



The Outline Report of the State of the Judiciary in Egypt

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Historical introduction:

The judiciary, and understanding of the notion of justice as such, in Egypt, have changed since its inception at the time of the Pharaohs.

Part I: Background. Methodology.

1. Political, Economic, and Social Context

1.1. Political Context:

The constitutional power in Egypt is divided into three:

- Executive;
- Legislative, and
- Judicial.

1.2. Economic Context:

The Egyptian economic system which had begun as a controlled socialist economic system, has developed gradually into a more liberal and opened economic system.

1.3. Social Context:

The social crisis and the problems that Egyptian society has suffered, from erosion of individual income, to increase of unemployment rates, and decrease of employment opportunities, have had an influence on the judiciary system, through the influence of the judges, being members of society, by them.

Part II: The Legal Foundation of the Present Judicial System:

a. Legal Texts:

The legal texts governing the judiciary power in Egypt come in many varieties ranging from the Constitution to international conventions to the Law regulating the judicial authorities.

b. Organization of the Judiciary:

The courts may be grouped under two types: the ordinary courts, and the special courts.

The ordinary courts include:

- The Supreme Constitutional Court;
- The civil, commercial, and criminal judicial courts, and
- The Councils of the State Courts.

The special courts include:

- Military Courts;
- The Audit Court, and
- The Court of Political Parties

The competences of these courts vary considerably.

Part III: Analysis of the Judiciary Status in Light of the Ten Principles of Impartiality:

The ten principles of judicial impartiality may be grouped under two main parts: The first part relates to the Judiciary system, and the second to the rights of judges.

A. Principles Related to the Independence of the Judiciary:

1. The Guarantee of Judicial Independence:

There are some legal texts, including the Constitution, that provide for the guarantee and independence of the Judiciary. There are other legal texts though that place restrictions on, and infringe upon, the judiciary.

B- The Principles Governing the Judge's Personal Rights

2. Institutional and Personal/Decisional Independence of the Judges:

According to the Egyptian Constitution, judges act independently in arriving at deciding cases. They are not subject to any authority other than that of the law. No power shall interfere with the judiciary activities. There are, however, some practical legal texts that, by giving power to other authorities over the judiciary, constitute a real infringement upon the independence of the Judiciary.

These competences are the following:

2.1. Competences of the Minister of Justice:

The authority invested with the Minister of Justice to appoint and transfer the judges, as well as the influence that the media and the public opinion exert on the judges, put pressure on the judges to take a certain trend in adjudicating cases.

2.2. The Administrative Chief Powers:

The Administrative Chief of the Courts is entrusted with wide powers that actually may be used in cases such as delegation, financial benefits, etc., to exert influence on the judges.

3. Adequate Training and Continuing Legal Education:

Adequate training of judges in Egypt has started since the end of the last century. It is carried out in the National Center for the Judicial Studies.

4. Adequate Qualifications and Objectives and Transparent Selection Process:

The law provides for the appointment, and delegation of judges.

Also, the court's chief justice, the Minister of Justice, as well as the President of the Republic through presidential decrees, may take disciplinary action against judges, and make investigations into their activities.

The disciplinary boards vary according to the types and branches of the judiciary, each following specific rules of procedure.

There are specific texts and procedures that regulate the appointment of judges in general, and which are separate from the texts that regulate the appointment of general prosecutors.

3. Income and Asset Disclosure:

3.1. Income:

The judge's salary is considered modest if measured by their salary purchasing power, and by the insufficiency of the normal benefits.

There are, however, special allowances given to judges holding specific offices. This, actually, make them subject to emotional blackmail from the authority entrusted with the power of delegation and appointment, such as the Minister of Justice and the Administrative Chief of the Courts.

3.2. Asset Disclosure:

The law requires periodic disclosure of the judges' personal properties and estates, which should be made with a special directorate within the Ministry of Justice. The majority of judges, however, neglect to make such a disclosure. On the other hand, the competent authorities have not shown interest in enforcing the law, for there has never been any reported case in the history of Egyptian judiciary where judges have been prosecuted for unjust enrichment.

6. Conflict of Interest Rules:

The law prohibits the judge from combining judiciary services with specific public services or offices.

C- Principles Related to Equity, and Protection of Rights

7. The Right to a Fair Trial, Equality Under the Law and Access to Justice:

The right to litigation is manifested in public hearings and the right of the accused of a felony or of a misdemeanor, to a counsel and the right to have his counsel attend the inquiries carried against him by the prosecution departments.

8. Fair and Effective Enforcement of Judgments

8.1. Execution of Civil and Commercial Judgments:

The Code of Procedures has regulated the execution of judgments. The procedures of execution are governed by such principles as simplicity, and acceleration. Practice witnesses, however, problems caused by issues of declaration, notification, and attempts to cheat the law, which all still pending solutions.

8.2. Execution of Criminal Judgments

The execution of criminal judgments may be, under the law, either through imprisonment or fines.

The legal system suffers, however, from considerable difficulties such as notification of judgments because of ignorance of the convicted's address, a fact that causes accumulation of non execution of *in absentia* judgments. The prosecution departments and the Department of Execution have not shown yet any interest in remedying the situation.

8.3. Capital Punishment

There are cases where capital punishment is imposed in Egypt, such in cases of crimes against national security, or of treason or terrorism. There are, however, cases where it is not imposed, such in cases of murder, kidnapping of female with rape, and import of drugs.

The execution of the capital punishment requires special procedures that must be followed, ranging from the approval of the President of the Republic, to the persons who must be present at the execution.

D- Principles Governing Publication of Legal and Judicial Information:

9. Public Access to Legal and Judicial Information:

The people suffer from difficulties preventing them from having access to the laws. For the Official Journal, although it is the sole source of legal information, is not regularly published.

10. Judicial Access to Legal and Judicial Information:

What we have just mentioned above applies also to judges. The judicial body has, however, initiated an action aiming to computerize all legal information, which actually would make it easier to judges to have access to all laws; yet other solutions to other related problems are still awaited.

Part IV: A Brief Analysis of Main Infringements upon the Principles of Judicial Impartiality:

The problems that have been blocking the judiciary's ways vary from divergence of opinions about whether a body is qualified as judicial or not, to multiplicity of judicial authorities which confuse the people as to the appropriate forum for their case, to the influence of the executive power through the President of the Republic and the Minister of Justice on the judiciary, to discrimination in the treatment of judges enjoying one legal status.

Also, the existence of special courts prevents citizens from taking their case before ordinary courts, which is mostly manifest in the State of Emergency laws, the military courts, and the National Security Court.

Part V: Main Proposals for Solutions

The Conference on Justice has summarized the prerequisite solutions for the reformation of the judiciary, as follows:

- 1- Ensuring proper execution of judgments through a court composed of one or more judges in each criminal court. This court would have the power to control the procedures of execution, and pronounce judgments on all related disputes. The court would be entitled, in pursuing its objectives, to seek the help of police and civil prosecution departments.
- 2- Reviewing the means by which debtors would be forced to fulfill their obligations, with the view to better procedures of execution.
- 3- Controlling the procedures of execution as to prevent any misuse thereof.
- 4- Expanding the sphere of application of Article 123 of Criminal Code as to cover employees, holders of public service offices, and those enjoying a parliamentary capacity.

Also, the media plays a considerable role in supporting the judiciary, in terms of awakening the public opinion about, and shedding lights on, the most important judicial cases.