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PREFACE

For a number of reasons, social, historical, political or legal, a new Egyptian law has progressively taken form over the last two centuries, a law clearly resembling in its characteristics its counterparts in the civil-law tradition. Although the adoption in the last quarter of the nineteenth century of legal codes and judicial institutions inspired by the French model is generally recalled, it must nevertheless be underscored that in nearly two centuries Egypt has developed its own legal system. Reception of foreign law did not entail a mere coexistence of different legal system but gave rise to the creation of a new local legal system. Prestigious jurists, such as Sanhoury, have made brilliant contributions to the construction of a law endeavouring to give thought to the multiplicity of heritages and specificities of the country. It is, moreover, to the vigour of this Egyptian law, its institutions and its representatives, that one owes the wide diffusion of the civil law legal model in the countries of the Middle-Eastern region.

One is therefore justified in speaking of Egyptian law, without disregarding the numerous exchanges which have governed its constitution, quite on the contrary. Egyptian law is certainly the result of continuous contacts between generations of jurists, and it is probably therein that its wealth is to be found. It is also, of course, the product of its history and the changes in Egyptian society. But Egyptian law – legislation and case-law together – is nevertheless in its different branches a law for itself, original and distinct from its sources of inspiration. Whence, the interest in becoming acquainted with it. However, it is difficult to approach because of the absence of works treating of it in a manner which is both detailed and embracing. It is no longer written in French; Western research deals only sparingly with it, and Arab legal literature, however abundant it may be, nevertheless remains dispersed and difficult of access.

The need was thus felt to provide a work which would attempt to explore the entire domain of the law in Egypt in a both complete and integral manner, addressing the layman as well as the jurist in search of a key with which to enter the complexity of Egyptian law and its institutions. This book is the result of a project which aimed at filling this lacuna. Moreover, as it is a question of Egyptian law, the word has been given to Egyptian jurists, to those who, because they have been educated in this law and practice it while contributing to its construction and transformation, have an intimate knowledge of it.

Compiling contributions from some twenty Egyptian specialists, professors, practitioners and magistrates, the chapters of this book reveal, on the one hand, the history, sources and main provisions applicable in each of the large branches of law and, on the other hand, the organization and powers of each order of jurisdiction. As often as possible, this presentation has been accompanied by references to judicial decisions which have applied these provisions. These contributions are preceded by an introduction which undertakes to succinctly present a historical, legal and sociological setting for the

general organization of the system. To this is added an index enabling of a cross-reading, a bilingual glossary introducing the vocabulary of contemporary Egyptian law and tables which recapitulate the legislation and judicial decisions cited in the different chapters.

This book, the result of work begun in 1997, was realized thanks to funding from the Commission of the European Union and the MEDEA Institute. It owes its appearance to the amicable support, always positive and unfailing, of Jean-Michel Dumont. The book was conceived and realized in the Centre for Economic, Legal and Social Studies and Documentation (CEDEJ), a research institute based in Cairo, and it benefited from the constant support of its successive directors and all its personnel. Various persons, inside and outside the CEDEJ and in different ways, have directly contributed to it. We wish to particularly mention Ms Myriam Hamamdjian for her perseverance and fidelity in the secretariat. Marion Séjourné, Eric Denis and Hugo Bevort lent their competencies to the realization of the introduction, as well as Hala Bayoumi and Dara Santina. Muriel Paradelle accompanied the project in its preparation. Also to be mentioned are those who participated in the translation of texts and, particularly, Ms Nihad Salem and Mr Khaled Awad (Mark Media). Finally, this long process could not have come to its end without the amicable and professional help of Cecile Insinger, Phil Johnstone and Ingeborg van der Laan at Kluwer Law International.

Baudouin Dupret
and
Nathalie Bernard-Maugiron

INTRODUCTION: A GENERAL PRESENTATION OF LAW AND JUDICIAL BODIES[1]

1. HISTORICAL SUMMARY

1.1. Judicial bodies

In the nineteenth century, Egypt saw an increased effort on the part of the Ottoman governors, viceroys and khedives to transform and reorganize the law and the judicial system. There had been no substantive reforms during French occupation (1798–1801). The introduction of both legal and judicial changes was, for the greater part, to begin under the reign of Muhammad 'Alî and to continue under his successors. The means to this end was the *qânûn*, a term which roughly translates the idea of an administrative order. New ministries, councils with judicial competencies and judicial bodies, such as the Council of Judgments (*majlis al-ahkâm*) or the Council of Justice (*jam'iyyat al-haqqâniyya*), were established. At the same time, Muslim religious courts – *sharî'a* courts (*mahâkim shar'iyya*) – continued to function, as well as consular courts put in place by the system of capitulations.

Beginning in 1845, Muhammad 'Alî undertook to establish specialized judicial councils competent in legal, administrative and military matters. The gradually increasing subjection of Egypt to the constraints of international commerce and Western imperialism also lead to the establishment of merchants councils (*majâlis al-tujjâr*), which had extensive recourse to French personnel and law. These judicial councils were not necessarily composed of professional judges. They were not independent institutions either, insofar as before their decisions could be implemented they had to be approved by the governor (*walî*) or by other higher councils. These councils progressively extended their competence to most of the matters which previously fell into the competence of the *sharî'a* courts, with the exception of questions pertaining to personal status. In 1856, fourteen community councils (*majâlis milliyya*) were organized to settle questions relating to the personal status of non-Muslims.

[1] We would like to thank Hugo Bevort, Marion Séjourné, Eric Denis, Frédéric Abécassis and Denis Ardisson, who contributed in different ways to the realization of this introduction.

In 1875, the Mixed Courts (*mahâkim mukhtalita*) were established to settle disputes in which foreign nationals were either party to, or had an interest in, the outcome. They began to function in 1876, using codes created on the model of the codes enforced at that time in France: civil, commercial, maritime, civil and criminal procedures and criminal codes. They were organized in two levels, with a court of appeal in Alexandria.

In 1883, the National Courts (*mahâkim ahliyya*, then known as *mahâkim wataniyya*) were established for Egyptian nationals. These courts had specific codes in civil, commercial, penal and procedural matters, mainly inspired by French law through the codes of the Mixed Courts. A court of appeal was established in Cairo, then a second in Asyut, in 1926. At the same time, the *sharî'a* courts and the community councils continued to function for questions pertaining to personal status. The major characteristics of the legal system put in place with the National and Mixed Courts lie in the creation of a specialized professional category (judges), the adoption of a coherent system of codes and the explicit choice of the European model.

The situation at the turn of the century was, to say the least, complex: mixed codes were applied by the Mixed Courts and national codes by the National Courts, Islamic *sharî'a* was applied by the *sharî'a* courts, religious provisions of the different non-Muslim communities were applied by their respective religious councils in personal status matters and foreign law was applied in certain cases by the consular courts. This situation necessitated a reform which would ensure a system of equal treatment of nationals and foreigners, as well as of nationals among themselves without consideration of their religion. The consular courts were abolished in 1937 and the Mixed Courts with effect from 14 October 1949, following the Convention of Montreux in 1937. All privileges accorded to foreigners were abolished and the competencies of the Mixed Courts were transferred to the National Courts. The latter were transformed into jurisdictions with general competence in which a unified system of law was applied. Four Courts of Appeal (*mahâkim al-isti'nâf*) were created in 1949 (Cairo, Alexandria, Mansura, Asyut), to which are to be added the Courts of Tanta (1951), Bani Suwayf (1963), Isma'iliyya (1976) and Qina (1985). The Court of Cassation (*mahkamat al-naqd*) was created in 1931. It was divided into two chambers: civil (civil and commercial matters and those pertaining to personal status) and criminal. Judicial power was organized in its actual form by Law 46-1972 (*qânûn al-sulta al-qadâ 'iyya*).

There was a question of creating, in 1879 and then in 1883, an administrative jurisdiction. The project was, however, not adopted and it was necessary to wait until 1946 for the creation of the Council of State (*majlis al-dawla*), competent in administrative matters and based on the French model. The Supreme Constitutional Court (*al-mahkama al-dustûriyya al-'ulyâ*), heir to the Supreme Court (*al-mahkama al-'ulyâ*) created in 1969, was introduced by the Constitution of 1971 and was organized by Law 48-1979.

The *sharî'a* courts and the community councils ruled on personal status matters until 1955. A law-decree of 1931 had organized the former in three levels: courts of summary justice, courts of first instance and a court of appeal. They applied the laws in force and, where the text was silent, were requested to refer to the main texts of the Hanafite

doctrine. They had powers in Muslim personal status matters; in cases of difference of religion or rite between the litigants, and in cases where litigants challenged the jurisdiction of the community councils. The latter dealt with the personal status of members of the Orthodox Churches, Catholics, Protestants and Jews. All these bodies were abolished by Laws 461 and 462-1955 and their powers were transferred to the ordinary courts. Chambers of personal status were first invested with matters earlier related to the *sharî'a* courts and the community councils, before themselves being integrated in the civil chambers. It should be noted, however, that in matters of personal status, the principle of the personality of the law still prevails nowadays, which foresees that the applicable law is to be determined by the religion of the parties involved.

Several new jurisdictions were instituted after the Revolution of July 1952 and the establishment of the Republic, among which were the Military Courts (*mahâkim 'askariyya*; Law 25-1966), the Courts of State Security (emergency) (*mahkâkim amn al-dawla tawâri'*; Law 162-1958), Courts of State Security (*mahâkim amn al-dawla*; Law 105-1980), the Court of Values (*mahkamat al-qiyam*; Law 95-1980), as well as various special courts and administrative committees.

The investigation bodies first followed the centralizing movement and then the scattering tendency. With the creation of the Mixed Courts, the parquet (public prosecution office) appeared. It was presided over by a foreigner and composed of foreigners and nationals. There was also a parquet with the National Courts, over which an Egyptian presided starting from 1895. Apart from the general parquet (*al-niyâba al-'âmma*), numerous others were created: the administrative prosecution (*al-niyâba al-idâriyya*; 1958), the military prosecution (*al-niyâba al-'askariyya*; 1966), the parquet of the Socialist Public Prosecutor (*al-mudda'î al-'âmm al-ishtirâkî*; 1971) and the parquet of the Court of Cassation (*niyâba mahkamat al-naqd*; 1972).

1.2. Positive Law

From 1869 to 1876, Qadri Pasha (Minister of Justice) undertook to codify the *sharî'a* on the model of the Ottoman Mecelle. Its most well-known work is the *Murshid al-hayrân* dealing with civil and contractual law. Another code which brought together *sharî'a* norms relating to personal status, though unofficial, is used still today by judges of personal status.

The Mixed Courts were endowed with specific codes extensively reproduced when it was a question of providing codes with the National Courts (1883). These codes were mainly inspired by French codes and reproduced the French conception of law. This influence was further reinforced by the major role exercised by judges of European origin who occupied the majority of seats in the Mixed Courts. But, whatever may have been the foreign influence on the drafting of Egyptian codes, their adoption, at the same time as the Mixed and National Courts were created, most fundamentally and lastingly established the very principle of a codified legality decided upon and amended by a legislator.

In anticipation of the abolition of the Mixed Courts and of the transfer of their powers to the National Courts, new criminal (1937) and civil (1948) codes were elaborated, as well as a new code of criminal procedure (1950). Various laws have been adopted to govern personal status (1920, 1929, 1979, 1985, 2000). A new code of civil and commercial procedure was adopted in 1968 and a new commercial code in 1999.

The constitutional history of Egypt is eventful. A first organic law (*lâ'iha asâsiyya*) was adopted by Ismaïl in 1866. It was replaced by the fundamental law of 1882, which very soon gave way to the organic law (*al-qânûn al-nizâmî al-masrî*) of 1883. In 1913, a new organic law was granted by the Khedive Abbas. Since the adoption of its first constitution in 1923, Egypt has experienced protracted constitutional instability. The Constitution of 1923 was abrogated and replaced in 1930. In 1934, the 1930 Constitution was abrogated in its turn and one year later the 1923 Constitution was again put into force, until 1952. The Republic has had four constitutions in fifteen years (1956, 1958, 1964 and 1971), in addition to two constitutional declarations (1953 and 1962) to the purpose of interim administration. However, since 1971, Egypt has entered into a phase of stability. The Constitution of 1971 is still in force and was only amended once, in 1980.

1.3. Legal professions

The phenomenon of technology transfer was also expressed in the appearance of a category of Egyptian law professionals, as well as in the development of an education in so-called modern law.

Initially divided between foreign and Egyptian judges, the body of Egyptian magistrates assumed its present form with the end of the Mixed Courts. New legal professions, that of advocate, for example, began to appear in the late nineteenth century. The first real regulations for this profession date from 1888, when Egyptian law determined the conditions pertaining to age, conduct and competence for the exercise of the profession of advocate. In 1893, a condition was added requiring a degree from the Royal School of Law or an equivalent foreign institution, and the rights and duties of the advocate were specified. In 1912, the Bar Association of National Courts Lawyers was created and recognized authority to regulate the essentials in the professional life of advocates, including the conditions of registration, praxis and discipline. In 1954, under Nasser, the Board of the Bar Association was dissolved for having opposed the new political system; then, in 1958, the election of its members was on condition of membership in the sole party, the National Union. In 1968, its activities were further limited by the obligation to function in the framework of the government-controlled Arab Socialist Union. On 5 June 1971, the Board of the Bar Association was once again dissolved, this time by Sadat, for having refused its support to the new President of the Republic in his struggle for power. The new elections, however, returned for the most part the same persons to the Board. The latter was again dissolved by Sadat in 1981, and a provisional Board was named in its place. After President Mubarak came to power, the

Law of 1981 was replaced by Law 17-1983, which constitutes the law presently in force. However, by virtue of Law 100-1993 on professional associations, the Board was yet again dissolved and replaced by court-appointed custodians. The law provided for very strict conditions of quorum for elections to the Board of the Bar: half the registered members must vote at the first round, or one third at the second round. Following several years of administration of the activities of the Bar Association by the custodians, elections were finally held in 2001.

The teaching of modern law was, for its part, first conducted by the School of Languages (*madrasat al-alsun*), founded in 1836 and directed for a time by the famous reformist Rifâ'a Râfi' al-Tahtâwî. It was closed under the reign of Abbas, then re-opened in 1868 by Ismaïl with the name Khedivial School of Law in Cairo, or School of Administration and Languages (*madrasat al-idâra wa al-alsun*), and finally renamed School of Law (*madrasat al-huqûq*), in 1886. This institution was integrated in the nascent Cairo University as the Faculty of Law in 1925. The School of Law was headed, until 1907, by French directors (the last being Edouard Lambert, famous specialist in comparative law from the University of Lyon). Notwithstanding increasingly pronounced English presence, French influence endured by reason of the very nature of the legal system put in place, and because of the French School of Law, which opened in 1890 and only ceased to exist in 1956. In addition, a tradition of doctoral sojourn in France was begun in this period, and continues to this day. A large number of well-known personalities from the Egyptian legal world were cast in this mould. And thus was the way of Sanhoury, figurehead of Egyptian law. He first studied at the School of Law, was then deputy public prosecutor and for a time judge at the Mixed Court in Mansura. He wrote his doctoral thesis in the 1920s in Lyon under the direction of Edouard Lambert and finally, upon his return from France, joined the Faculty of Law at Cairo University, where he became dean in 1936. He was President of the Council of State between 1949 and 1954.

The number of law faculties has increased, even though Cairo University remains the most prestigious one. Law is taught in the universities in the capital (Cairo, al-Azhar, 'Ayn Shams), as well as in the universities on the Delta (Mansura, Zagazig and Tanta), in Alexandria and Upper Egypt (Asyut and Bani Suwayf). The program comprises a degree course in four years, followed by a master's and a doctoral thesis.

2. Organic structure: courts, public prosecutor, legal profession

2.1. General judicial organization

Egyptian courts are organized by type of justice in a pyramidal form at the top of which is a paramount jurisdiction exercising control (Court of Cassation for the ordinary justice, Supreme Administrative Court for the administrative justice). The Supreme Constitutional Court settles conflicts on competence between judicial bodies belonging to the different orders of jurisdiction.

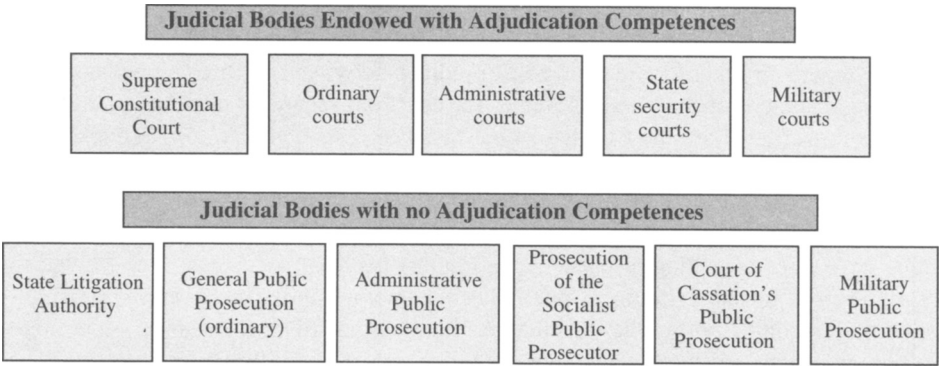


Figure 1

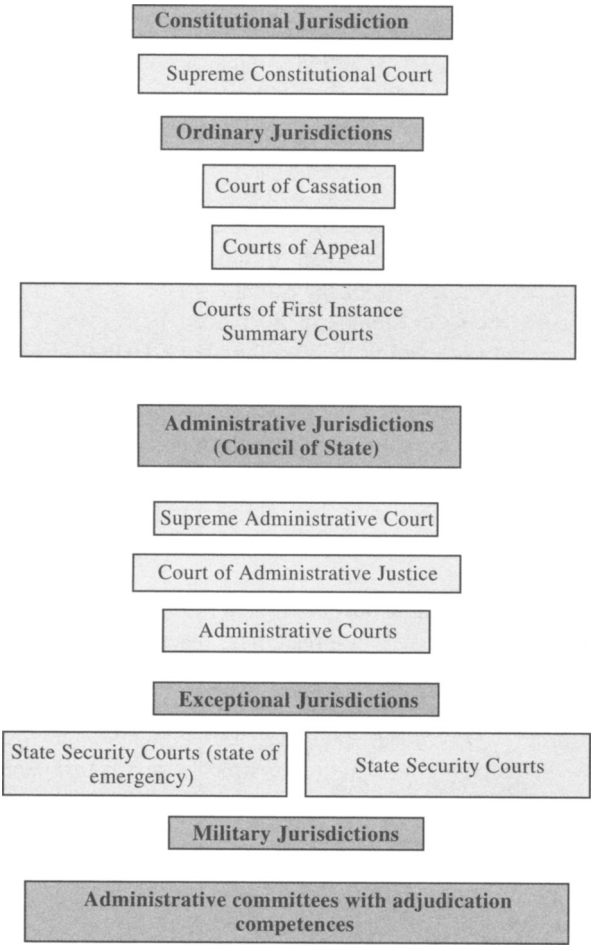


Figure 2

2.2. Ordinary justice

Ordinary courts provide for the main part of judicial activity. They are competent in civil, commercial and criminal matters as well as for questions regarding personal status.

At the lower level are the Courts of First Instance (*mahkama ibtidâ'iyya*), also called plenary courts (*mahkama kulliya*), which are composed of chambers with three judges. Egypt has a Court of First Instance in the capital of each of the governorates, excepting Cairo, which has two, and the governorates of Matruh, Wadi al-Gadid and Red Sea, which have none (resulting at present in a total of twenty-four courts). The Minister of Justice decides on the creation of one-judge Summary Courts (*mahâkim juz'iyya*), also called partial courts, within the jurisdiction of each Court of First Instance, according to the burden of work of the latter. There are today more than 200 Summary Courts. They are competent for minor litigations: in criminal matters, they rule on petty offenses (*mukhâlafât*), that is, crimes which are liable to a fine not exceeding 100 £E (they are thus called *mahâkim al-mukhâlafa*), and misdemeanors (*junah*), that is, crimes liable to detention (maximum three years) or fines exceeding 100 £E (they are called *mahâkim al-junah al-juz'iyya*); in civil matters, they judge cases involving amounts less than 10 000 £E. Appeals against decisions by the Summary Courts in civil matters are brought before the Courts of First Instance. This is only possible when the amount exceeds 1 000 £E. The rulings of the Courts of First Instance on the appeals against decisions from the Summary Courts are in principle definitive and enforceable.

The Courts of First Instance, consisting of a president, one or several vice-presidents and a "sufficient" number of judges, also sit in first instance in civil matters in litigations which are not within the competence of the Summary Courts, and in urgent or temporary cases. Appeals against their decisions can be placed before the Court of Appeal, on condition that the amount involved in the case be above 10 000 £E. They give decisions in criminal matters on appeals against rulings adopted by the Summary Courts (in that case they are named *mahâkim junah al-isti'nâf*). Let us finally note the existence of special sections such as the courts of expeditious litigation (*al-mahâkim al-musta 'jila*), which are emergency sections of the Courts of First Instance which try cases in matters which would suffer no delay (for example, conflicts concerning the rental of premises); juvenile courts (*mahâkim al-ahdâth*); or the judge of the Summary Courts in charge of enforcing sentences.

