remained prevalent and have been ignored as perpetrators are not being held accountable by the competent judicial and security authorities.

Therefore, the decision of the Military court's Investigating Judge has, for the first time since the adoption of Law 65/2017, implemented the provisions of Article 4 of the same law and invalidated the allegations obtained under torture. The judgment rendered by the Court of Cassation establishes a legal precedent that shall be heeded and invoked in subsequent comparable proceedings.

2. A cornerstone that enables detainees who have been subjected to torture to resort to the provisions of Law 65/2017:

Article 3 of Law 65/2017 stipulates that:

"The passage of time for the offenses set forth in Article 401 shall not take effect until after the victim is released from prison, arrested or temporarily arrested, if no imprisonment has taken place."



However, detainees who have been subjected to torture often refrain from pressing charges in accordance with the provisions of Law 65/2017 due to their lack of trust in the judiciary as well as the ineffectiveness of such proceedings.

Therefore, the decision of the Court of Cassation has a positive moral impact on any detainee who has been subjected to torture and wishes to press charges.

3. Torture no longer justified by the crime committed or by its perpetrators:

The decision of the Court of Cassation constitutes a remarkable development in the punishment of torture and holding perpetrators accountable regardless of the offense attributed to the detainee and the responsible security agency.

In 2019, we witnessed the death of detainee Hassan Al-Dika, who prior to his death claimed that he had been subjected to torture and electrocution by the internal security forces during his arrest. His allegations and his family's complaints remained unanswered by the competent authorities and the legal procedures and provisions of Law 65/2017 were not respected.

After four years of constant effort and hard work, we have been able to obtain a ruling that implements the provisions of Law 65/2017 and punishes perpetrators of torture.

In conclusion, given the prevailing disregard for the situation of detainees in prisons, the State's failure to secure their most basic needs, and the failure to issue the necessary decrees for the activation of the National Committee against Torture, this decision sets a precedent for future decisions. Moreover, efforts are still needed to amend certain provisions of Law 65/2017, which do not conform to international standards such as the referral of torture cases to the military courts instead of the civilian judiciary.