At the intermediary level is the Court of Appeal (*mahkamat al-isti'nâf*). It consists of a president, a variable number of vice-presidents, the presidents of the Courts of First Instance of its district and a variable number of counselors. The jurisdiction of the Court of Appeal is geographic and it is divided into two chambers (civil and criminal). A jurisdiction with three judges sitting together, it is competent to hear appeals against decisions given by the plenary courts in civil matters. Also, its criminal chamber, bearing the name "criminal court" (*mahkamat al-jinayât*), judges felonies, that is, acts liable to imprisonment (between three and seven years), or to punishment by forced labour (seven years and more) or to the death penalty. With the exception of the death penalty, which must be confirmed by the Court of Cassation before being carried out, the rulings of the

Court of Appeal are not subject to appeal. They can, however, be challenged before the Court of Cassation on points of law, which will suspend their enforcement. There are eight courts of appeal in Egypt (Cairo, Tanta, Alexandria, Mansura, Isma'iliyya, Bani Suwayf, Asyut, Qina).

Law 105-1980 organizes the functioning of State Security Courts (*mahâkim amn al-dawla*). These jurisdictions belong to the ordinary justice and their existence is foreseen by the Constitution of 1971 (Art. 171). Divided in two levels according to the type of offence, they are integrated in the ordinary structure of courts and tribunals: State Security Courts are attached to the Courts of First Instance and High State Security Courts are attached to the Courts of Appeal. Their competence extends to crimes foreseen by the criminal code and by the other legislative provisions which affect internal and external state security.

The Court of Cassation (*mahkamat al-naqd*), created in 1931 as higher jurisdiction of Mixed and National Courts, is at the apex of the ordinary justice. It is composed of a president, six vice-presidents and counselors. It is divided in two chambers: civil (civil and commercial cases, personal status) and criminal, themselves divided in sections (in civil matters: contracts, liability, labour law, land law), sitting in groups of five judges. Its main function is to control the judgments of the Courts of Appeal following a motion for cassation introduced by any interested party, including the public prosecutor. The motion must be founded on an error of law which would have been committed by the lower court. The allegations can be the misapplication or misinterpretation of law, irregularity in the language of the judgment or procedural errors. The control of the Court of Cassation only bears on these questions and not on the facts. However, in cases which entail the pronouncement of the death penalty (the appeal is then necessarily transmitted to it by its public prosecutor), as in cases which are placed before it for the second time, the Court of Cassation examines the facts as well as the law. When the Court quashes a judgment placed before it, it sends it back to the Court of Appeal which had delivered the judgment. The Court of Appeal, which must then be composed of judges other than those who delivered the quashed judgment, completely re-examines the case. A special procedure has to be followed when a legal principle previously in effect is to be "broken".

2.3. Administrative justice

One of the most pronounced consequences of the influence of the French system on Egyptian law is the existence of an administrative justice separate from the civil and criminal one. The Council of State (*majlis al-dawla*) was created in 1946 (Law 112-1946). Its organization and competence are presently governed by Law 47-1972, as amended by Law 136-1984. It has powers to control administrative action with regard to laws and regulations (judiciary competence), to give an opinion on draft laws and draft regulations coming from the government (legislative competence) and to give legal opinions to organs of the state (advisory competence). Since the coming into force of the Constitution of 1971, in which Article 172 provides that the Council of State is exclusively competent to take decisions in administrative disputes and disciplinary cases, the Council of State is given a general competence.

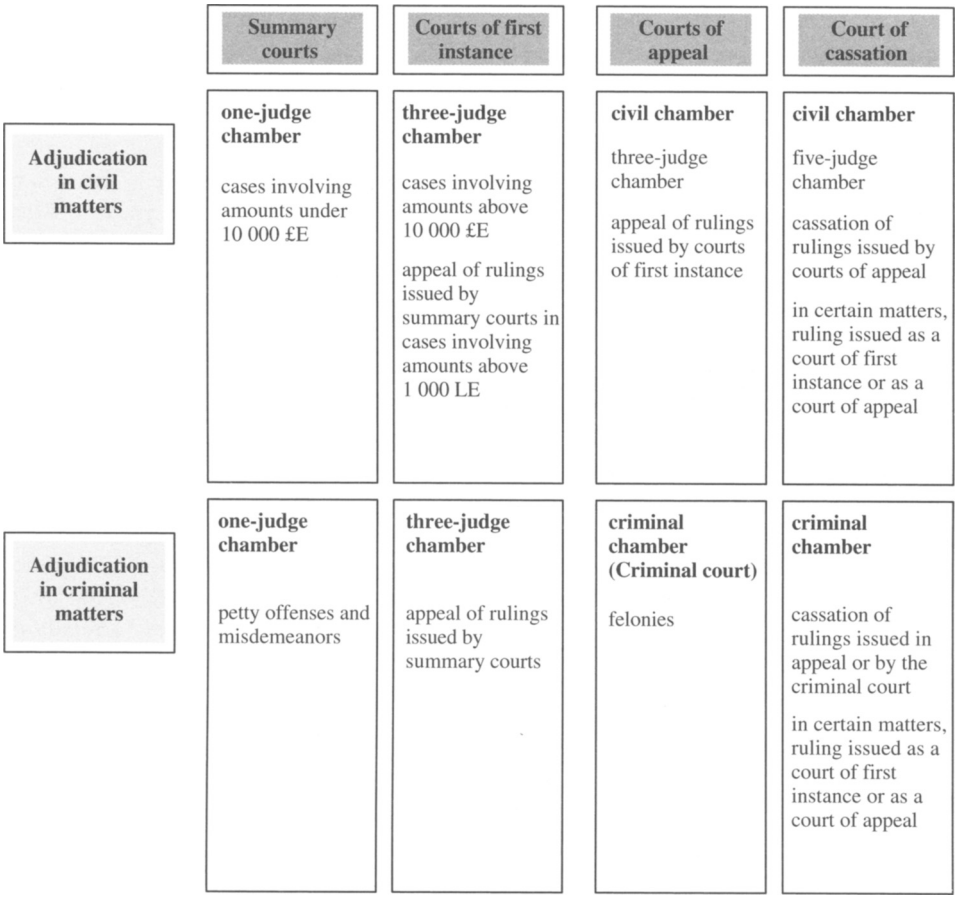


Figure 3

The judiciary section of the Council of State includes all administrative jurisdictions. It deals with two types of litigation: on the one hand, administrative litigation properly speaking, on the other, disciplinary litigation. It is structured in three levels of jurisdiction: administrative courts (*mahâkim idâriyya*) (created in 1954) and disciplinary courts (*mahâkim ta'dîbiyya*) (created in 1958), Court of Administrative Justice (*mahkamat al-qadâ' al-idârî*) (created in 1946) and Supreme Administrative Court (*mahkamat al-idâriyya al- 'ulyâ*) (created in 1955). In disciplinary matters, the disciplinary courts are divided into two levels according to the ranking (low or high) of the civil servant. The disciplinary section of the Supreme Administrative Court judges appeals against decisions taken by both categories of disciplinary courts.

In administrative matters, the Administrative Courts are competent in the first instance to deal mainly with appeals placed before it by public servants against administrative

decisions concerning them. The Court of Administrative Justice has a principle competence to examine in first instance all other administrative litigations. It also constitutes the jurisdiction for the appeal of decisions taken by the Administrative Courts. The Supreme Administrative Court examines appeals against the rulings of the Court of Administrative Justice sitting as judge of first degree. The control exercised by the Supreme Administrative Court, in the image of the control exercised by the Court of Cassation in civil and criminal matters, is however limited to points of law and not of fact, except otherwise prescribed by a clear legislative provision. The quorum is five judges for the Supreme Administrative Court and three judges for the other jurisdictions. The judiciary section of the Council of State also includes a body of state commissioners (*hay'at mufawwadîn al-dawla*) (created in 1955), composed of magistrates charged to investigate cases submitted to the various jurisdictions so as to prepare them to be judged. The various functions of the magistrates are permutable.

The mission of the legislative section of the Council of State, created in 1969, is the reviewing of draft laws and regulations prepared by the government, as well as presidential orders prior to their promulgation. However, the absence of previous review by the legislative section does not entail the questioning of the validity of these texts.

The advisory section of the Council of State (*qism al-fatâwâ*) is competent to give a legal opinion to the different state administrations (among which, ministries, public administration, public institutions or public sector companies). It has three levels. On the first are the Advisory Departments, each of which specialized in a particular ministry and its agencies. On the second level are three Committees of the Department Presidents that discuss issues sent by the Advisory Departments and review public concessions and monopolies as well as draft contracts exceeding 50 000 £E to which the government is party. On the third level, is the General Assembly of the Legislative and Advisory Sections. It consists of the presidents of the Advisory Departments, the presidents of the Committees as well as of the president and members of the legislative section. Presiding over it is the first vice-president of the Council of State, and it is competent to give opinion on questions submitted to it by the Committees, the legislative section, the President of the Council of State, Ministers, the President of the People's Assembly or the President of the Republic. Recourse to the opinion of the advisory section is not obligatory and its opinions are not coercive. Nevertheless, its opinion is increasingly sought and very generally followed, notably so as to not risk subsequently having the text declared null and void by the judiciary section. When disputes oppose public administrations among themselves, recourse to the advisory section is obligatory and its decisions are binding.

2.4. Constitutional justice

The Constitution of 1971 established a Supreme Constitutional Court (*al-mahkamat al-dustûriyya al-'ulyâ*) as an "independent and autonomous judicial body" (Art. 174) responsible for undertaking, alone, "the judicial control over the constitutionality of the laws and regulations and the interpretation of the legislative texts in the manner

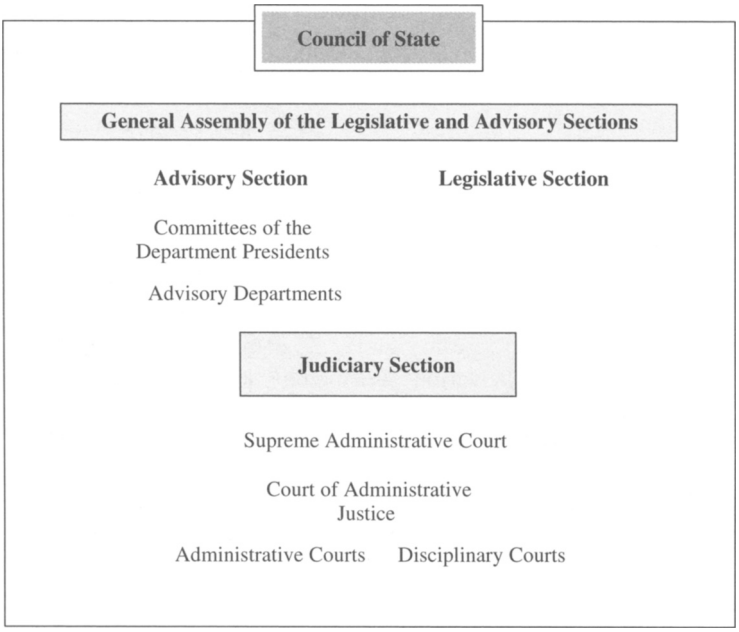


Figure 4

	Administrative and Disciplinary Courts	Court of Administrative Justice (CAJ)	Supreme Administrative Court
Administrative Litigation (Council of State)	**Administrative Courts (AC)** first-degree judge in matters placed before them by public servants against administrative decisions concerning them **Disciplinary Courts (DC)** - first-degree judge in disciplinary matters concerning low ranking civil servants - first-degree judge in disciplinary matters concerning high ranking civil servants	- appeal of rulings issued by ACs - first-degree general competence in administrative matters	- appeal of rulings issued by the CAJ as a first-degree judge - appeal of rulings issued by the 2 categories of DCs

Figure 5

prescribed by law" (Art. 175). It was not until 1979, however, that the legislature organized its functioning.

Review of the constitutionality of laws is not contemporary, in Egypt, with the creation of the Supreme Constitutional Court, even though no constitutions prior to that of 1971 contained provisions instituting such review. The Council of State, created in 1946,

pronounced in 1948 a ruling in favour of the judicial review of the constitutionality of laws. This control, however, was limited in the sense that, other than the fact that it was entrusted to the courts dealing with the merits of the case, it did not entail the abrogation of the provision considered to be unconstitutional and the decision of unconstitutionality was not binding for the judges before whom a similar litigation was subsequently referred.

The conflict which opposed magistrates to the political power, when the latter attempted to integrate them in the sole and government-controlled party (Arab Socialist Union), culminated in the promulgation of four law-decrees, on 31 August 1969, one of which compulsorily retired nearly 200 magistrates, while a second one brought about the creation of a Supreme Court (*al-mahkamat al-'ulyâ*). The latter was recognized to have the exclusive competence to interpret the laws, to review their constitutionality and to settle conflicts of competence between jurisdictions. This Court, all members of which were nominated by the President of the Republic for three renewable years, was without doubt intended to become a submissive instrument of the executive. The new institution was from its beginning considered to be illegitimate by the body of magistrates and it never succeeded in imposing itself on the other jurisdictions. It remained in place until 1979, when the Supreme Constitutional Court was finally established.

Law 48-1979 on the Supreme Constitutional Court guaranteed the irrevocability of the members of the Court, named for life, and recognized its quality as judicial body. It did not fix the number of its members, but foresaw that they must be chosen from among senior law professionals (magistrates, law professors or advocates). In practice, they all came from the judiciary. The members are nominated by presidential decree, with the opinion of the Supreme Council of Judicial Bodies, on a list of two names proposed by the General Assembly and by the President of the Court. The president of the Supreme Constitutional Court is named by decree of the President of the Republic, at his discretion. The quorum is seven judges. The judges are irrevocable. They must be at least forty-five years of age and their retirement is fixed at sixty-four years. They enjoy the same rights and are subject to the same obligations as the counselors of the Court of Cassation. In addition, only their peers can judge them in criminal and disciplinary cases. The Court is independent of supervision by any ministry and has an autonomous annual budget.

The competence of the Supreme Constitutional Court extends to the judicial review of the constitutionality of laws and regulations, the settlement of conflicts on competence between judicial bodies and to the interpretation of laws and regulations having the force of law. Judicial review represents the main competence and the essential activity of the Court. It exercises an *ex post* review over laws and regulations submitted to it. It is only on the occasion of a litigation before the judge dealing with the merits of the case that a law or a regulation can be referred to it, by the judge dealing with the merits of the case himself, or by one of the parties in the litigation. In its capacity as judge of conflict on competence between judicial bodies, the Supreme Constitutional Court settles conflicts submitted to it by an interested party on the allocation of competencies among the different judicial institutions (mainly the civil and administrative branches), as well as on conflicts of judgments. Finally, the Supreme Constitutional Court can be called upon by the Minister of Justice to interpret laws and regulations having the force of law.

The Supreme Constitutional Court has become a leading institution in Egyptian political and judicial life in the last twenty years.

2.5. Military justice and special jurisdictions

While the revolutionary courts and other exceptional jurisdictions set up in the wake of the Revolution of 1952 have gradually disappeared, competence continues to be entrusted to special jurisdictions in three domains: offences of a political, military and moral nature.

Article 148 of the Constitution of 1971 authorizes the President to proclaim a state of emergency (*hâlat al-tawâri'*). In this case, Law 162-1958 on the State of Emergency foresees the establishment of State Security Courts (emergency). They are to examine any violation of the Law on the State of Emergency, as well as violations of ordinary legislation which the President of the Republic decides to refer to them. State Security Courts exist in the jurisdiction of the Courts of First Instance and are presided over by a judge from the latter. High State Security Courts, created within the jurisdiction of the Courts of Appeal, are composed of three judges from the latter. The President of the Republic can also appoint officers to sit at the sides of the judges. These courts judge without appeal, after a summary procedure, and their decisions are submitted to the President of the Republic for confirmation. The state of emergency has been in force in Egypt without interruption since 1981.

Military justice in Egypt is not an exceptional justice but is part of the permanent judicial system in the country, by virtue of Article 183 of the constitution which gives the law the task of organizing it. Law 25-1966 organized the military courts, their procedures and substantial rules. Military justice consists of a Supreme Military Court and two Central Military Courts. They include a public prosecutor and military judges, and their rulings made after a summary procedure are not open to appeal. They are charged with offences against the army and are competent to judge military personnel for all offences, even civil, committed by them. Moreover, the President of the Republic is entitled, when a state of emergency has been declared, to place before the military courts any offence

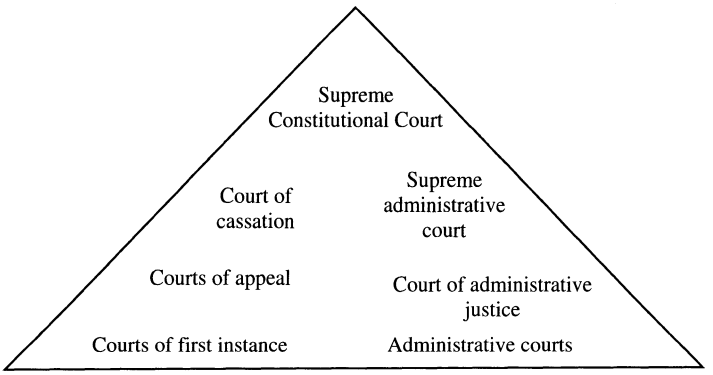


Figure 6

foreseen by the criminal code or any other legislative provision, even if the offence has been committed by a civilian.

Law 95-1980 on the Protection of Values against the Shame created a Court of Values (*mahkamat al-qiyam*) with two levels, composed half of magistrates and half of public persons charged to preserve the morality of public life and to punish perpetrators of embezzlement and misappropriation of funds. The Court of Values can judge without appeal and pronounce moral sanctions, such as the suspension of civil and political rights or the interdiction to leave the country; and material sanctions, such as sequestration of the property of accused persons. Law 95-1980 was abrogated in 1994.

The "Party Circuit Court" is a special formation of the Supreme Administrative Court, presided over by the President of the Council of State and composed of five counselors of the Council of State to which are added five public persons appointed by the Minister of Justice. It judges appeals against decisions taken by the Committee of Party Affairs as regards recognition of new political parties.

2.6. Parquets (public prosecution offices)

The general public prosecutor (parquet) (*al-niyâba al-'âmma*) is organized by the Judicial Authority Law (Law 46-1972). Presided over by the Attorney General (*al-nâ'ib al-'âmm*), it is present in all courts and is hierarchically organized under the ultimate supervision of the Minister of Justice. Representative of state interests and protector of the general interest, the parquet is charged with the opening, the investigation and the exercise of public action. It also avails of recourses to appeal and cassation and, in criminal matters, of the control over the implementation of judgments. The members of the public prosecutor's office belong to the judicial power and, as such, benefit from the same rights and immunities as judges, including irrevocability. Nevertheless, placed under the hierarchic authority of their superiors, up to the Attorney General who is subordinate to the Minister of Justice, they do not enjoy the same independence as judges. Another principle proper to the public prosecution is indivisibility, which means that each member represents the public prosecutor and can be substituted for any other member.

The administrative prosecution office (*al-niyâba al-idâriyya*) conducts the preliminary investigation of offences committed by officials or by persons working in organizations belonging entirely or in part to the state. It deals with disciplinary questions only. The eventual criminal aspects of cases which it investigates are sent to the general public prosecutor's office. The office is headed by a president and its members are spread over the different governorates in Egypt. They have the same status as members of the general public prosecution as far as rights, immunities and duties are concerned. The administrative prosecution was created by Law 117-1958 and is presently governed by Law 88-1973.

The Constitution of 1971 (Art. 179) established the office of the Socialist Public Prosecutor (*al-mudda'î al-'âmm al-ishtirâkî*), and Law 95-1980 organized it and charged it with the investigation and prosecution of individuals before the Court of Values. The

Socialist Public Prosecutor is nominated and dismissed by the President of the Republic and is subject to the control of the People's Assembly. The competence of that office covers essentially cases of political and economic corruption and of the illicit accumulation of wealth, as well as the protection of all matters concerning the socialist orientation of the state.

2.7. The State Litigation Authority

The State Litigation Authority (*hay'at qadâyâ al-dawla*), founded in 1923, fulfils the function of state attorney. It is today organized by law-decree 75-1963. It represents state agencies in litigations which involve them before all courts on national and international levels. It comprises a central administration in Cairo and representatives in the different governorates. Its members assume the same responsibilities and enjoy the same rights as their colleagues from other judicial institutions.

2.8. The magistrates

The development of the career of magistrate is common to the judges and to the body of public prosecutors. Channels are open between them, access to the office of judge even being dependent on having previously served as deputy of the parquet until the age required to become judge (thirty years). Although the recruitment of judges from among advocates, professors of law or members of the Council of State is authorized, it rarely occurs.

The conditions for access to the office of magistrate are: (1) to have Egyptian nationality, to present all the required guarantees of morality and reputation and to be in possession of civil rights; (2) to be a law graduate (or the equivalent); (3) to have reached the age of twenty-one years for the office of public prosecutor, and of thirty years for the courts of first instance. Newly recruited magistrates are trained in the field, but benefit from a parallel training given by the National Centre of Judicial Studies (*al-Ma'had al-qawmî li-l-dirâsât al-qadâ'iyya*). One must in addition have reached the age of thirty-eight years to receive an appointment to a Court of Appeal and of forty-three years to be appointed to the Court of Cassation. Although no legislative provision would prohibit women from becoming magistrates, they are only present in the administrative prosecution.

Conditions for entering the Council of State are similar, but recruitment is separate. A provision which prohibited members of the Council of State from being married to a foreign woman was held to be unconstitutional by the Supreme Constitutional Court. There is no school comparable to the French Ecole Nationale d'Administration from which members of the Council of State would come. The counselors are irrevocable and benefit from the same status as ordinary magistrates.

To the privileges and immunities from which the magistrates benefit (among which, irrevocability which protects them from dismissal, from being retired and from transfer without consent), correspond the duties and obligations: rules of professional incompatibility, duty of keeping all information secret, obligation to reside in the district,

confidentiality of investigation, etc. The Minister of Justice has a general right of supervision over the courts, but disciplinary sanctions against magistrates are taken by their peers. The disciplinary function is exercised by the president of the court and by a disciplinary council composed of the president of the Court of Cassation, three presidents of Courts of Appeal and three counselors of the Court of Cassation. Its decisions are not subject to appeal.

The magistrates have an institution watching over the interests of their profession, the Club of Judges, the presidency of which constitutes an important issue. This club oversees a group of diverse activities, such as the diffusion of books and legal reviews, but it above all exercises a fundamental role in the defense of the social and corporatist interests of its members. Thus, it owns a holiday centre, it administers a social security fund which opens private hospitals to magistrates, allocates monthly premiums for medicines, supplementary pensions and assistance in housing. These activities are financed by a tax paid on all legal acts by litigants.

2.9 The Bar Association

The Bar Association plays a double role. On the one hand, it fulfils a corporate function by providing services to its members seeking an improvement in their working conditions and stands in their defense in conflicts which oppose them to the state. On the other hand, it pursues the realization of public interests and controls the exercise of the profession by its members, implements disciplinary decisions concerning them and can formulate regulations. Its competencies and conditions of functioning are determined by Law 17-1983, as amended by Law 227-1984 and by Law 98-1992. To be registered as an advocate, it is necessary to have a degree in law or an equivalent degree, to be an Egyptian national and to have a good reputation.

It is administered by a board composed of a president and twenty-four members elected by their colleagues. Neither the board nor its president can be revoked by administrative decision.

2.10. Judges' auxiliaries (clerks of court, bailiffs, secretaries, experts, forensic medicine, etc.)

The status of all these personnel is regulated by the Judicial Authority Law of 1972.

3. GEOGRAPHICAL STRUCTURE OF COURTS

3.1. Ordinary Courts

The Court of Cassation exercises its competence throughout the national territory. The Courts of Appeal number eight (Cairo, Tanta, Alexandria, Mansura, Isma'iliyya, Bani Suwayf, Asyut, Qina) and their seats are found in the capital of the governorates. The Courts of First Instance, numbering twenty-four (North Cairo, South Cairo, Giza,

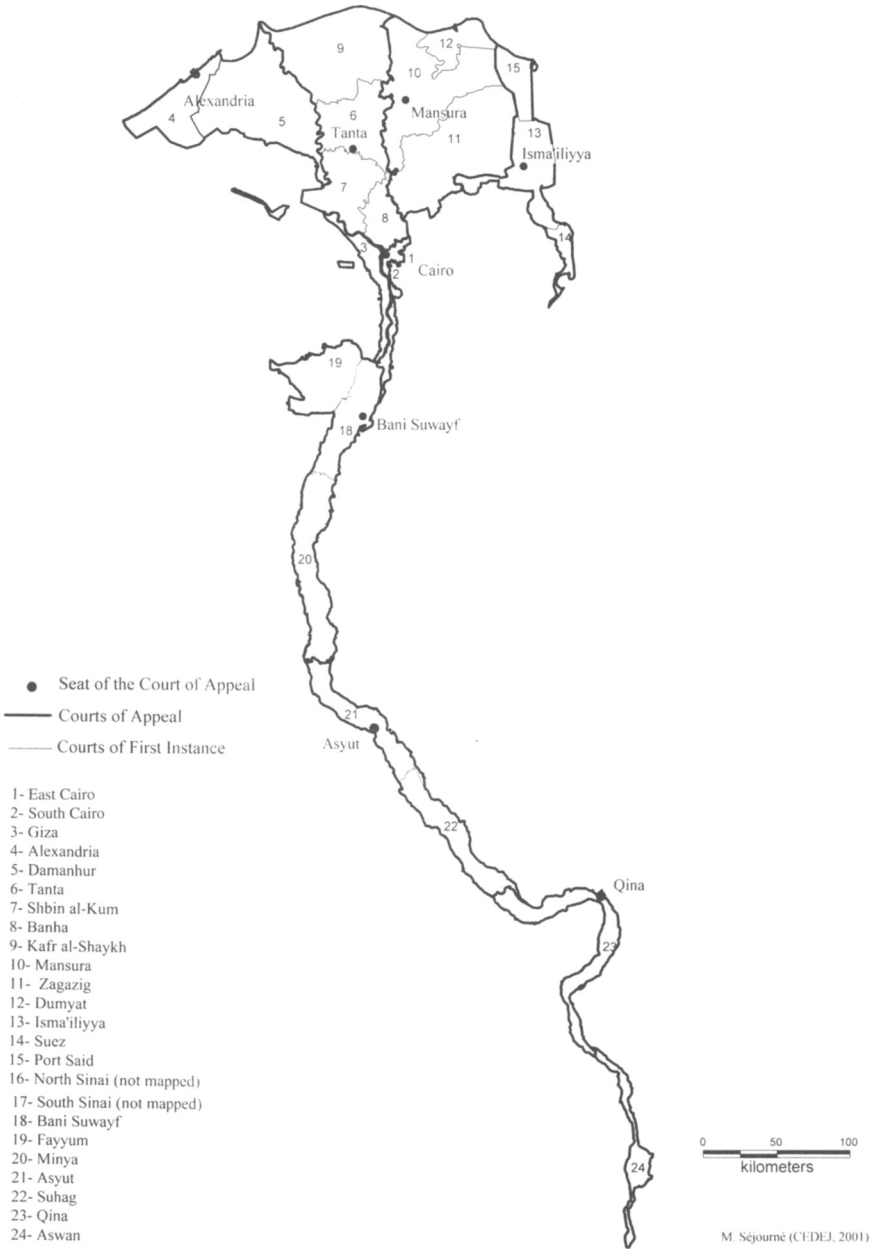


Figure 7A Map of Courts of Appeal and Courts of First Instance



Figure 7B Map of Summary and First Instance Prosecution Offices in the Delta and Alexandria

Alexandria, Damanhur, Tanta, Shibin al-Kum, Banha, Kafr al-Shaykh, Mansura, Zagazig, Dumyat, Isma'iliyya, Suez, South Sinai, North Sinai, Port Said, Bani Suwayf, Fayyum, Minya, Asyut, Suhag, Qina, Aswan), are in principle located in the capital of every governorate. Cairo, however, has two and the governorates of Wadi al-Gadid, Matruh and Red Sea have none. There is in principle a Summary Court in each agglomeration (*qism*) or district (*markaz*), which amounts to more than 200.

3.2. The Council of State

The Supreme Administrative Court has its seat in Cairo. The Court of Administrative Justice is seated in Cairo too, but the president of the Council of State can decide to create divisions of the latter in other governorates. Thus Courts of Administrative Justice

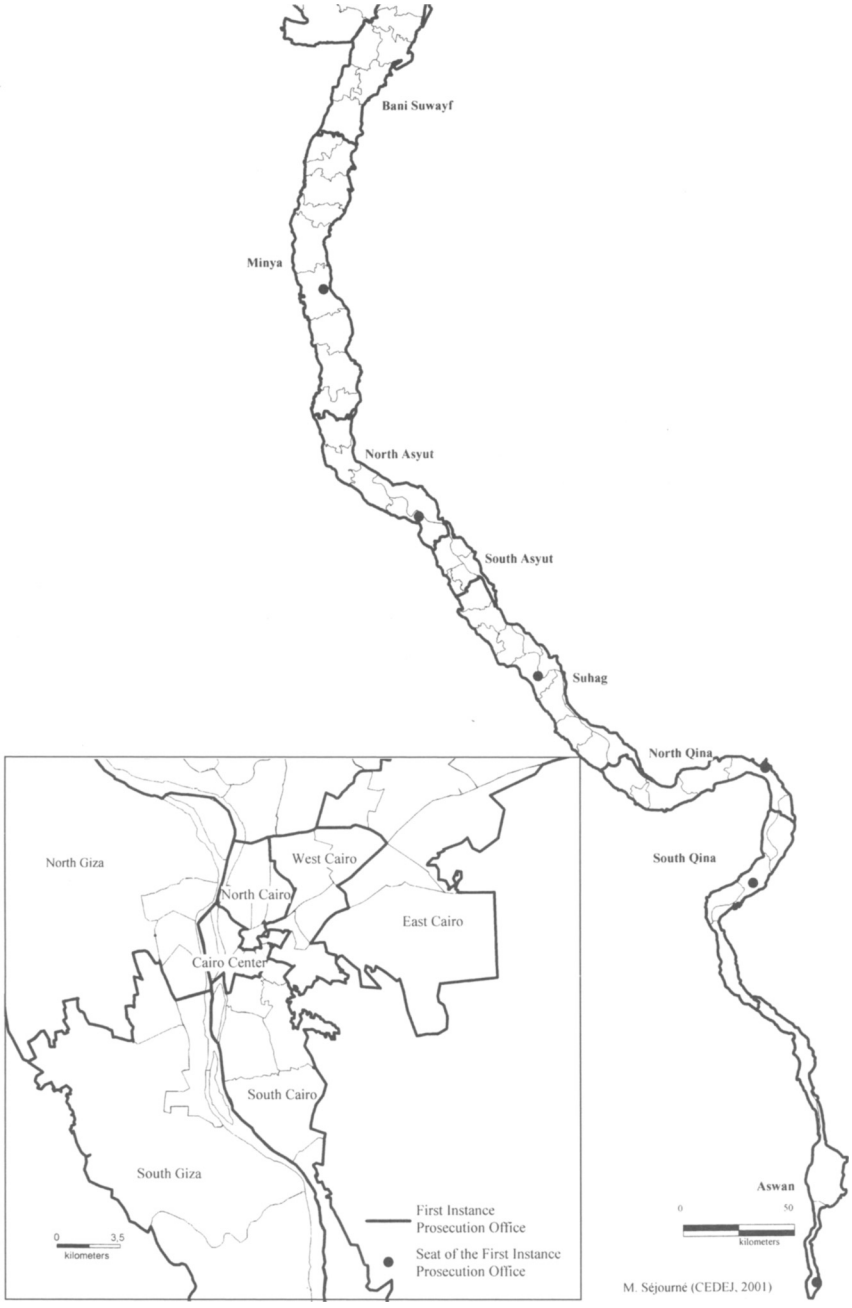


Figure 7C Map of Summary and First Instance Prosecution Offices in Cairo and Upper -Egypt

Figure 7D List of the Summary and First Instance Prosecution Offices

Niyaba sharq al-Qahira al-kulliyya
- Misr al-gadida
- Madinat Nasr
- al-Nuzha
- al-Matariyya
- 'Ayn shams
- Madinat al-salam

Niyaba gharb al-Qabira al-kulliyya
- al-Zitun
- al-Wayli
- al-Hada'iq
- al-Zahir
- al-Gamaliyya

Niyaba wasat al-Qahira al-kulliyya
- Abidin
- Qasr al-Nil
- Bulaq abu al-'ila
- al-Muski
- Bab al-sha'riyya

Niyaba shimal al-Qahira al-kulliyya
- al-Sharabiyya
- al-Azbakiyya
- Rud al-farag
- al-Sahil
- Shubra

Niyaba ganub al-Qahira al-kulliyya
- Misr al-qadima
- al-Darb al-ahmar
- al-Khalifa
- Hilwan
- al-Sayyida Zaynab
- al-Ma'adi

Niyaba shimal al-Giza al-kulliyya
- Qism Imbaba
- al-'Aguza
- al-Duqqi
- Markaz Imbaba

Niyaba ganub al-Giza al-kulliyya
- Markaz al-Giza wa al-Haram
- Madinat Atfih
- Qism al-Giza
- al-Badrashin
- al-Saff
- al-'Ayyat
- Bulaq al-dakrur

Niyaba sharq al-Iskandariyya al-kulliyya
- al-Muntaza
- al-Raml
- Sidi Gabir
- Mahrma bey
- al-Manshiyya
- Bab sharqi
- al-'Attarin

Niyaba gharb al-Iskandariyya al-kulliyya
- al-Gumruk
- al-Laban
- al-Mina'
- Kurmuz
- Mina al-basal
- al-Dakhila
- Marsa Matruh (not on the map)

Niyaba Damanhur al-kulliyya
- Qism Damanhur
- Markaz Damanhur
- Qism Kafr al-dawar
- Markaz Kafr al-dawar
- Abu hummus
- Rashid
- Idku
- al-Mahmudiyya
- al-Rahmaniyya
- al-Dilingat
- Itay al-barud
- Hawsh 'Isa
- Shubra khit
- Kum Hammada
- Abu al-Matamir

Niyaba Tanta al-kulliyya
- Qism awwal Tanta
- Qism thani Tanta
- Markaz Tanta
- Mamuriyya al-Mahalla
- Qism awwal al-Mahalla
- Qism thani al-Mahalla
- Markaz al-Mahalla
- Samanud
- Qutur
- al-Santa
- Zifta
- Basyun
- Kafr al-zayat

Niyaba Shbin al-kum al-kulliyya
- Qism Shbin al-kum
- Markaz Shbin al-kum
- Tala
- Minuf
- Ashmun
- al-Shuhada'
- al-Bagur
- Quwisna
- Birkat al-siba'
- al-Sadat

Niyaba shimal Banha al-kulliyya
- Qism Banha
- Markaz Banha
- Tukh
- Shbin al-Qanatir
- Kafr Shukr
- al-Khanka

Niyaba ganub Banha al-kulliyya
- Qalyub
- Qism awwal Shubra al-khayma
- Qism thani Shubra al-khayma
- Qalyub
- al-Qanatir al-khayriyya

Niyaba Kafr al-Shaykh al-kulliyya
- Qism Kafr al-Shaykh
- Markaz Kafr al-Shaykh
- Sidi Salim
- Qallin
- Disuq
- Fuwwa
- Mutubis
- Byala
- al-Barlis
- al-Hamul

Niyaba al-Mansura al-kulliyya
- Qism awwal al-Mansura
- al-Daqahliyya
- Qism thani al-Mansura
- Markaz al-Mansura
- Talkha
- Bilqas
- Shirbin
- Dikrans
- Minyat al-Nasr-al-Manzala
- Aga
- al-Simbilawayn
- Markaz Mit Ghamr
- Qism Mit Ghamr

Niyaba al-Zaqaziq al-kulliyya
- Qism awwal al-Zaqaziq
- Qism thani al-Zaqaziq
- Markaz al-Zaqaziq
- Hihya
- al-Ibrahimiyya
- Abu Kabir
- Kafr Saqr
- Awlad Saqr
- Faqus
- al-Husayniyya
- Abu Hammad
-Bilbays
- Mashtul al-suq
- al-'Ashir min Ramadan
- Mina al-qamh
- Dayrab Nigm

Niyaba Dumyat al-kulliyya
- Marka Dumyat wa Ra's al-Bir

- Qism Dumyat
- Mina Dumyat al-gadid
- Kafr Sa'd
- Farsakur
- al-Zarqa

Niyaba al-Isma'iliyya al-kulliyya
- Qism awwal al-Isma'iliyya
- Qismay thani wa thalith
- Markaz al-Isma'iliyya
- al-Qantara
- al-Till al-kabir
- Fayid

Niyaba al-Suwis al-kulliyya
- al-Suwis
- al-Arba'in

Niyaba ganub Sina al-kulliyya (not on the map)
- al-Tur
- Ra's Sudr

Niyaba Bur Sa'id al-kulliyya
- al-Sharq wa Bur Fu'ad
- al-'Arab wa Dawahi
- al-Mina'
- al-Manakh wa al-Zuhur

Niyaba shimal Sina' al-kulliyya (not on the map)
- al-'Arish

Niyaba Bani Suwayf al-kulliyya
- Ihnasya
- Qism Bani Suwayf
- Markaz Bani Suwayf
- Nasir
- Biba
- al-Wasta
- al-Fashn
- Sumusta

Niyaba al-Fayyum al-kulliyya
- Markaz al-Fayyum
- Qism al-Fayyum
- Atsa
- Sinuris
- Tamiyya
- Ibshaway

Niyaba al-Minya al-kulliyya
- Qism al-Minya
- Markaz al-Minya
- Maghagha
- al-'Udwa
- Bani Mazar
- Matay
- Samalut
- Abu Qurqas
- Qism Mallawi
- Markaz Mallawi
- Diyar Mawas

Niyaba ganub Asyut al-kulliyya
- Qism awwal Asyut
- Qism thani Asyut
- Sahil Salim
- al-Badari
- Abu Tig
- Sidfa
- al-Kharga

Niyaba shimal Asyut al-kulliyya
- Markaz Asyut
- Dayrut
- al-Qawsiyya
- Manfalut
- Abnub wa al-Fath

Niyaba Suhag al-kulliyya
- Qism awwal Suhag
- Qism thani Suhag
- Markaz Suhag
- al-Mansha'a
- al-Balyana
- Dar al-salam
- Akhmim
- Guhayna
- Tahta
- Tama
- Gurga
- al-Maragha
- Saqilta

Niyaba shimal Qina al-kulliyya
- Qism Qina
- Markaz Qina
- Abu Tisht
- Farshut
- Nag' Hammadi
- Dishna
- Nafada
- Quft
- al-Ghardaqa (not on the map)

Niyaba ganub Qina al-kulliyya
- Qism al-Uqsur
- Markaz al-Uqsur
- Qaws
- Isna
- Armant

Niyaba Aswan al-kulliyya
- Qism Aswan
- Markaz Aswan
- Kum Umbu
- Idfu

have been established in the governorates of Alexandria, Mansura, Gharbiyya, Isma'iliyya, Asyut, Port Said and Qina. The Administrative Courts are seated in Cairo and in governorates in which the president of the Council of State has decided to establish them. This is the case for the governorates of Alexandria, Mansura, Gharbiyya, Isma'iliyya, Asyut, Port Said and Qina.

4. Elements of a sociology of the body of magistrates

This section takes up the main conclusions of the survey of Egyptian magistrates conducted by Frédéric Abécassis and Denis Ardisson (1995) and based on data from an inventory of all promotions of auditors at the National Center of Judicial Studies between 1981 and 1992.

In Egypt, all deputies of the parquet must be trained at the National Center of Judicial Studies, the program of which has repeatedly changed in the course of time. The use of

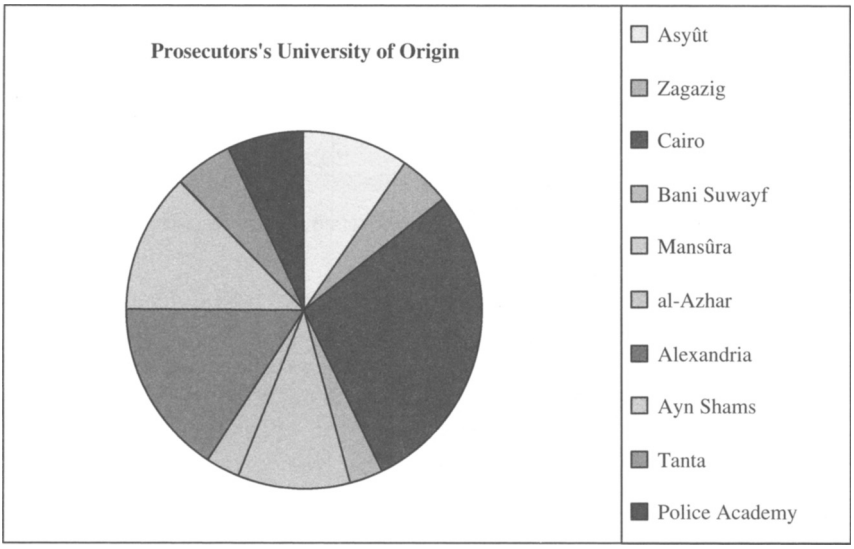


Figure 8

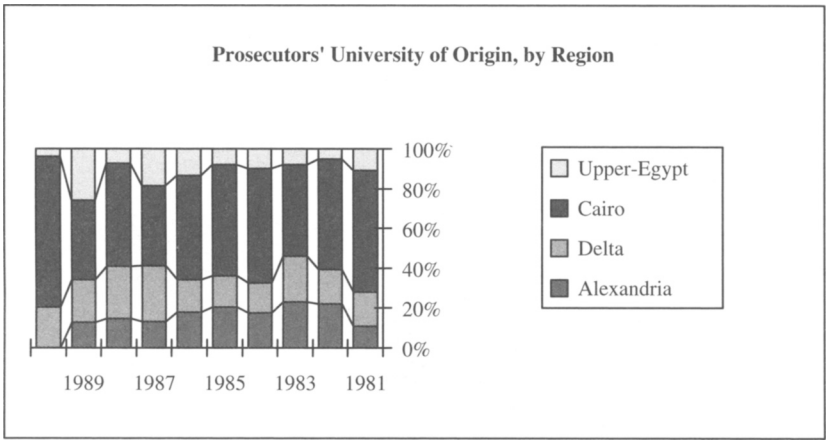


Figure 9(a)

the file of trainees which has been kept between 1981 and 1992 has made it possible to determine the geographic origin of the young magistrates, their academic backgrounds and, consequently, their degree of mobility.

One thus observes that the universities of the capital (Cairo, al-Azhar, 'Ayn Shams, Police Academy) provide the largest contingent of auditors, distantly followed, in order, by the universities of the Delta (Mansura, Zagazig and Tanta), the university of Alexandria and the universities of Upper Egypt (Asyut and Bani Suwayf). Of the four faculties in Cairo, that of Cairo University is far ahead of the Police Academy, which has

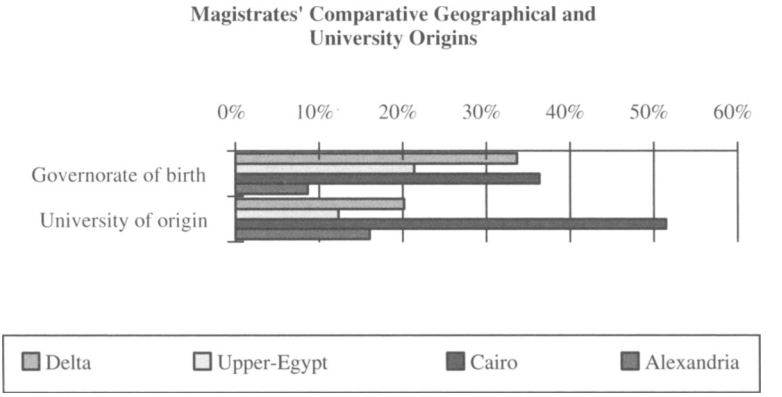


Figure 9(b)

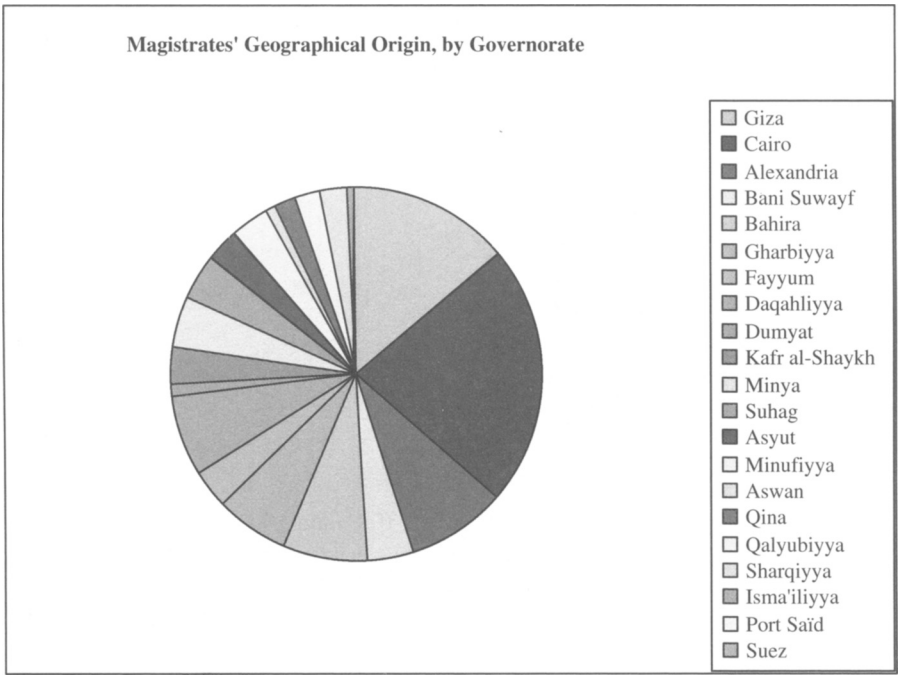


Figure 10

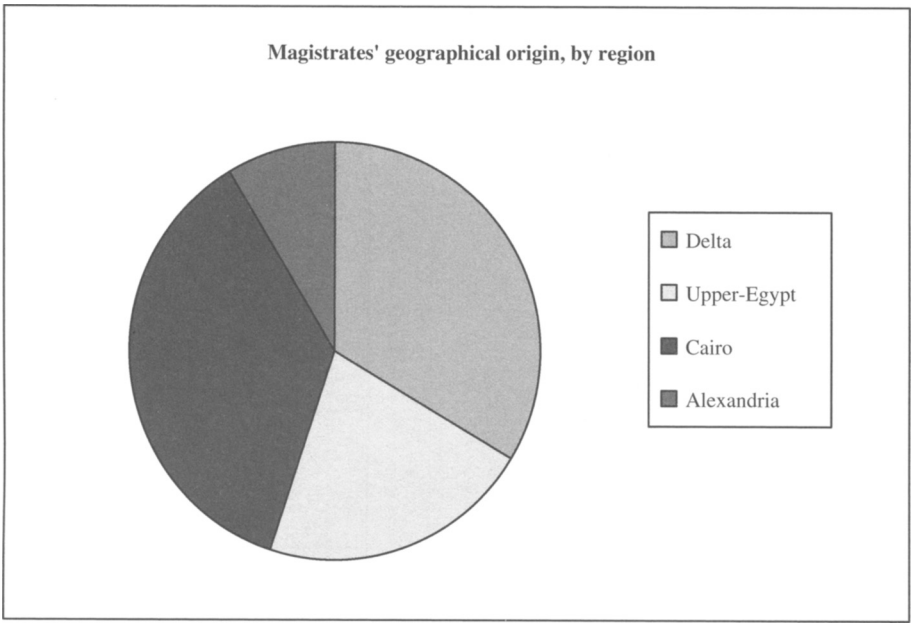


Figure 11

taken precedence over the Faculty of Law of 'Ayn Shams University; al-Azhar is in last place (and in a manner not proportional to its demographic weight).

Examining the birth places of the magistrates, one observes that the recruitment by the National Centre of Judicial Studies is for the greater part from outside Cairo and Alexandria, but to a proportional extent less than the demographic weight of the province would lead one to expect. It will be noted that the governorates north of Minya provide comparatively more magistrates than the southern governorates.

The number of magistrates enrolled at the National Centre of Judicial Studies may also be compared to the population of the governorates from which they come. This comparison shows the extent to which each governorate is represented at the Centre in proportion to its demographic representativeness (population in 1986). The governorates in which the ratio is higher than 1 are thus over-represented at the Centre, while those in which the ratios are equal to or less than 1 are represented proportionally or are under-represented, respectively.

Comparing also the geographic origins and academic backgrounds of the magistrates, it appears that the faculties of Cairo and Alexandria have a surplus, in the sense that the number of magistrates they train is higher than the number of magistrates born in the regions where they are located.

Magistrates' Geographical Origin per Governorate's Total Population

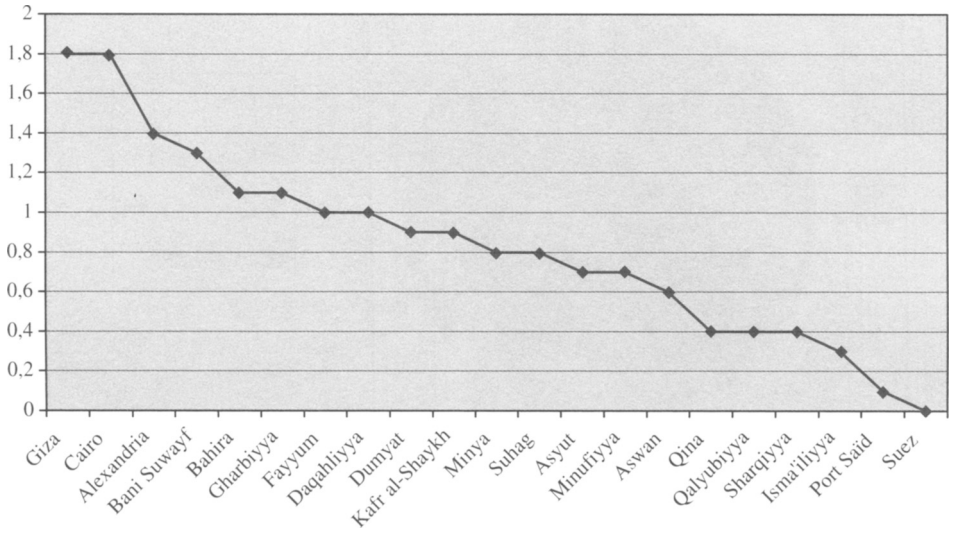


Figure 12

5. A FEW INDICATORS OF CRIMINALITY

In this section, we shall make a few comments drawn from the comparative study of judicial statistics for the years 1982 and 1996. The first remark relates to the collection of data itself. Legal statistics are produced annually by the Ministry of Justice on the basis of figures communicated to it by public prosecutor's offices and courts from throughout the country. The figures are themselves the product of a breakdown of cases registered at the public prosecutor's office or the court. The legal statistics reflect nothing other than the rate of cases which come before the judicial body and, farther up the line, in the criminal field, the police. It is known that a large part of the criminality remains unknown to the latter. It is also widely recognized that, in a large number of cases, attempts to make a deposition with the police are not officially recorded when there is little chance of any prompt settlement. Finally, it should be underscored that criminal statistics are established according to a legal taxonomy. Criminality is thus divided into seventeen categories, as follow: willful homicide, attempted homicide, assault entailing death, assault, theft, attempted theft, arson, corruption, forgery, counterfeiting money, embezzlement, misconduct and breach of modesty, rape and intimidation, possession of weapons, narcotics, repeated offences and other crimes. This all leads to taking the following remarks with much caution, a legitimate question being, finally, whether what the figures express is the criminal phenomenon in Egypt, or indeed the activity of criminal justice.

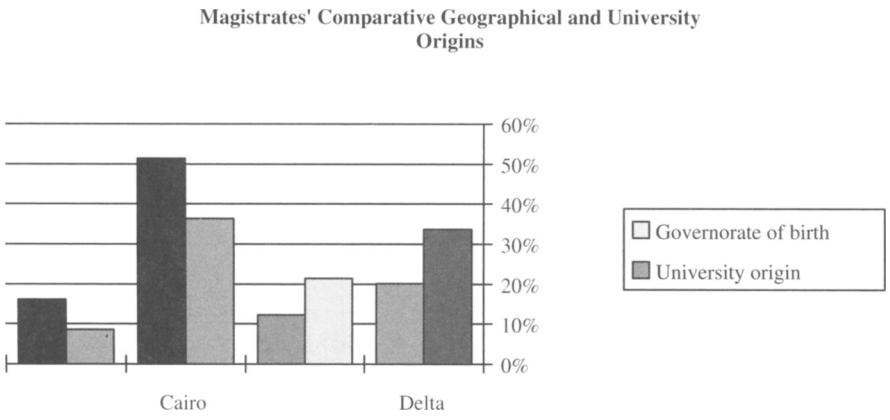


Figure 13

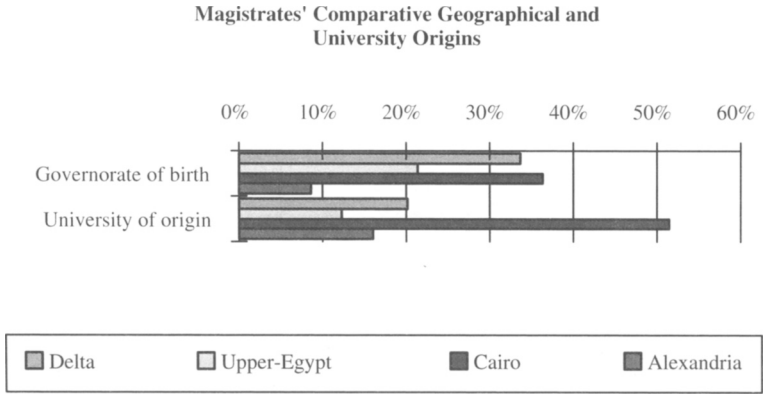


Figure 14

Generally speaking, one will first note an overall increase in the reported rate of criminality . This overall increase is highly pronounced in the metropolitan areas, namely Cairo and Alexandria, but also in the public prosecutor's offices in Port Said, Suez, Isma'iliyya, Qalyubiyya and Asyut. Generally, the rate of criminality in Upper Egypt is higher than the national average, particularly in the public prosecutor's offices in Minya Asyut and Aswan.

Turning now to criminality according to sector, it will be noted that willful homicide, the rate of which is already low when compared with the averages in other countries, shows an overall declining tendency, whereas attempted homicide shows the opposite tendency. Moreover, the rate of theft and attempted theft increased five-fold over the same period of time. Although the rates are generally low or very low, the cases of arson are seen to increase considerably (six-fold) and cases of counterfeit money appeared. The rate of occurrences of embezzlement reported to the public prosecutor's office doubled,

Rate per type of criminal act		
	1982	1996
wilful homicide	1,35	1,25
attempted homicide	0,64	1,20
assault entailing death	0,49	0,65
assault	0,87	1,27
theft	0,52	2,85
attempted theft	0,14	0,63
arson	0,10	0,60
corruption	0,20	0,52
forgery	1,30	1,81
counterfeiting money	0,03	0,40
embezzlement	0,55	1,38
misconduct and breach of modesty	0,65	1,08
rape and intimidation	0,26	0,39
possession of weapons	10,82	12,32
narcotics	10,95	17,87
repeated offences	0,15	0,31
other crimes	2,21	9,08

Wilful homicide		
	1982	1996
TOTAL	**1,35**	**1,25**
Cairo	0,57	1,22
Alexandria	0,68	1,86
Port Saïd	1,48	1,70
Suez	0,38	0,96
Dumyat	0,15	1,20
Mansura	1,13	0,64
Sharqiyya	0,49	0,61
Qaliubiya	1,12	1,00
Kafr al-Shaykh	1,04	0,22
Gharbiyya	0,87	1,41
Minufiyya	1,46	0,65
Bahira	0,52	0,90
Isma'iliyya	1,52	0,70
Giza	0,93	0,69
Bani Suwayf	1,31	1,08
Fayyum	2,33	1,01
Minya	1,80	1,12
Asyut	5,61	4,92
Suhag	2,90	0,80
Qina	2,82	1,15
Aswan	0,28	0,92

Corruption		
	1982	1996
TOTAL	**0,20**	**0,52**
Cairo	0,42	1,31
Alexandria	0,11	0,42
Port Saïd	0,89	1,06
Suez	0,00	0,00
Dumyat	0,30	0,00
Mansura	0,00	0,31
Sharqiyya	0,13	0,26
Qaliubiya	0,09	0,12
Kafr al-Shaykh	0,00	9,13
Gharbiyya	0,23	0,23
Minufiyya	0,15	0,07
Bahira	0,03	0,43
Isma'iliyya	0,43	0,70
Giza	0,13	0,36
Bani Suwayf	0,00	0,16
Fayyum	0,58	0,00
Minya	0,21	0,00
Asyut	0,17	0,64
Suhag	0,19	0,13
Qina	0,00	0,16
Aswan	0,00	0,10

Rate per Public Prosecution office		
	1982	1996
TOTAL	**31,24**	**53,59**
Cairo	50,78	82,82
Alexandria	18,25	65,89
Port Saïd	52,56	66,87
Suez	21,41	123,80
Dumyat	13,27	26,35
Mansura	31,65	20,46
Sharqiyya	16,59	31,79
Qaliubiya	41,99	72,18
Kafr al-Shaykh	24,45	33,42
Gharbiyya	17,97	34,19
Minufiyya	15,06	17,11
Bahira	23,33	41,34
Isma'iliyya	21,69	78,18
Giza	31,84	39,62
Bani Suwayf	29,09	35,10
Fayyum	25,65	30,76
Minya	35,35	57,21
Asyut	65,63	82,79
Suhag	37,28	18,28
Qina	22,79	36,78
Aswan	18,46	95,93

Theft		
	1982	1996
TOTAL	**0,52**	**2,85**
Cairo	1,22	3,73
Alexandria	0,27	4,78
Port Saïd	0,89	4,26
Suez	0,00	10,06
Dumyat	0,75	0,77
Mansura	0,21	0,57
Sharqiyya	0,65	2,29
Qaliubiya	0,56	2,57
Kafr al-Shaykh	0,43	1,12
Gharbiyya	0,68	2,73
Minufiyya	0,39	1,74
Bahira	0,31	1,93
Isma'iliyya	0,22	2,38
Giza	0,42	2,39
Bani Suwayf	0,15	3,28
Fayyum	0,66	3,12
Minya	0,25	1,75
Asyut	0,00	3,28
Suhag	0,14	0,13
Qina	0,59	2,54
Aswan	0,83	4,11

Counterfeiting money		
	1982	1996
TOTAL	**0,03**	**0,40**
Cairo	0,11	0,32
Alexandria	0,00	0,24
Port Saïd	0,00	3,41
Suez	0,00	0,00
Dumyat	0,00	0,33
Mansura	0,00	0,24
Sharqiyya	0,00	0,23
Qaliubiya	0,00	0,06
Kafr al-Shaykh	0,18	0,63
Gharbiyya	0,04	0,15
Minufiyya	0,05	0,15
Bahira	0,00	0,15
Isma'iliyya	0,22	0,70
Giza	0,00	0,31
Bani Suwayf	0,00	0,32
Fayyum	0,00	0,05
Minya	0,00	0,03
Asyut	0,00	0,04
Suhag	0,00	0,16
Qina	0,00	0,12
Aswan	0,00	0,31

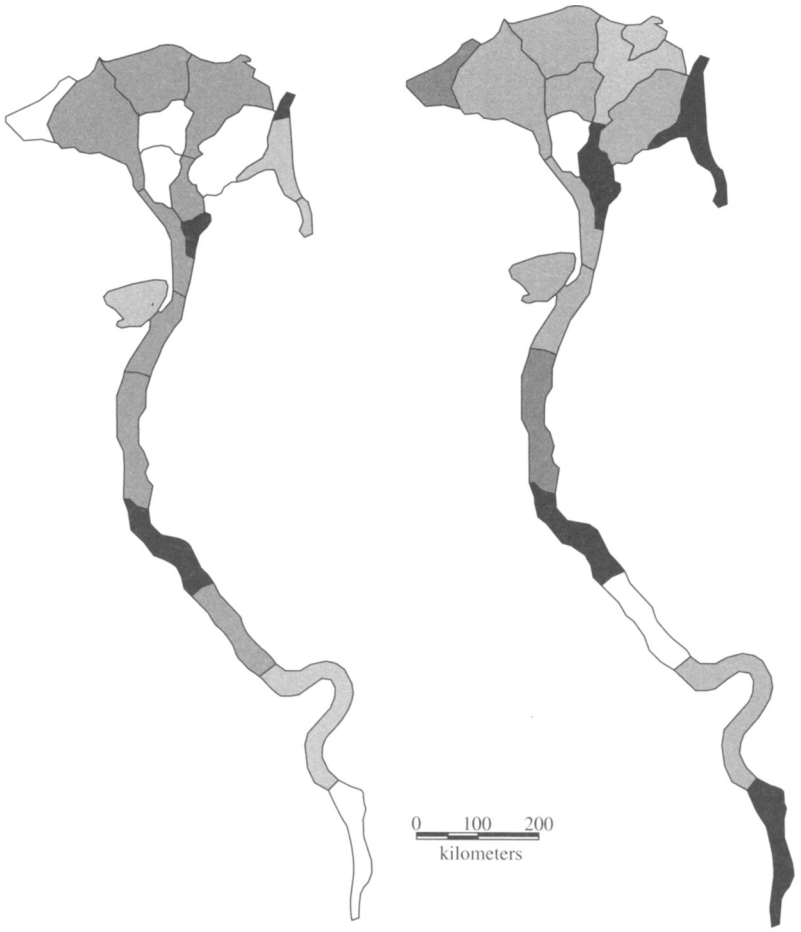
Figure 15

Possession of weapons		
	1982	1996
TOTAL	**10,82**	**12,32**
Cairo	1,93	9,68
Alexandria	0,76	3,64
Port Saïd	3,25	20,23
Suez	0,38	19,40
Dumyat	1,34	4,05
Mansura	7,32	3,53
Sharqiyya	6,49	3,87
Qaliubiya	21,76	18,26
Kafr al-Shaykh	12,78	2,47
Gharbiyya	3,80	8,58
Minufiyya	7,12	3,66
Bahira	15,98	8,44
Isma'iliyya	4,55	4,20
Giza	10,80	5,27
Bani Suwayf	16,66	14,25
Fayyum	10,13	14,57
Minya	24,26	37,90
Asyut	31,84	45,96
Suhag	20,83	11,85
Qina	10,83	13,60
Aswan	1,79	28,65

Narcotics		
	1982	1996
TOTAL	**10,95**	**17,87**
Cairo	36,25	36,84
Alexandria	1,03	23,23
Port Saïd	37,21	12,35
Suez	17,65	79,02
Dumyat	5,37	0,44
Mansura	10,41	4,45
Sharqiyya	5,57	8,47
Qaliubiya	12,14	37,42
Kafr al-Shaykh	3,79	1,62
Gharbiyya	5,78	10,66
Minufiyya	1,75	2,79
Bahira	2,87	3,87
Isma'iliyya	11,28	43,78
Giza	16,77	19,16
Bani Suwayf	4,38	3,71
Fayyum	4,66	6,18
Minya	1,17	3,72
Asyut	16,44	9,35
Suhag	5,42	1,73
Qina	2,72	7,99
Aswan	2,62	35,43

Figure 15 *Continued*

while corruption is seen to be of a very erratic character (but the national average doubled). Questions of morality have not undergone any appreciable evolution. On the other hand, both the carrying of arms and possession of drugs display very high average rates and, in the case of drugs, a substantial increase. It is noteworthy that the carrying of arms is a phenomenon very largely specific to Upper Egypt. Finally – and this remark takes us to the general question as to the nature of this nomenclature and the phenomena it expresses – there was quadrupling of the rate of criminal acts not included in defined categories, referred to the public prosecutor's office. In this respect, it would not be exaggerated to say that the legal taxonomy obviously has some difficulty in reflecting the criminal acts referred to it. In addition, some very large increases, a number of sudden and erratic variations, or the rate of zero reported occurrences of certain criminal acts in certain public prosecutor's offices, necessarily give rise to two questions: first, as to the conditions in which data were collected and, second, as to the confined character of police and judicial action in specific domains. The fact that in Kafr al-Shaykh, for example, the rate of corruption reported to the public prosecutor's office would have gone from zero in 1982 to more than nine for 100 000 inhabitants, in 1996, can only call for the greatest prudence in the interpretation one might propose.



Rate of Criminality per Public Prosecution Office in 1982
Number of occurrences per 100,000 inhab. (Average : 24.6)

- 50 – 65
- 26 – 50
- 23 – 26
- 20 – 23
- 10 – 20

Rate of Criminality per Public Prosecution Office in 1996
Number of occurrences per 100,000 inhab. (Average : 43.6)

- 66 – 124
- 50 – 66
- 30 – 50
- 20 – 30
- 10 – 20

Figure 16

T. Khattab

1. CIVIL LAW

1. Definition and Division

The Egyptian Civil Code is divided into:

– a preliminary section; and
– two major parts (each of which includes two books).

The preliminary section is entitled 'General Provisions' and consists of three chapters, which are:

Chapter I: 'The Law and Its Application';
Chapter II: 'Persons'; and
Chapter III: 'Classification of Things and Property'.

Part 1 is entitled 'Obligations or Personal Rights' and consists of two books:

First book: 'Obligations in General';
Second book: 'Nominal Contracts'.

Part 2 is entitled 'Real Rights' and consists of two books, continuing the sequence of the preceding books:

Third book: 'Original Real Rights';
Fourth book: 'Real Rights by Entailment or Material Guarantees'.

In this chapter the same sequence is used in discussing the Code.

2. Historical Synopsis

After the older Egyptian Civil Codes, mixed and national, were enacted in 1876 and 1883, there was an urgent need to amend several of their provisions. This was probably due both to the circumstances in which they were passed and to the sources from which they drawn.

Although the provisions of these Codes were modified, in whole or in part, it became clear that fundamental defects still existed. Because of these defects, the law was unable to adapt to new economic and social developments.

Therefore, a strong desire to comprehensively overhaul the laws arose. This desire was also probably the result of a sweeping trend towards abolishing the duality of mixed and national Codes, which coexisted with duality of the judiciary.

N. Bernard-Maugiron and B. Dupret (eds.), Egypt and Its Laws, 1–17.
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The first steps on the way towards comprehensive revision of the provisions of the older civil codification and creating a basis for unification were taken. An Egyptian cabinet decree was issued on 27 February 1936, which set up a committee to undertake this task. The committee was under the chairmanship of the late Murad Sayyed Ahmed, and consisted of eight lawyers. Among them were Dr. Mohamed Kamel Mursi, the Dean of the Faculty of Law, and Dr. Abdel Razzaq Ahmed Al Sanhuri, Professor of Civil Law at the Faculty of Law. Linant de Bellefonds, counselor with the Mixed Court of Appeal, and Maurice de Foyer, a judge with the Mixed Courts, were also on the committee.

The committee prepared some preliminary texts related to the sources of the law and the conflict of laws, but was then abolished by a cabinet decree issued on 26 May 1936.

On 20 November 1936, a cabinet decree ordered the formation of another committee to carry out the mission of the original one. This second committee was under the chairmanship of the late Kamel Sidqi Pasha, with ten members in addition to the chairman. This committee formulated the texts of the Civil Code concerning bailing surety and preemption.

The Ministry of Justice presented a memorandum to the cabinet of ministers on 16 June 1938, in which it stressed the fact that the system of committees was valueless and inefficient. The memorandum proposed that two great figures of the law should be commissioned to draft the Civil Code; one of these two should be Egyptian, the other one a foreigner. The cabinet duly approved this memorandum on 21 June 1938, and on 28 June 1938 the Minister of Justice issued a decree entrusting the compilation of the Civil Code to Dr. Abdel Razzaq Ahmed Al Sanhuri, judge with the Mixed Courts, together with Edouard Lambert, one of the great figures of jurisprudence in France at that time. They successfully carried out the project, and prepared a complete preliminary draft Civil Code, which was published in 1942.

The draft was presented for discussion and perusal by the legal community. Then, a committee was set up on 29 March 1945 under the chairmanship of Dr. Sanhuri and the membership of four of the legal professionals.

The task of the committee was to review the draft in the light of the observations that arouse during the discussions. The revision was accomplished on 21 November 1945; the revised draft was sent to the cabinet on the next day. On 4 December 1945 a cabinet decree was issued for the presentation of the bill to the House of Representatives from 17 December 1945 to 27 May 1946. Then, it was presented to the Senate, taking up the period from 27 May 1946 to 28 June 1948.

The preliminary draft of the Egyptian Civil Code was once more referred to the House of Representatives, where it was reviewed and amended on 5 July 1948. It was approved and promulgated on 16 July 1948. It was published in the Official Egyptian Gazette (al-waqa'i al-masriya) in issue No. 108 bis A) on 29 July 1948. It was stated in the promulgation law that it would be put into force as from 15 October 1949, the day of the commencement of the national Egyptian judiciary that had jurisdiction over all the population of the country.

On 24 October 1948, a decree was issued by the Minister of Justice which set up a committee under the chairmanship of Soleiman Hafez Pasha and with a membership of nine lawyers to collect and publish the preparatory works.

It is thus that the present Egyptian Civil Code came into being.

3. Rules Followed in the Legislation

3.1. Persons (Status and Capacity)

3.1.1. Introduction

The civil law is a group of legal rules linked or related to the life of the individual as an individual and as a member of a family, irrespective of any professional consideration or the affiliation of that individual to any social group other than the family.

The Egyptian civil law includes two categories of rules: the first regulates the financial dealings of the individual; these are called the real status rules. The second regulates the relationships of the individual with his/her family, such as marriage and divorce; these are called the personal status rules.

It should be noted that personal status in Egypt differs according to the religions of the disputing parties and their different confessions and religious communities. The Moslem is governed by one rule, the Christian another, the Jew still a different one.

The first category of rules is composed of financial relations rules, which are studied in Egyptian civil law in the framework of the study of the theory of property right, especially the place of this right and its parties and who the persons are.

The second category is composed of the categories related to the status of the person and his capacity.

The person means the legal person, i.e., the person who leads a legal life. It may be a human and thus called a natural person, or non-human and thus called a juristic or corporate person.

3.1.2. Definition of Status and Capacity

3.1.2.1. Status

By status is meant all what distinguishes one human being, meaning natural or familial attributes. A natural attribute is, for instance, whether this person is a male or a female. A familial attribute is whether he is married or a widower, a father or a son. These attributes can have a civil nature, e.g. when deciding whether a person has or lacks full capacity. They can also be religious: is the human being a Moslem, a Christian or a Jew? They can be political: does the person possess the nationality of a certain state?

The status, therefore, consists of the collective attributes that distinguish a person's status in his country and in his family.

3.1.2.2. Capacity

The term 'capacity' has two meanings. The first is the ability of the person to acquire a right or to bear an obligation; this is called capacity of competence (*capacité de jouissance*). The second is the person's ability or capability to perform legal acts in a manner

that the law stands by, i.e., practicing the legal acts that entitle him to a right or lays an obligation on his shoulders; this is called capacity of performance (*capacité d'exercice*).

3.1.3. Contents

As we mentioned before, status means the collective attributes that distinguish a person's status in his country and in his family. As to capacity, it is an attribute of the person that allows him/her to acquire or perform a right and bear an obligation. Therefore, status includes capacity.

Therefore, it can be said that capacity is an element of the status.

The capacity of performance has three stages:

The first stage starts with the birth of a person and ends immediately before the age of seven. In this stage the person has no discretion and all his/her acts are absolutely null and void.

The second stage starts when a person reaches the age of seven and ends immediately before he reaches the age of 21. The person here has a deficient capacity.

The third stage is when the person has full capacity, at the age of 21.

The legislature has regulated the provisions of capacity in the Civil Code in Articles 45–48 and in Articles 109–119.

3.2. Property

3.2.1. Definition

The right to property is the most important original real right, as it is the basis upon which all the others originate.

Article 27/11 of the former Egyptian Civil Code stated that: 'property is the right of the owner to usufruct in what he/she owns and to dispose thereof in an absolute way'. It is clear that the Egyptian legislature was influenced – in the past – by Article 544 of the French Civil Code.

As for the current Egyptian Civil Code, Article 802 gives a definition of property stating that: 'who owns a thing has alone, within the limits of the law, the right to use it, to exploit it and dispose of it'.

This means that the property right is a real original right based on the direct power of a person over a material thing, authorizing solely him/her to use, exploit and dispose of that thing.

3.2.2. Subdivisions and Contents

The property right is studied in the Egyptian Civil Code in two chapters. The first chapter is concerned with the study of the property right in general, including the following parts: the first part is about the meaning of the property right, dealing with the definition of this right and explaining its characteristics in addition to the powers of the owner, i.e., disposal, usage and exploitation. It also covers the limits imposed on these powers or on the property right as such. Examples of the first case are the conditions preventing from disposal and exaggeration of the owner in using his right. An example of the second case is the right of secondary passage in the case of an isolated land.

The second part studies the provisions of joint possession; these are the provisions regulating the management of joint possession, the usufruct thereof as well as the provisions of its disposal, cessation and share.

The second chapter is dedicated to the study of the sources of the property right, by which we mean the means of acquiring property: contract; possession; preemption; and inheritance.

3.2.3. Rights of Easement

3.2.3.1. Preamble

According to Article 806 of the Civil Code: 'When using his right, the owner has to take into consideration the contents of the laws, decrees and regulations relating to public or private interest'.

According to legal scholars, this provision ensures that the limitations imposed on property rights are regulated, as well as defining rights of easement.

This interpretation is supported by Article 13 of Law No. 12 of 1984 on irrigation and drainage, which mentioned rights of easement and stipulated that: 'the lands through which a private irrigation or drainage canal runs are burdened with a right of easement for the benefit of the other lands that utilize this irrigation or drainage canal …'.

3.2.3.2. Rights of Easement in the Egyptian Civil Code

Three kinds of right of easement are included in the Civil Code:

3.2.3.2.1. Right of Irrigation. The first paragraph of Article 808 of the Civil Code states the following: 'Whoever digs a private irrigation or drainage canal according to the competent regulations has the sole right to its use'. The same text adds: 'Nevertheless, the neighboring owners may use the canal for whatever irrigation and drainage their land needs, after the owner of the canal has satisfied his need'.

3.2.3.2.2. Right of Passage. This right was stated in Article 809 of the Egyptian Civil Code: 'The owner of a land shall permit the passage in his land of enough water for the irrigation of the lands lying farther from the water source'.

Commenting on that, the explanatory note of the Civil Code said: 'The legislature gave the right of passage to the owner of the lands far from the water outlet (source); water sufficient to irrigate the land shall pass through the neighbor's land. This water may be taken from a public canal or from a private one owned by him or others and on which a right of irrigation has been established'.

3.2.3.2.3. Right of Drainage. Article 809 of the Egyptian Civil Code also obliges the owner of a land to permit drainage water coming from neighboring lands to pass through his land in order to reach the nearest public drainage canal.

The right of drainage means the right of the owner of land not overlying a drainage canal to drain water in excess of the needs of his land and left over after irrigation, either in a private drainage canal owned by his neighbor or by digging a drainage canal in his

neighbor's land, according to Article 15 of Law No. 12 of 1984 on irrigation and drainage in Egypt.

3.2.3.3. The Right of Easement is a Right Branching from the Right of Property
In Part II of the Civil Code, dedicated to the provisions of the rights branching from the property right, the legislature dedicated Chapter 3 to the provisions of the right of easement, in Articles 1015–1029.

Article 1015 gave a definition of easement as: 'a right that limits the enjoyment of a tenement for the benefit of another tenement owned by another person. The right of easement may also bear on public property if it does not conflict with the purpose of this public property.'

In addition to the three cases of easement discussed above, Article 1018 of the Civil Code should also be mentioned, which imposes limitations on the right to build of the owner of a tenement, such as limits on the height or width of the building. This Article adds that these limitations are rights of easement imposed on the tenement for the benefit of the other tenements.

3.3. Obligations

3.3.1. Preamble
The theory of obligation has enjoyed considerable interest and is considered the crux of law in all its branches. This theory includes within itself the basic rules that regulate obligations in general. Doubtless, this demonstrates its importance in general and in the field of legal studies in particular. This is also justified, since it contains within its study the basis on which transactions in Islamic law are built, side by side with the secular law. That is, assuming that whatever provisions the latter has are within the framework of the general rules of the former.

The logical method of studying obligation as a legal system necessarily leads us to examine its phases of life, as if it were a living being, from birth to death.

We will start with the sources of an obligation; then its life, its effects, its characteristics, as well as the alterations it may undergo.

Following that, we will investigate the death of an obligation and the causes that may lead to its termination.

3.3.2. Sources
An obligation is a link or a legal relation between two or more persons, the creditor and the debtor. The basis of this relation is the obligation of the latter towards the former to give, to do or to abstain from doing something.

The sources of obligation are divided into intentional and unintentional sources. Heading the intentional sources is the contract. Heading the unintentional sources are the illegal act (responsibility) and unexplained enrichment.

We shall present the contract, then the civil responsibility.

3.3.2.1. The Contract

A contract is an agreement between two or more wills to create a legal effect in the form of establishing an obligation or transferring, removing or amending it. It means, concisely, the desire of two or more wills to achieve a legal result.

A contract is based on the principle of the power of the will, meaning that the will of the individual can establish what contracts it wishes and is not limited by the types of contracts specified by the legislature (nominal contracts). It may also alter its effects, either by alleviating or strengthening them.

Contracts are divided into several categories, which differ according to the base on which the division is built. They are divided into consensual, formal, and real contracts.

As to their effects, they are divided into synallagmatical (reciprocal) and unilateral contracts.
As to the existence or non-existence of remuneration, there are contracts for valuable consideration and contracts for gratuitious consideration.
As to the possibility of executing them, there are fixed or aleatory contracts.
As to the interest of the legislature in regulating them, there are nominal and non-nominal contracts.
As to the role of time, there are spontaneous and continuous contracts.
As to the different fields they regulate, they may be simple or mixed.

3.3.2.2. Elaboration

For a contract to exist, three factors must be present: an agreement; an object; and a cause, in addition to the conditions of validity.

An agreement means an exchange of mutual consent. It is evidenced by an offer and an acceptance.

An object means the object of the obligation which the debtor is committed to do. It can be an obligation to give, to do or to abstain from doing something.

The object of a contractual obligation means the thing which is the object of the act, such as the thing sold, in a sale contract.

The object of a contract means the legal operation which the two parties want to achieve by getting into a contact. For instance, the transfer of ownership of the thing sold is the subject of the sale contract.

As for the cause of the obligation, it means the direct and objective purpose aimed at by the committed person. So, in the case of a sale, the seller is obligated to transfer the ownership of the sold object to the buyer and the cause of his/her obligation is to get the price. The cause of the contract is the motive instigating the holding of the contract, i.e., the main reason motivating a person to get into a contract.

The conditions of validity are capacity and a will free of defects such as error, fraud, constraint and exploitation.

The absence of one of the elements of the contract or one of its conditions of validity entails its nullity.

The nullity is absolute in the absence of one of the basic elements of the contract: agreement, object, cause, or of absence of a condition of one of those elements.

The nullity is relative where one of the conditions of validity is absent, such as the lack of capacity or the presence of a defect in the will (error, fraud, constraint or exploitation).

3.3.2.3. Effects

The effects of the contract are to establish obligations between two parties. It is possible to look at these effects from the perspective of the obligating power of the contract: each party is committed to respect its content and its provisions, according to the concept that 'the contract is the law of the contractors'. The obligating force of the contract is confined to its two parties; its effects do not go beyond them. This is the principle. However, there are exceptions where the contract stipulates for the benefit of a third party or undertakes obligations on behalf of a third party. The principle and the exceptions are expressed in the concept of the relativity of the contract.

3.3.3. Provisions

3.3.3.1. Definition

The provisions of an obligation are the rules that regulate the obligation itself after it originated from a rightful source.

3.3.3.2. Contents

3.3.3.2.1. Implementation of an Obligation. The main effect of an obligation is the necessity of its implementation. This implementation may be in specie: the debtor has to implement the obligation in kind. It may also be by remuneration or compensation.

Implementation is done voluntarily, which is the principle. It may be obligatory if the debtor abstains from the voluntary implementation.

This is the case for a civil obligation. But in the case of a natural one, there is no obligation in its implementation.

3.3.3.2.2. Characteristics of an Obligation. The condition is one of the characteristics of an obligation. It is something that may or may not take place in the future. Its occurrence or absence entails the realization or lack of the obligation, making the condition either suspensive or resolutive.

As for the term of the obligation, it is a future matter that will take place. Its occurrence or absence entails the realization or absence of the obligation, making the term either suspensive or resolutive.

3.3.3.2.3. Transfer of an Obligation. On the positive side, an obligation is transferred when transferring a right; on the negative side, it is transferred when transferring a debt.

Transferring a right is a contract under which the transferor is committed to transfer the right, object of transfer, to the transferee.

The legislature dealt with the transfer or rights in Articles 303–314 and with the transfer of debt in Articles 315–322 of the Civil Code.

3.3.3.2.4. Solidarity. The solidarity is based on the multiplicity of the parties to an obligation. On the negative side it is called the solidarity of debtors; on the positive side it is called the solidarity of creditors.

The negative solidarity of debtors is based on the multiplicity of the debtors of one debt, so that the creditor can claim the debt from them collectively or individually, as stated in Article 285 of the Egyptian Civil Code.

As for the positive solidarity, it is based on the multiplicity of the creditors so that any of them can claim the whole debt and not only his/her share of it. The two types of solidarity are based on the unity of the debt or the object and the multiplicity of the links.

3.3.3.2.5. Termination. An obligation is terminated, first, by its implementation, i.e., by fulfilling it.

It can be terminated, also, with an equivalence of fulfillment (e.g. renewal, fulfillment by delegation or equivalent, compensation).

It may also be terminated without fulfillment (e.g. remission, impossibility of implementation and prescription).

3.3.4. Statutory Texts

The legislature dealt with fulfillment of the obligation in Articles 303–349 of the Civil Code.

Then, he tackled the means that are equivalent to fulfillment, like renewal and delegation in Articles 352–361.

Compensation is demonstrated in Articles 362–369 and the confusion of ownership in Article 370.

As for the causes that lead an obligation to expiration without fulfillment, the legislature dealt with remission in Articles 371 and 372, impossibility of implementation in Article 373 and prescription in Articles 374–388.

3.3.5. Civil Responsibility

Civil responsibility arises when a person violates an existing obligation.

If the source of this obligation is a contract, the civil responsibility is a contractual responsibility. But if the source is the law, the civil responsibility is an omissive responsibility, since there is a general obligation imposed by the law not to wrong others.

We shall study contractual responsibility, then omissive responsibility.

3.3.5.1. Contractual Responsibility: Elements

Contractual responsibility arises when three elements are present: a fault, a damage and a relation of causality between them. We assume the existence of a valid contract, then a breach by one of the parties of an obligation arising from that contract, causing a damage to the other party. It should also be clear that but for that breach the damage would not have happened; the damage must be the result of the breach.

A contractual fault arises when the debtor breaches an obligation arising from the contract. He may not fulfill this obligation in part or as a whole, or even implement it completely but with a delay or a default.

The Egyptian Court of Cassation ruled that: 'the debtor's failure to fulfill his/her contractual obligation is considered a fault entailing his/her responsibility which he/she can avoid by proving *force majeure* or an excused mistake or a mistake of a third party'. This ruling was passed on 10 December 1987. In another ruling, dated 20 December 1987, the Egyptian Court of Cassation decided that: 'since the principle is to fulfill the obligation in specie, the failure of the debtor to implement his/her contractual obligation is a fault that entails his/her responsibility'.

The damage can be defined as the harm that a person suffers in relation to one of his/her rights or in a lawful interest that may be material or moral.

The damage may be material, represented in a financial loss. It may also be moral, represented in a non-financial harm, such as hurting the feeling or emotions of a person.

The relation of causality means that the contractual fault caused damage that would not otherwise have occurred.

The statutory texts are as follows: Article 221/1 of the Civil Code: 'The damages shall cover the loss the creditor suffered and the profits he missed'.

Article 222/1: 'The damages shall also cover the moral injury'.

Article 221/2: 'If the obligation arises from a contract, the debtor who did not resort to fraud or gross negligence is only committed to give damages for the injury that could normally be expected at the time of making the contract'.

3.3.5.2. Omissive Responsibility (Illegal Acts)

The fault is a deviation from the usual behavior of a normal person or a head of family in charge of his family, taken as an average person, not the most careful nor the most negligent. This person is envisaged in the same external circumstances as the ones that led to the injurious act. The possible behavior of this normal person is then investigated.

The damage, as mentioned before, is the harm that a person suffers in respect of one of his/her rights or in a lawful interest that may be material or moral.

Contrary to the contractual responsibility, the damages shall cover expected and unexpected harm, while in the contractual responsibility it only covers the normally expected one.

The relation of causality means that the fault caused damage that would not have happened otherwise.

Article 163 of the Civil Code states that any fault causing injury to others shall lead his author to indemnify it.

According to Article 165, if the person proves that the injury was the result of an extraneous reason out of the reach of his/her will, such as an accidental case, *force majeure* or a mistake of the injured party or a third party, he/she is not liable for damages for this injury unless it is stated or agreed otherwise.

The legislature dealt with the provisions of responsibility for omission in the Civil Code in Articles 163–172 concerning the responsibility for a person's act.

As for the provisions of the responsibility for the acts of others, this is dealt with in Articles 173–175. Article 173 addresses the responsibility of the supervisor of a minor or mentally deficient person, and Article 174 tackles the responsibility of the principal for the acts of his agent.

Then the Code addresses responsibility because of things. In Article 176 the legislature mentions the responsibility of animal owners. Article 177 relates to the responsibility of owners of buildings. Article 178 deals with the responsibility of owners of dangerous inanimate things that require special care, such as mechanical equipment.

3.4. Personal and Material Guarantees

The legislature regulated civil guarantees as a legal system that insures and protects the creditor against a specific danger: non-fulfillment by the debtor of his obligations.

There are two types of guarantees: material and personal ones.

Material guarantees are money or property allotted to insure the fulfillment of obligations. They are described as material, since the warranty comes from money or property. The material guarantees in Egyptian law are mortgage, pledge, and preferential rights.

Personal guarantees are essentially based on another person joining the debtor and pledging fulfillment of the latter person's unfulfilled obligations. They are personal as the warranty comes from a person. The legislature regulated several of these, such as joint liability, but the most important of them is the bailing surety.

We shall discuss the material guarantees first, and then the personal guarantees.

3.4.1. Material Guarantees

3.4.1.1. Mortgage

Mortgage is studied in the Egyptian Civil Code within the frame of the legal system of material guarantees. The basis of this kind of guarantee is allotting money or property as a security for fulfillment of the obligation. The basic principle is that the debtor shall present this guarantee of money or property.

3.4.1.1.1. Official Mortgage. The legislature regulated official mortgage in Articles 1030–1084 of the Civil Code.

Article 1030 defines it as a contract by which the creditor acquires a right over a real estate unit for the fulfillment of the debt. He/she shall gain precedence over simple contract creditors and the creditors ranking after him in obtaining his right from the price of the real estate, whoever holds it.

The official mortgage is an accessory real right.

It is used with real estate only.

It arises from an official contract, i.e., a formal contract; that is to say with an official paper.

It is subject to the principle of non-divisibility.

The official mortgage is subject in its making, as a contract, to the general rules for the conclusion of contracts: agreement, object and cause, in addition to the conditions of validity such as capacity and a will free of defects.

Consent alone is not sufficient to make this contract; the legislature stipulated the necessity of formal conditions, represented in writing down the content of the contract onto an official paper.

Articles 1031–1042 of the Civil Code deal with the procedure of creation of the mortgage.

Articles 1043–1081 present the effects of the official mortgage.

The effects between the two parties are represented in the obligations imposed on the mortgagor. The official mortgage is a unilateral contract, since the mortgagee has no obligation. On the other hand, the effects appear in rights and powers for the mortgagee.

As for the obligations of the mortgagor, he is committed to give the mortgagee the mortgage and is also committed to secure the soundness of this right.

These obligations of the mortgagor are not in conflict with his/her rights, as the official mortgage does not strip the mortgager of his/her mortgaged property and does not dispossess him/her of its possession. The mortgagor is still the owner of the property, with the power of disposal, use and exploitation, the most important form of exploitation being to rent the mortgaged real estate.

As for the mortgagee, he/she has the right to implement the official contract on the mortgaged real estate at the time of expiration of the delay.

For the mortgage to have effects on third parties, it must be registered according to the laws on publicity of real estates and property registry.

For third parties, executing the mortgage either means right of priority or right of pursuit.

Right of priority means that the creditor has priority in obtaining his/her right from the monetary equivalence of the real estate, before all simple contract creditors and mortgagees ranking after him.

As for the right of pursuit, it means that the mortgagee has the right to execute the contract on the mortgaged real estate in the possession of its holder, whoever he is. The holder may be a third party who received the ownership of the real estate in whole or in part or of any other material right that can be mortgaged.

The official mortgage is extinguished (Articles 1082–1084) with the fulfillment of the guaranteed debt. It may also be extinguished, as such, for several reasons such as the destruction of the mortgaged real estate.

3.4.1.1.2. Pledge. Article 1096 defines the pledge as a contract in which a person is committed, as a guarantee for a debt which is his/hers or somebody else's, to deliver to the creditor or a third party nominated by the two contractors a thing on which the creditor will enjoy a real right. According to this right, he/she will be authorized to detain the thing till the debt is paid off. He/she shall gain precedence over simple contract creditors and the creditors ranking after him in obtaining his right from the price of the object, whoever holds it.

The legislature regulated the provisions of the pledge in the Egyptian Civil Code in Articles 1096–1113.

The pledge is an accessory real right.

It applies to real estate and movable property by transferring the material holding to the mortgagee or the third party agreed upon by the two parties.

It is made with a consensual contract. Mutual agreement is sufficient for its making, there is no formal condition.

It is subject to the principle of non-divisibility.

The pledge is subject in its making, as a contract, to the general rules for the conclusion of contracts: agreement, object and cause, in addition to the conditions of validity.

The pledge is a contract committing both parties; therefore it imposes obligations and rights on them both.

The mortgagor is committed to giving the mortgage right to the mortgagee, as well as to delivering the thing mortgaged to this creditor and to securing the soundness of this right.

The mortgagor remains the owner of the thing mortgaged in spite of the transference of the holding of the property to the creditor or a third party.

The mortgagee is committed to managing and exploiting the thing mortgaged and shall input its profits against what may be due him. He shall also return the thing after obtaining his dues.

Rights of the mortgagee creditor: the mortgagee creditor has the right to execute the contract, under the mortgage, on the thing mortgaged.

For the pledge to entail effects on third parties, it has to be applicable to them.

Whatever the nature of the mortgaged thing, the pledge will have effects on third parties only if the mortgaged thing was transferred to the mortgagee or to the third party agreed upon by the two parties.

If the thing mortgaged is a real estate, the mortgagee shall register the pledge.

If the thing mortgaged is a movable property, it is stipulated in Article 1117 that for its application to third parties the mortgage must be written down and dated and specified.

The mortgage is extinguished when the debt secured by the mortgage is paid. It may also end for other reasons, such as the destruction of the mortgaged thing.

The Egyptian Court of Cassation (4 March 1980) ruled that: 'when the holding of the mortgaged land is transferred to the mortgagee, he/she shall exploit it on behalf of the mortgagor in the usual way which it is suitable for it'.

3.4.1.2. Competence Right

A competence right is an accessory real right imposed on one real estate or more of the debtor, arising according to an order of a court president based on an enforceable ruling committing the debtor to the debt. It gives the beneficiary the rights of priority and pursuit.

According to Article 1088 of the Civil Code, the right of competence may be obtained only on one or more real estate owned by the debtor at the time of registering this right, and which may be sold at a public auction.

The president of the court shall give an order for the right, relying on an enforceable ruling committing the debtor to the debt, as stated in Article 1085.

The creditor may not, after the death of the debtor, take any right on real estate which is part of an inheritance.

The competent court is the court of first instance in whose circuit the real estate claimed for affectation is situated, as stated in Article 1089/1 of the Civil Code.

3.4.1.3. Preferential Rights

A preferential right is a priority determined by law for a certain right, taking into consideration a quality of this right (Article 1130/1 of the Civil Code).

The legislature dedicated Chapter 2 of Part 4 of the Egyptian Civil Code (Articles 1137–1149) to the different kinds of preferential rights. The first chapter of that Part (Articles 1130–1136) sets out the general provisions regarding them.

In Article 1132, the legislature expressed two major types of preferential rights: general preferential rights, which are imposed on all the real estate and movable properties of the debtor; and special preferential rights, on particular real estate or movable properties.

In Chapter 2, the legislature went on to describe the types of preferential rights.

We find first the general preferential rights and the special ones on movable property:

- on judicial expenses (Article 1138);
- on sums due to the public treasury (Article 1139);
- expenses for maintaining and restoration of movables (Article 1140);
- rights of wage-earners and suppliers, alimony rights (Article 1141);
- rights of expenses of crops and the due payments for agricultural equipment (Article 1142);
- rights of the real estate landlord and the hotel owner (Articles 1143–1144);
- rights of the vendor of a movable and the sharer therein (Articles 1145–1146).

The special preferential rights on a real estate are the following:

- rights of the vendor of a real estate and the sharer therein (Articles 1147 and 1149);
- rights of the contractor and architect (Article 1148).

3.4.2. Personal Guarantees

Article 772 of the Civil Code defines bailing surety as: 'a contract under which a person secures the implementation of the obligation if the debtor himself/herself did not fulfill it'.

Bailing surety is a consensual contract, which the legislature did not submit to special formal conditions. The guarantor must fulfill the original obligation if the debtor defaults. The bases of bailing surety are an agreement and an object.

The agreement is established by exchange of will between the creditor and the guarantor. There are the two parties to the bailing surety. The debtor is not a party therein. This is proven in the statement of Article 775; it states that: 'the debtor may have surety without his knowledge, or even despite his disagreement'.

The agreement must be free from defects such as error, fraud and constraint.

The obligation must be a civil one. Natural obligations, indeed, cannot be under bailing surety since they are not enforceable by force.

Article 777 states that: 'The guarantor of a person lacking in capacity, who gave his or her guarantee because of this lack, has to fulfill the obligation if it is not fulfilled by the secured debtor'.

According to Article 778/1, there may be a bailing surety on a future debt or on a conditional one.

The guarantor is entailed from the original debtor's obligation; and its validity of nullity.

The obligations of the guarantor are the same as the ones of the secured debtor. Article 780/1 states that: 'bailing surety shall not cover a sum larger than that due to the creditor, nor with conditions stricter that the secured debt's ones'. Article 780/2 adds that it may cover a smaller sum and at more lenient conditions.

The bailing surety entails direct effects and affects the relation between the guarantor and the creditor.

One of those effects is the right of the creditor to lay claims on the guarantor. In the case where they are several guarantors, each of them is responsible for the whole debt.

The creditor also has the right to execute the contract on the property of the guarantor if the original debtor did not fulfill his or her obligation.

If the creditor starts execution against the guarantor's property before the debtor's one, the guarantor may demand the dispossession of the debtor first.

The bailing surety also has indirect effects between the guarantor and the debtor as a result of the fulfillment by the former of the debt of the latter.

If the guarantor fulfills the obligation because the original debtor defaulted, he has the right to raise a claim against the debtor, since he paid off the debt of another person.

3.5. The System of Proof

In the Law of Evidence No. 25 of 1968, the legislature put together all the objective rules and the procedural rules related to proof.

The methods of proof stated in that law are as follows:

- writing (Articles 10–59);
- testimony of witnesses (Articles 60–98);
- presumption and res judicata (Articles 99–102);
- confession and cross-examination of the parties (Articles 103–113);
- oath (Articles 114–130) ;
- inspection (Articles 131–134);
- expertise (Articles 135–162).

The parties and the judge are committed to these methods and may not agree on other ones.

4. Two Important and Recent Rulings of the Egyptian Court of Cassation Concerning Conflicts of Laws

The legislature addressed the conflict of laws in respect of time in Articles 6–9 of the Egyptian Civil Code.

The conflict of laws in respect of time has to do with the fact that every legal rule has a certain specified lifetime; every rule has a life span for its application. This life span

starts with the time the rule becomes into force and ends with its abolition. The question is: how can the time conflict between old and new laws be resolved?

The principle is that laws are not retroactive, as stated in Article 187 of the Egyptian constitution: 'The provisions of laws apply only from the date of their entry into force and shall not have retroactive effects. However, the law may state otherwise, in other than criminal matters, with the approval of the majority of the members of the People's Assembly'.

The meaning of the text is categorically against the retroactive application of the laws; they do not apply to the past. The prohibition is absolute in criminal matters and relative in civil ones.

There are exceptions to this principle, allowing the retroactive application of the law. This is the case in the adoption of a new law more favorable to the accused.

Paragraph 1 of Article 5 of the Egyptian Penal Code states that: 'crimes are punished according to the law that was in force at the time of committing them. However, if a law more favorable to the accused is passed after the crime and before a final sentence, this new law shall be followed'.

According to paragraph 2 of the same Article: 'If a law is passed after a final sentence, which makes the act for which the criminal was penalized non-punishable, the execution of the sentence is suspended and its criminal effects are null'.

The new Egyptian Code of Commerce was issued on 17 May 1999, to enter into force from 1 October 2000. This raised controversy about the application of the provisions of its Article 534, which includes punishment for a number of acts, the most important of which is the crime of issuing an uncovered cheque, or, as the text says: 'issuing a cheque with no fulfillable cashable counterpart'.

The penalty in this new text is imprisonment and a fine not exceeding 50 000 LE, or one of these two penalties.

The penalty for this crime before the issuing of the new Code was, as stated in Article 337 of the Egyptian Penal Code, imprisonment.

Hence, there was a problem about the application of the new provision, since it was more favorable to the defendant.

In a ruling of 10 July 1999, the Court of Cassation said that Article 534 of the Commercial Code concerning the penalty for the crime of issuing an uncovered cheque shall be considered more favorable for the accused. It gives, indeed, the options of either imprisonment or a fine, when in the older provision the penalty could only be imprisonment.

As to paragraph 4 of Article 534 of the new Code, concerning the cheque, it states that: 'the victim and his attorney may request, from the public prosecution or the court according to the amount, at whatever stage of the examination of the case, to record his/her reconciliation with the accused'.

Reconciliation entails the termination of the criminal suit.

The public prosecution shall order the execution of the penalty to be discontinued if the reconciliation is accomplished during the suit; even if the sentence becomes final. The clear meaning here is that this new Code is more favorable to the accused since it has allowed reconciliation, contrary to the old Code where reconciliation was not possible.

The ruling of the General Assembly of the Court of Cassation of 10 July 1999 is in contradiction with a ruling of one circuit of the same Court of Cassation dated 29 June 1999 which ruled that a cheque issued before 1 October 2000 (the date the new Code will take effect) will still be subject to the provisions of Article 337 of the Penal Code and is not affected by the rule of the most favorable law to the accused. This court decided that the crimes of uncovered cheques which took place under the provision of Article 337 of the Penal Code would remain subject to this provision even after the entry into force of the new Code of Commerce, and that therefore the new Code does not apply to them retroactively even if it is more favorable to the accused.

Y. Qassem

2. LAW OF THE FAMILY (PERSONAL STATUS LAW)

1. INTRODUCTION

The term 'Personal Status Law' does not originate in Islamic jurisprudence, hence my preference is for the terms 'Rights of the Family' or 'Law of the Family'.

Since the term 'Personal Status Law' has no origin in Islamic Law, there have been different interpretations as to its substance and scope. The variety of relevant jurisdictions was also conducive to widening the range of interpretations.[1] The differences were not only formal, but substantive, which led to differences as to the applicable law. That is why the Egyptian Court of Cassation handed down a decision very early on in which it explained that Personal Status Law means: 'what differentiates one person from another in terms of natural and family characteristics and which is taken into consideration by the law to entail legal effects governing his/her social life: whether he/she is a man or a woman; a spouse, a widow, a divorcee, a father, a legitimate child; whether he/she enjoys full legal capacity or not. As for *waqf*, donations and alimony, even though they are real estate, yet they fall within the jurisdiction of "Personal Status Law" since they are, more often than not, based on the idea of "charity" which falls within the purview of religion. Civil courts are not qualified to examine matters involving a religious element that may affect their decision'.[2]

Finally, it is to be noted that the 'Law of the Family' for non-Muslim Egyptians depends on their religious laws and religious communities. In Egypt's faculties of law, the latter is taught as Personal Status Law for non-Muslims.

The Law of the Family in Egypt is governed, for Muslims, by the rules of Shari'a (Islamic Law) and, in particular, by the school of Abu Hanafi, unless the Egyptian legislature has ruled otherwise in a given matter.

This means that the Egyptian judge, when examining a case, applies the relevant texts of Egyptian law. In the absence of the latter, he seeks the preponderant opinion in the Hanafi doctrine and rules accordingly.

When promulgating a law related to the family, the Egyptian legislature seeks the provisions of Islamic law, without confining himself to the Hanafi school.

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1 Muhammad Sallam Madkur, *Provisions Governing the Family in Islam* (1989) Cairo, Dar al-nahda al-'arabiyya, pp. 22–23.

2 Court of Cassation, 21 June 1934.

N. Bernard-Maugiron and B. Dupret (eds.), Egypt and Its Laws, 19–36.
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The most important laws adopted by the legislature are the following:

1. Law Decree No. 25 of 1920;
2. Law No. 56 of 1923;
3. Law Decree No. 25 of 1929;
4. Law Decree No. 78 of 1931;
5. Law No. 44 of 1979;
6. Law No. 100 of 1985;
7. Law No. 1 of 2000.

These laws have been adopted by the Egyptian legislature as a temporary solution to some specific problems, until a comprehensive Code governing the rights of the family is promulgated. Such a Code has not yet been issued.

Several attempts were made in Egypt to establish one comprehensive code governing family issues, but so far they have not been fruitful.

In 1915, a committee was set up, composed of senior 'Ulama representing the four Islamic doctrines, to prepare a code of the family based on the four schools of thought, but this committee failed to produce a result.

In 1936, a committee of Shari'a jurists representing the four schools was once again established in order to draft a comprehensive personal status code, together with all connected rules governing inheritance, testaments and *waqf* (endowment). The committee succeeded in issuing the following laws:

1. Law No. 71 of 1946 concerning testaments, which is applied in all Egyptian courts in all relevant cases involving Muslims and non-Muslim Egyptians alike.
2. Law No. 46 of 1948 concerning the two kinds of *waqf* (both 'charity' and private). The latter was abrogated in Egypt by Law No. 180 of 1952.

In 1962, a committee was set up to review the draft code of personal status already prepared, with a view to issuing a comprehensive code in this respect. The draft is still pending.

All the above laws were promulgated with a view to improving the status of women in Egypt. So when the relevant provision stipulated in the Abu Hanifa school does not serve public interest nor the interest of women, the Egyptian legislature seeks another rule or provision stipulated in the Ibn Malik school, for example, or in any other school of jurisprudence,[3] with a view to improving the status of women in Egypt.

[3] For example, the preponderant opinion in the Hanafi doctrine is that the husband's long absence from his wife does not justify her filing a case for divorce. However, when Law Decree No. 25 of 1929 was issued, it set aside the Hanafi doctrine and turned to the Maliki one which clearly stipulates a woman's right to sue for divorce in the case of her husband's long and unjustified absence from her, even if her livelihood is assured, since she would still fear seduction.

2. Ordinary Law

2.1. The Marriage Contract

2.1.1. Stages

With a view to guaranteeing a stable marriage, Islamic Law envisaged a preparatory stage to the marriage contract, for further seriousness and stability, since it is meant to be a permanent arrangement destined to last 'for life', to quote an eminent jurist.

2.1.1.1. Choice

This is a psychological stage, when a young man or woman begins to think of marriage. A saying of the prophet Mohammad explains that people seek to marry for family lineage, or for beauty or money; he concludes by recommending: 'select a woman for her piety'.[4]

2.1.1.2. Engagement

This stage immediately follows the choice. It is the announcement of a man's wish to marry a particular woman. Islamic jurists define engagement as being: 'a promise of future marriage'. It is meant to ensure the success of the marriage project. This is why it is not binding and may be broken by either party without any consequences or legal obligations.

So much for breaking the engagement as such, i.e., where no harm has been caused by the party responsible for breaking the engagement.

If, however, breaking the engagement has entailed harm to the other party, the affected party is entitled to compensation for damage.

If the fiancé has paid the dowry or part thereof, then broken the engagement, he is entitled to take back the dowry or whatever he paid as dowry; dowry, as such, is one of the consequences of the marriage contract, and since no contract was established, the dowry has to be returned.

As for presents, according to preponderant opinion of the Hanafi school:[5] 'what has been consumed is not to be returned, but what remains intact must be restored'.[6]

The draft Egyptian law, however, followed the Maliki school, according to which, if the fiancé is the one to break the engagement, he is not entitled to recover the presents he offered. If the fiancée is responsible for breaking the engagement, she has to return all his presents.

The principle is that the man is the one who seeks the engagement. He is the one who asks for a woman's hand in marriage from her guardian, since a woman, being timid by nature, does not ask to marry a man in particular.

An engagement shall not prejudice the rights of a third party. A woman already engaged shall not be asked in marriage,[7] nor a woman during the three months following a divorce from a previous marriage or following the death of her husband ('*idda*', widowhood).

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4 This *hadith* was confirmed by Muslim, al-Bukhari, Abu Dawud, al-Nisa'i, Ibn Maja quoting Abu Hurayra.

5 Since there is no legal text in the Egyptian law regulating this question.

6 Radd al-muhtar'ala al-durr, al-mukhtar (1966) p. 153.

7 Obviously, no married woman shall be asked in marriage.

Permission to see or look upon the woman to whom a man is engaged is one of the consequences of the engagement.[8] They are not, however, allowed the '*khalwa*'.[9]

2.1.1.3. Establishment of a Marriage Contract

The marriage contract is established once a valid contract has been entered into by both spouses. Islamic Shari'a requires several conditions for a marriage contract to be valid, one of the most important of which is that two adult, rational witnesses, who are cognizant of the terms of the contract and of the language accepted by both parties and in which the contract is written, must witness the marriage contract.

Guardianship[10] is of great importance in the marriage contract, since the woman's guardian is the one to sign the marriage contract with the husband or with his deputy.

The guardianship of the father (or his surrogate) is not tyrannical. It is merely a supervision of the girl to guarantee her future and her settled life with her husband, without coercion.

In this respect, a *hadith* is quoted from Ibn Abbas wherein: 'A virgin maiden went to the prophet complaining that her father had coerced her into a marriage against her will. The prophet granted her freedom of choice',[11] i.e., he gave her the right to opt for acceptance of that marriage or its rejection.

2.1.2. Rights Arising from the Marriage Contract

Some rights arise directly from the contract, these are conjugal or marital rights. Some other rights arise indirectly, such as the rights of the children and of relatives.

We shall deal here with the first category of rights only, the rights of the spouses.[12] The rights of the husband will be discussed first, then those of the wife, followed by their mutual rights.

2.1.2.1. Rights of the Husband

The rights of the husband, arising from the marriage contract, are several. Suffice it to mention the following three:

1. The right to obedience. A wife has to obey her husband in all but that which has been forbidden by God.
2. The right of decision-taking at home. The wife is to settle down in her husband's home and not to leave it without his permission, except in some cases when it is not possible to obtain his permission.

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8 This applies to both the man and the woman.

9 To be together somewhere where no one can see them.

10 Guardianship is established as being the father's and in his absence, the grandfather's. In the absence of both, it belongs to the full brother (brother-german), then to the brother from the father, then to the brother, then to the paternal uncle, then the uncle.

11 Quoted by Ahmad, Abu Dawud and Ibn Maja in *Nayl al-awtar*, p. 253.

12 The other category of rights, those of the children and relatives, will be tackled later on.

3. The right of authority and guidance. God Almighty has given the husband the right to guide his wife and supervise her, so that family affairs may be stable and that life may be pleasant in the home.

In return for such rights, the husband must counsel his wife gently and guide her with kind words. If she refuses, he is entitled to act differently by abandoning the marital bed, but not the home, in deference to the *hadith*: 'Abandon only within the home'.[13]

2.1.2.2. Rights of the Wife

The wife is entitled to two types of rights: financial; and non-financial.

Financial rights consist of two basic rights:

Sadaq (or dowry), which is the money paid by the man and which is considered the woman's established right by virtue of a text in the Quran that states: 'Thou shall give women their dowry as a free gift'.[14]

God made it incumbent upon men to pay their wives a sum of money, which becomes their right, without compensation.

The rule governing dowry is to facilitate its payment. Thus, Shari'a did not indicate either a minimum or a maximum amount. It is left to the agreement of both parties and to the acceptance of both families. But it is a must.

According to the prophet's Sunna, payment of the dowry should be made easy. This is stated in the following *hadith*: 'Women with the least dowry are women with the most blessing'.[15]

As previously noted, the dowry is a financial obligation to be paid by the husband to the wife and is hers alone to do with as she pleases. No one else has a right to it (not the father or anyone else). Islamic Shari'a recognizes a wife's right to an independent financial estate. Moreover, a Muslim wife maintains her surname after marriage.

Thus, Islam recognizes a woman's full right to her assets and to her surname, unlike Western legal systems.

A wife also enjoys a right to alimony. Shari'a establishes a husband's duty to provide for his wife's expenses. In Egypt, according to the preponderant opinion of the Abu Hanifa school, such expenses shall be evaluated according to the husband's and the wife's situation. However, the law decree No. 25 of 1929 clearly stipulates that the evaluation is to be based on the situation of the husband. Law No. 44 of 1979 added the following: 'Provided the alimony, in the case of a husband's financial difficulties, is no less than what can cover her essential needs'. Law No. 100 of 1985 maintained the same provision.

The elements of which alimony is composed are: food; clothing; medical expenses; and a safe home with all the necessary amenities for a stable life.

The non-financial rights of the wife are that the husband must not cause her harm and must ensure her fair treatment.

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[13] *Nayl al-awtar*, p. 364.

[14] *Surat al-nisa'*, Verse 3.

[15] *Nayl al-awtar*, p. 313.

2.1.2.3. Mutual Rights

The most important mutual rights are the following three:

'Husn al 'ishra', or pleasant and dignified treatment.[16] Each of the spouses is called upon to treat his/her partner with dignity. 'Live with them in kindness', says the Holy Text. Even though the latter is addressed to men, it is general enough to apply to all husbands and wives in that they should treat one another with kindness, love and respect.

The right to inheritance. This is yet another mutual right: the surviving spouse inherits. It will be covered subsequently.

The inviolability of in-laws.[17] A man is forbidden from marrying his mother-in-law.[18] Such inviolability is one of the consequences arising from the marriage contract. We consider it to be a mutual right since it stems from the respect due to the wife's mother and the husband's father.

2.2. Dissolution of the Marriage

The marriage contract is meant to endure and last. That is why some jurists consider it to be 'the contract of a lifetime'.

If the marriage founders, Islamic law imposes on both parties the duty of avoiding all reasons of conflict and dissent. God Almighty even calls for such avoidance before the actual conflict. The Quran states: 'If you fear a breach between a man and his wife, appoint an arbiter from his people and another from hers. If they wish to be reconciled, Allah will bring them together again, for God is All-Knowing and Wise'.[19]

If, however, conflict and dissent are insuperable, Islamic law allows the dissolution of the marital bond, in order to avoid greater harm.

In general, there are four ways in which a marriage can be dissolved:

1. Death, the natural cause for ending a marriage.
2. Repudiation, which is the dissolution of the marriage bond as a result of a pronouncement by the husband. The prophet describes it as being: 'the most hateful of lawful acts to God Almighty'.[20]
3. Judicial divorce.
4. Khul' divorce.

Islamic Law does not allow divorce except in critical cases where marital life can no longer continue, i.e., it is a bitter medicine for an incurable situation. The Holy Text

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[16] This is connected to another right: to satisfy each other's sexual needs. A wife must respond to the husband's needs or be considered a sinner. The husband must also satisfy his wife's needs. If there is a legitimate obstacle, the rights and obligations are resumed once the obstacle is removed.

[17] Meaning inviolability of family relations born of the marriage contract (listed in verse 25 of *Surat al-nisa'*).

[18] Or any other relative whose degree of relationship is included in the inviolability.

[19] *Surat al-nisa'*, Verse 35.

[20] Abu Dawud's *Sunan*, p. 255 ; *Nayl al-awtar*, p. 2.

states that: 'If they are to separate, God, in His Generosity, shall not allow either of them to want for God is Generosity and Wisdom'.[21]

Why should divorce not be pronounced by a judge? The answer is that Islamic law seeks to protect the secrecy of the home and the dignity and the honor of the parties involved. Any woman wishing to preserve her honor and dignity would not allow her privacy and reputation to be registered in official records for all to read.

The Shari'a did not, however, neglect a woman's right in certain circumstances, and gave her the right to resort to court if her marital life has become unbearable and harmful.

She is entitled to do so for the following reasons:

2.2.1. Judicial Divorce

Divorce is the dissolution of the marriage by a judge's decision. A woman may resort to the courts to obtain a divorce if she has suffered severe harm from her husband and can no longer live with him.

Such severe harm is recognized in the five following cases:

1. In the case of serious or contagious disease, or of a congenital defect which deprives the wife of her marital rights.
2. Ill-treatment, that is, if the husband hurts her or treats her with cruelty.
3. Fear of seduction, i.e. if the husband is unjustifiably absent for a long period of time and the wife is afraid of being drawn into temptation. This includes the case of wives whose husbands are serving a prison sentence of three years or more.
4. A husband's willful and unjustified refusal to meet his wife's expenses.
5. Law No. 100 of 1985 added a fifth case: if the husband takes a second wife. In such a case, the law entitles a woman to apply to the judge and to obtain a divorce if she has suffered any material or moral harm as a result of the second marriage and can no longer live with her husband.

The above law has stipulated an important condition in such cases: the judge shall attempt to reconcile her to her husband before pronouncing the divorce. In fact, Law No. 100 of 1985 stipulates that if the judge fails to reconcile them, he shall grant a final divorce.[22] A wife forfeits her right to claim a divorce for the above reason one year after having obtained knowledge of the second marriage, or even before then if she has explicitly or implicitly accepted it. Her right is renewed every time the husband marries another.

If the new wife was not informed that the husband was married to another, she, too, can ask for a divorce.

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[21] *Surat al-nisa'*, Verse 136.

[22] A final divorce is one that cannot be redeemed. Another type of divorce exists, known as redeemable divorce. This means repudiation pronounced by the husband, which he is entitled to redeem within the following three months.

2.2.2. Khul' Divorce

That is when a wife offers her husband payment in exchange for divorce, because she no longer wishes to live with him. It is an option granted by God to women, to enable them to put an end to an unbearable marital relation. The Holy Quran stipulates that: 'If you fear that they shall not obey the orders of the Lord, then they shall not be remiss as to what she paid to redeem her freedom'.[23]

Khul' divorce was introduced in Egypt by Law No. 1 of 2000. According to this law, a wife can get a divorce by stating she does not want to be married any more, without having to give reasons. She must, however, go through a three-month arbitration period involving two mediators, from both sides. If reconciliation does not take place, the divorce shall be pronounced by the judge, even if the husband does not agree. The wife shall return the dowry her husband paid, since she is the one requesting separation against his wish, and forego all her financial rights. It is a final divorce, which is not open to appeal.

2.3. Rights of Children and Relatives

Such rights are indirect effects of the marriage contract, since they are not directly linked to the spouses, but rather to the children and other relatives.

2.3.1. Rights of Children

Islamic Shari'a has recognized several rights pertaining to progeny or children. The most important of these are:

2.3.1.1. Confirmation of Paternity

This is a right recognized to the child. It is also a woman's right to have the child's kinship to the father proven, in defense of her dignity, honor and reputation. It is also the right of the father and, finally, of society to avoid the problem of illegitimate children.

That is why the prophet said: 'He who claims to be the descendant of a man whom he knows not to be his father, does not deserve paradise'.[24] In yet another *hadith*, he said: 'Any woman who falsely imputes a child to a family to whom he does not belong, is not of God, and God shall not grant her entrance to paradise. Any man who denies his progeny as he beholds it, shall be denied the face of God; he shall be disgraced in the eyes of all'.[25]

Since Islamic law prohibits prejudice to true kinship, it also prohibits adoption as being a false claim which does not affect true kinship. God Almighty says: '... nor your adopted sons as your own sons. These are mere words which you utter with your mouths ...'.[26]

Consequently, the Law of the Family in Egypt does not admit adoption.

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[23] *Surat Al 'Imran*, Verse 229.

[24] *al-Bukhari*, p. 105.

[25] *Subul al-Islam*, p. 195.

[26] *Surat al-Ahzab*, Verses 4 and 5.

2.3.1.2. Right to Breast-Feeding

This is a natural right of the child; it is also the right of the mother and her duty, as long as the marital relation between her and the child's father exists. If her husband repudiates her or if she is divorced from him, the duty no longer stands, but her right to breast-feed her child remains consecrated, though she is entitled to claim payment for it from the child's father.[27]

2.3.1.3. Right to Custody

The right to custody means the right to nurture and care for a child, and his physical care during the early stages of his life.

The mother is entitled to custody, even if she is not a Muslim, because she, more than any other, has a right to care for her child and is more capable of doing so.

2.3.2. Rights of Relatives

God Almighty decreed the maintenance of the 'rights of womb relations'.[28] It is a major religious duty, greatly rewarded by God, not to mention its consequences in worldly matters. The prophet, in one of his confirmed *hadith*, said: 'He who wishes to be granted a plentiful livelihood, as well as a long and useful life, shall maintain the relations of the womb.'[29]

From the legal point of view, such rights can be summed up as the duty to financially support them. A rich relative must support his poor relations. He is legally[30] and morally committed to do so.

If he does so of his own accord, he is performing his duty. If he fails to do so, his needy relatives may resort to the courts to obtain financial support.

2.3.2.1. Criterion or Degree of Relationship Entailing Support

There are several opinions in jurisprudence concerning the degree of family relationship entailing support. We shall confine ourselves to the preponderant opinion in the Hanafi school which is applied in Egypt: it is the degree of relationship by virtue of which marriage is prohibited, i.e. the degree of relationship prohibiting marriage between a male and a female. That is what is decreed by the Abu Hanifa school. Since Egyptian law does not include a text pertaining to the matter, Egyptian courts rule accordingly.

It should be borne in mind that the main beneficiaries from the above-mentioned rights are the parents.

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[27] Only in that case, i.e. if she is separated from her husband.

[28] Maintaining womb relations means good treatment, assistance, friendliness and charitable relations among relatives.

[29] *Al-Bukhari*, quoting Abu Hurayra and the blessed 'A'isha, *Subul al-Islam*, p. 160.

[30] It is also a definite religious duty.

They are rights unanimously recognized in all Islamic schools of thought, by all schools of jurisprudence and, individually, by all experts in Islamic jurisprudence.

Suffice it, where such established rights are concerned, to quote the words of God Almighty: 'Your Lord has decreed that you shall adore none other but Him, and shall treat your parents with kindness'.[31] Also: 'If they press you to associate another deity to Me, I am Cognizant of what you know not; do not obey them but treat them throughout their life with kindness'.[32]

The most basic of their rights is their right to support, even if they are not Muslims, for God has decreed: 'Treat them throughout their life with kindness'.

Consequently, all children, males and females alike, are obliged to support their father and their mother if they are in need.

2.3.2.2. Conditions Governing the Duty to Provide Support

Parents should not be referred to as relations, for they enjoy a special status and obeying them comes second to obeying God.

As for the progeny's right to financial support, it is a recognized duty imposed on the father; it is both a natural right and one stipulated by law.

Yet such a right is related to age. As soon as a child is capable of earning his/her living, i.e. as soon as he/she becomes productive or as soon as a female child gets married, the father is no longer duty-bound to support them.

If the father is the needy one,[33] it is up to his son to support him, need being the only required condition. A father in need must be supported by his son or by all his children, males and females, separately or jointly. The same applies to the mother, even more so.

As for other relatives, they are entitled to support if they are in need and incapable of earning a living.[34] Moreover, the supporting relative must be rich, i.e. must have enough to cover his needs, his children's needs and the needs of his poor relation.

2.4. Inheritance and Testament

Inheritance and testament are one of the subjects related to the Law of the Family, since inheritance is one of the established rights due to relatives. Testament is akin to inheritance, being equally connected to the deceased's estate.

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31 *Surat al-Isra'*, Verse 23.

32 *Surat Luqman*, Verse 15.

33 Support is due to the father in need, or the mother in need, or to both.

34 Such a condition is not required for parent support; it is enough for them to be needy.

2.4.1. Inheritance[35]

The Egyptian legislature organized inheritance by promulgating Law No. 77 of 1943, which entered into force on 12 September 1943. It is applicable to all Egyptians, regardless of their religion.[36]

The provisions of that law are based on the Quran and *hadith*, the legislature having sought guidance, also, from all Islamic schools of thoughts.

The Holy Quran stipulated the share of each heir in three verses. Verse 11 of *Surat al Nisa'* spells out the details concerning the inheritance of 'offspring'[37] and 'origins'.[38]

Verse 12 of the same *Surat* clearly stipulates the inheritance of the spouse, and the maternal siblings. The last verse of the same *Surat* covers the inheritance of the full brothers and sisters and the paternal siblings.

Among the most outstanding *hadith* or sayings of the prophet in the matter of inheritance is: 'Rights and ordainments[39] are due to them who deserve them; what is left, to the male most deserving by agreement'.[40]

The interpretation of the *hadith* is that the inheritance is to be first divided among those ordained, i.e. the heirs whose specific shares are spelled out in percentages (such as one-sixth or one-third) in the Holy Quran. The rest goes to the males directly related to the deceased, or to the descendants of his direct male relations, according to the degree of closeness.

In yet another quotation by Al Bukhari from Ibn Massoud, regarding a daughter, a granddaughter and a sister, it is said: 'I shall rule as would have the prophet, may God's

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35 The Quran was revealed at a time when Arabs disdained women and considered them inferior (*Surat al-Nahl*, Verse 58). Islam, actually, resurrected women, since girls during the *Jahiliyya* were buried alive. The Quran provided women with a life of dignity and encouraged the education and upbringing of girls. The prophet Mohammad addressed himself to those people who used to bury their girl children alive, saying: 'He who has a daughter and brings her up properly, teaches her well and makes her share the bounties that God granted him, will find her to be his protection and shield against the fires of hell' (the *hadith* is to be found textually in the interpretation of al-Qurtubi, p. 3734).

Islam also brought women back to life in the moral sense, safeguarding their right to a life of dignity, away from evil and perversion; their right to inherit was recognized where, once, women had been goods to be inherited themselves (*Surat al-Nisa'*, Verse 19).

Yet, Islam took into consideration a man's responsibility to bear the costs of supporting his wife and children, whereas his sister is supported by her husband. That is why a woman's share in the inheritance is half that of a man's. In so doing, Islam was fair and wise, recognizing the facts and not forgetting the burdens to be borne by men.

There are cases, however, when a woman's share of the inheritance is equal to that of a man's, such as the shares of maternal aunt and maternal uncle, as well as the shares of mother and father in the presence of a male heir (see Y. Qasim, *Rights Related to Inheritance in Islamic Jurisprudence,* Cairo, Dar al-nahda al-'arabiyya, 1997).

36 It is only applied to non-Muslims if they resort to Egyptian courts, unless they choose to agree among themselves.

37 The offspring are the sons and daughters and their progeny.

38 The origins are the parents and grandparents.

39 Ordainments are the shares which have been textually stipulated by God in terms of half or one-quarter or one-eighth, etc.

40 Agreed by both al-Bukhari, p. 100 and Muslim, p. 135.

blessings be upon him: half for the daughter, one-sixth for the son's daughter and the remainder for the sister'.[41]

2.4.2. Testament

In Egyptian law, a testament is defined as being: 'Disposal of the estate in addition to what there is subsequent to death'.[42]

God allowed the principle of the testament in His wisdom so that a human being's good deeds may increase, or so that, nearing the end of his/her life, a person may make up for the good and charity they failed to show. The prophet said: 'God granted you, in charity, one-third of your estate at your death, that you may add to your good deeds'.[43]

Egyptian law requires the testator to have legal capacity. A young man of 18 may, however, be a testator, and so can a person under interdiction for reasons of profligacy, provided permission of a court is obtained.

The legatee must exist and be known; he or she cannot be the murderer of the testator.[44]

The legacy itself must exist, it must be the property of the testator and should not exceed one-third of the inheritance.

A testament is considered an act of charity encouraged by Islamic law within its legal limits. It is, consequently, desirable in normal circumstances.

A testament may, according to the unanimous opinion of Islamic jurists, be an obligation in case of financial indebtedness for *zakat* and ordained restitution. It may also be in payment of the rights of those who cannot prove their entitlements before the courts. The Egyptian law governing testaments has also introduced a new type of testament referred to as the legal testament and stipulated in Article 76 of that law.

3. Examples of Egyptian Court Decisions

Some examples of decisions handed down by Egyptian courts in certain cases regarding the Rights of the Family, otherwise known as personal status cases, are mentioned below.

3.1. Decisions Handed Down by the Egyptian Court of Cassation

1. Personal status. This term has previously been referred to as having no origin in Islamic jurisprudence, a fact which often led to misinterpretation and to different applications. That is why the Court of Cassation intervened on 21 June 1934 to pronounce a

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41 *al-Buhkari*, p. 103.

42 Article 1 of Law No. 71 of 1946 concerning testaments.

43 *Subul al-Islam*, p. 107.

44 Jurisprudence requires yet another condition: that the legatee is not one of the heirs. Egyptian law did not stipulate that condition.

historic decision explaining what 'personal status' actually means (see Introduction of this chapter).

2. Engagement. Egyptian courts disagreed as to the consequences of breaking the engagement. Some decreed compensation for harm done to either party as a result of such a breach.[45] Other courts considered breaking the engagement to be an established right of both parties which entails no obligations whatsoever.[46]

The Egyptian Court of Cassation settled the disputed matter by its decision of 14 December 1939 wherein it stated: 'An engagement is only a preparatory stage. The promise of marriage does not bind either party, since both may abandon the project at any time. Particularly, the marriage contract must allow its contractors full freedom to conclude it, marriage being a serious factor in the fabric of society. Neither party should feel threatened with the obligation to compensate. If the breaking of the engagement is accompanied by other totally independent acts causing material or moral damage to either party, the person having committed such acts must defer to his/her conscience on the basis that such acts, in themselves and regardless of the mere breach of promise, are damaging and require compensation'.

3. Divorce for serious harm. God Almighty ordered kind cohabitation between husband and wife. If the husband ill-treats his wife causing her unbearable damage, that justifies her filing for divorce.

The Egyptian Court of Cassation stated that the condition for granting a divorce for harm is for cohabitation to have become impossible as a result of the husband's causing harm to his wife by word or deed.[47]

4. Divorce between non-Muslim Egyptians. The Court of Cassation decided that alienation of affections between husband and wife is to be considered a reason for divorce among Orthodox Copts, such a rule having long prevailed in religious councils, which means that it is customary for alienation to justify divorce.[48]

3.2. Some Decisions by the Supreme Constitutional Court

1. Decree Law No. 44 of 1979: In 1979 Decree Law No. 44 of 1979, regarding possible solutions to some family problems in Egypt, was enacted. Some of those solutions overstepped the established provisions of Islamic Law. A challenge as to its constitutionality was submitted to the Supreme Constitutional Court. The latter handed down its famous decision declaring the above law decree unconstitutional and in violation of Article 147 of the Egyptian Constitution. The following reasons were given.

'That being the case, and for the above-mentioned reasons, and being prompted merely by the wish to amend the personal status laws which have long prevailed despite

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45 Alexandria Civil Court, 10 December 1929.

46 Cairo Court of Appeal, 23 May 1926.

47 Court of Cassation, Challenge No. 27 of Judicial Year 50, 31 March 1981. See also Court of Cassation, Challenge No. 19 of Year 50, 16 June 1981.

48 Court of Cassation, Challenge No. 57 of Judicial Year 55, 3 June 1986.

the changes having occurred in society, the law decree, however, does not fulfill the rules stipulated in paragraph 1 of Article 147 of the Constitution. It is clear from the reasons stated that no particular circumstances have arisen, in the absence of the Peoples' Assembly, to create a situation justifying the right of the President of the Republic to promulgate exceptional laws in keeping with Article 147. Consequently, Law Decree No. 44 of 1979, issued by virtue of that Article, and contrary to the stipulated conditions, is deemed unconstitutional.

The adoption by the Peoples' Assembly of the challenged law decree can only lead to its continued implementation without clearing it from the constitutional defect that led to its promulgation. Such adoption, per se, does not transform the law decree in question into a new law. In view of the above, and in view of its constitutional defect, the law decree is declared unconstitutional'.[49]

2. Law No. 100 of 1985. Then came Law No. 100 of 1985, wherein Article 18 bis stipulates the following: 'The divorcing husband shall provide his children by his divorcee – who is their nurturing guardian – with an appropriate, independent home. If he fails to do so within the 'idda', they shall continue, with their nurturing guardian, to reside in the conjugal home'.[50]

The above text was challenged before the Supreme Constitutional Court as being in violation of Articles 2 and 34 of the Constitution on the basis that Islam was the official religion of the State, and that the principles of Islamic Law are the principal source of legislation.

The Supreme Constitutional Court examined all aspects of the above challenge and advanced the following reasons to justify its decision: the challenged text is overly harsh vis-à-vis the divorcing husband and lays an unjustifiable burden on him beyond his means; consequently:

'The court declares the unconstitutionality of Article 18 bis of Law No. 100 of 1985 amending the personal status laws in that:

First: It makes it incumbent for the divorcing husband to provide his children by his divorcee and their nurturing guardian with an appropriate residence, even if they, or their guardian, are already in possession of a residence, rented or otherwise.

Second: It imposes a limitation on the right of the divorcing husband, if the conjugal residence is rented, by decreeing that he must provide his children by his divorcee and their nurturing guardian with an appropriate residence within a period of time not exceeding the '*idda*.[51]

4. Personal Status Provisions Regarding Non-Muslim Egyptians

Non-Muslim Egyptians are composed of Christians and Jews, each of which groups have their own provisions governing marriage and divorce. They are the

[49] Supreme Constitutional Court, 4 May 1985.

[50] See Y. Qasim, *The Rights of the Family in Islamic Jurisprudence*, for a constructive criticism of that text.

[51] Supreme Constitutional Court, 6 January 1996, *Official Gazette*, No. 3, 18 January 1996.

following:

4.1. Christian Marriage

Marriage can be defined as being the legitimate relationship between a man and a woman with the view to establishing a family, in keeping with religious precepts and in a manner recognized by the law.[52]

The above definition covers the significance of marriage in all the revealed religions.[53]

4.1.1. Characteristics of the Christian Marriage

1. It is a legal institution and not a mere contract;
2. it is a formal regime;
3. it is an individual relationship;
4. it is an eternal relationship.

4.1.2. Introductory Steps

The introductory steps are constituted by the engagement, which, for Christians, is an exchange of promise between a male and a female to conclude a marriage in future. Both parties are entitled to break the engagement.

Both parties must be of legal age.

Orthodox Coptic Law requires that the engagement be performed by a priest of the church and entered into a special register.

Both Orthodox and Catholic laws require the engagement to be made public.

The death of either party entails the dissolution of the engagement.

4.1.3. Constitution of the Marriage

The marriage is constituted by mutual consent, with due consideration to the appropriate rites and in the absence of any impediments.

Mutual consent signifies the willingness of both parties to grant one another exclusive physical marital rights conducive to begetting children.

The required rites are prayers, the performance of the marriage by a priest and making the marriage public.

For both Catholics and Protestants the religious man must be a priest. The Catholics require him to be the parish (local) priest. The witnesses to the marriage must be capable of understanding the marriage vows pronounced by the spouses.

The registration thereof must be in compliance with the provisions of Law No. 629 of 1955. A certain degree of kinship may constitute an impediment to a Christian marriage.

Breast-feeding is only considered an impediment by Orthodox Syrians.

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[52] The Orthodox Coptic Personal Status Law of 1955 defined marriage as being: 'A holy ceremony officiated by a priest according to the rites of the Orthodox Coptic Church, binding a man to a woman with a view to establishing a family and sharing a life of cooperation. It is consigned in a contract set up by a priest'.

[53] See Y. Qasim, *The Rights of the Family in Islamic Jurisprudence*.

4.1.4. Dissolution of a Christian Marriage

The main justification for dissolution of a Christian marriage is death.[54] As for divorce, it is hardly admitted by Christians since matrimony is holy and cannot be dissolved by any human authority for whatever reason, barring death.[55]

4.1.5. Divorce in Christian Law

Both Orthodox and Anglicans agree as to the definition of the two major reasons for divorce:

- adultery committed by the husband or by the wife;
- abandonment of Christianity by one of the spouses.

Other reasons are accepted by the Orthodox Church such as: misconduct; aggression by one spouse against the other; separation; and alienation of affection.

4.1.6. Separation from Bed and Board (Séparation de Corps)

Separation from bed and board means the rejection by one of the spouses of the commitment to cohabit with his/her partner, despite the continuing marriage bond.

Reasons for separation from bed and board according to the Orthodox Church are the same as the reasons for divorce.

Reasons for separation from bed and board according to the Catholic Church are:

- adultery;
- abandonment;
- embracement of any other but the Catholic faith by one of the spouses.

Reasons for separation from bed and board according to the Anglican Church: Anglicans allow separation on the grounds of a general justification stipulated in Article 15 of their relevant law: 'If one of the spouses has reached a point where cohabitation with the partner has become painful, bitter and unbearable as a result of continuous ill-treatment by the other'.

4.2. Marriage among Jews

4.2.1. Engagement

Engagement is a preliminary step to marriage.

Rabbinical Jews consider an engagement to be:

1. a contract by virtue of which the date, dowry and conditions are agreed on;
2. a non-binding agreement.

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[54] The death of either spouse brings the earthly marriage relationship to an end. As for the hereafter, it is the domain of God Almighty.

[55] That is the general principle in all Christian sects. There are very exceptional cases such as those stipulated in art. 108 of the Papal Decree to the effect that marriage can only be dissolved for a just reason or at the request of one or both parties and by papal dispensation.

Orthodox Jews (Hasidic) consider an engagement to be tantamount to a marriage contract, to be dissolved by divorce.

4.2.2. Conditions of Marriage

1. Valid acceptance, without any default related to the exercise of free will.
2. A dowry: if a dowry is not stated, the marriage is null and void.
3. Form: as embodied in the appropriate holy rites, the signing of the contract and the public celebration.
4. Absence of impediments to the marriage: such as a certain degree of kinship to either spouse; adultery; different religion; the fact that the woman is still in the proscribed period following a previous marriage; and sexual impotence. There is one impediment exclusive to Judaism: when a man divorces his wife and she marries another, he cannot remarry her if her second husband divorces her or dies, even if the marriage was not consummated.[56]

4.2.3. Divorce among Jews

The procedure differs between Rabbinical and Hasidic Jews.

4.2.3.1. Main Elements Governing Divorce among Rabbinical Jews

1. A man may pronounce the divorce. In some cases, it may be his duty.
2. There need not be any causes.
3. The court will grant a divorce if the husband has failed to fulfill his wife's rights, or if he is duty-bound or entitled to divorce.

On the other hand, there are grounds justifying a woman's claim to divorce:

a. if her husband ceases to have intercourse with her because of sickness;
b. certain defects such as foul odor or sterility;
c. misconduct.

4.2.3.2. Main Provisions Governing Divorce among Hasidic Jews

1. There can be no divorce without a court decision.
2. There must be causes to justify it.
3. The court will grant the divorce in cases where it is imperative: for instance, if the husband cannot fulfill his marital duties, if the husband suffers from a chronic, incurable disease, if he is sterile or if he takes a second wife.

4.2.4. Separation from Bed and Board among Jews

The spouses may be separated for a year or less if either is sick with a possibility of recovery, if the wife has come to hate her husband but may feel differently after the separation. The spouses may also be separated for the same period of time if the husband prevaricates in granting her a divorce.[57]

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[56] There may be other causes such as a woman's monthly cycle as stipulated in art. 155 of *Hai Ben Shimon*, as well as other impediments listed in art. 46 of the same book.

[57] *Ibid.*, art. 327.

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M. Akida

3. CRIMINAL LAW

1. Definition of Criminal Law

In its general sense, criminal law is a set of legal rules determining the acts which are considered to be crimes and the penalties prescribed therefor. Criminal law also indicates the procedures to be followed so that the state may exact its right from the perpetrator, in terms of penalty, after the crime has been committed. On this basis, criminal law is divided into two main parts: substantive criminal law and procedural criminal law. Substantive criminal law encompasses all the provisions pertaining to offenses and their penalties and is composed of two main parts:

(1) General criminal law. This comprises the general rules pertaining to crimes and penalties and explains the general principles regarding the application of criminal law in terms of time, place and persons, the elements of a crime, participation in crime, reasons for justification and obstacles to penalty, types of penalties, precautionary measures and how they are to be implemented, as well as the reasons for their expiry.

(2) Special criminal law. This contains the provisions pertaining to each individual crime, its elements and penalties. The rules therein are mostly applications of the rules contained in the provisions of the general criminal law. This part is composed of three main chapters. The first deals with offenses against public interest, such as bribery, embezzlement, forgery, falsification and related offenses. The second chapter deals with the offenses against persons, such as crimes affecting life and causing bodily harm (willful murder and injury, abortion, manslaughter, unintentional injury) as well as crimes affecting dignity (rape, indecent assault, public act of obscenity, adultery) and offenses against honor and consideration (slander, libel, disclosure of secrets). The third chapter deals with offenses against property (theft, swindling, breach of trust and related crimes).

The second part of criminal law deals with procedural criminal law. It includes the procedural rules governing a criminal action and the means by which the state exacts due punishment from the moment a crime is committed until sentence is carried out against the offender. Thus it comprises the rules related to proving the offense, arresting the perpetrators, the investigation, the trial, the pronouncement and execution of the sentence and the determination of the authorities competent to carry out those procedures. Another special section was added to criminal procedures pertaining to international judicial cooperation: rules for extradition of offenders, transfer of jurisdiction, enforcement of

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foreign penal sentences in Egypt and of Egyptian sentences in a foreign country (see Book V of the draft Code of Criminal Procedure, Articles 522–559).

Application of Egyptian criminal law to foreigners: the provisions of Egyptian criminal law are applied in accordance with the prevailing principle in contemporary criminal legislation: the principle of territoriality, i.e. all those who are on Egyptian territory, be they citizens or aliens, are governed by that legislation.

There are a few exceptions to the principle of territoriality. Penal provisions (substantive or procedural) are not applicable to heads of foreign states, to foreign diplomats or to consuls representing foreign states for offenses perpetrated on Egyptian territory. Members of special diplomatic missions or representatives of international organizations such as the United Nations or the League of Arab States enjoy the same immunity.

There are other complementary principles to that of territoriality. Among these is the principle of the specificity of the penal provision, i.e. Egyptian criminal law is applicable to those who commit an offense against the basic interests of the state, regardless of the place where the offense was committed or the nationality of the perpetrator. This includes crimes against state security, be they external or internal; forging presidential decrees or the president's signature, or the seals of the state or its laws as well as crimes of counterfeit currency.

2. History of Criminal Legislation in Egypt

Egypt's experience with legislation goes back to the reign of the pharaoh Mena (3200 BC). The most significant laws were the ones promulgated by Horemheb (1330 BC). In Article 12 of that law, judges are instructed to mete out justice and to avoid graft. The law stipulates: 'Do not accept presents from anyone, else how can you mete out justice if you yourselves have violated the law'. The most severe penalties in pharaonic times were the death penalty, penalties of deprivation of freedom, financial penalties (confiscation and fines), moral penalties (civil or military divestment of office). Egyptians were also familiar with public service as a substitute for imprisonment.

As for the death penalty, it was applied in certain eras and cancelled in others. Execution was postponed until after birth and breast-feeding in case of a pregnant woman, and the person sentenced to death was given a narcotic before execution.

Ancient Egypt had precise and well-organized criminal procedures, from the moment the crime took place to the moment the sentence was handed down. Public prosecution was part of the system, and the function of the prosecution was separate from that of the judge. Courts were well-organized. There were provincial courts, police courts and military courts. In Thebes there was a Supreme Court composed of 31 judges (see *Herodotus*), one for each province of the country; the court functioned in much the same way as a present-day Court of Cassation.

After the pharaohs, Egypt was ruled by the Romans and the Greeks. Then came the Arab conquest of Egypt in the seventh century and, with it, the application of Shari'a (Islamic law) up to the nineteenth century.

Judicial and legislative reform in Egypt began in 1875 along the lines of modern European models. Mixed courts were set up to adjudicate disputes between Egyptians

and foreigners, in accordance with Napoleonic codification in both the penal code and the code of criminal procedure. In 1883, Egypt enacted a number of modern codes inspired by Napoleonic law, such as the National Penal Code and the Criminal Investigation Code, which were to be applied by the national courts.

The National Penal Code was promulgated in 1883 along modern lines, based on the principle of legality, the principle of the personal nature of penalties and the principle of equality where penalty is concerned. The Criminal Investigation Code separated the powers of prosecution and investigation.

In 1904, the two above Codes were repealed and replaced by new ones, and in 1937, when foreign capitulations were abrogated, a new Penal Code was issued, while the present Code of Criminal Procedure was issued on 3 September 1950, after the Mixed Courts were cancelled in 1949.

The Legislative Committee of the Ministry of Justice has just finished preparing a draft Code of Criminal Procedure and is now preparing a draft Penal Code.

3. General Principles and Competent Jurisdiction

3.1. General Principles Governing Criminal Legislation (the Penal Code and the Code of Criminal Procedure)

Egyptian criminal legislation applies the principles prevailing in modern criminal legislation, including those described below.

3.1.1. The Principle of Legality of Crime and Penalty

What is meant by this principle is the compilation of all the references pertaining to the criminalization of an act and its penalties in legal texts, thus confining the role of the judge to the application of the texts. Successive Egyptian constitutions, as from 1923, enshrined that principle. Article 66 of the present Egyptian Constitution stipulates that there shall be no crime or penalty except on the basis of a law, that no penalty shall be inflicted except by a judicial sentence and there shall be no penalty except for acts committed subsequent to the promulgation of the law prescribing them. Article 5 of the Penal Code also reaffirms the principle, ruling that: 'Crimes are punished in accordance with the laws in force at the time of their perpetration'.

It is obvious from all the above that the principle of legality is both constitutionally and legally protected and entails several consequences, such as: a restrictive interpretation of the texts of criminal law, the non-retroactivity of those texts unless it is in the interest of the accused and the inapplicability of analogy where texts pertaining to criminalization are concerned.

3.1.2. The Principle of the Personal Nature of the Sanction

What is meant by this principle is that no penalty shall be imposed save on those who have participated in committing the crime as perpetrators or accomplices. The principle is enshrined in the Constitution, Article 66 of which stipulates that: 'the penalty shall be personal'.

3.1.3. The Principle of Equality before the Penalty

What is meant by this principle is that all individuals are subject to the texts pertaining to criminalization and penalty, without discrimination due to their situation or social status. No one shall be exempt from punishment except on the basis of a particular legal text and for considerations determined by the legislature. The principle of equality does not mean that the same penalty shall be applied to all offenders, but that they are all governed by the same text, allowing the judge the possibility of applying different qualitative and quantitative penalties to offenders by comparison to their roles in the perpetration of a given crime and the circumstances leading to its aggravation or mitigation.

3.1.4. Individualization of the Penalty

This principle means that modern laws are governed by a system of legislative and judiciary individualization of penalty. Where criminal penalties are concerned, the legislature differentiates between the penalty as such and measures to be taken, making allowances for certain circumstances which may lead to alleviating, intensifying, suspending or staying execution of the penalty. The legislature gives the judge the power to individualize the penalty in accordance with the provisions of criminal law, in addition to allowing the judge the possibility of alleviating the sentence pursuant to a general provision allowing him to do so. When imposing a penalty on the accused, the judge shall take into account the degree of danger that the offender represents and the degree of gravity of the crime from the objective point of view.

3.1.5. Presumption of Innocence

The accused must be considered innocent until proven guilty following a legal trial providing him with all the necessary guarantees to defend himself. International instruments have all stipulated this principle: the Universal Declaration of Human Rights (Article 11/1); the International Covenant on Civil and Political Rights (1966) (Article 14); The Draft Declaration of Human and Peoples' Rights in the Arab Nation (1985) (Article 5/2). The Constitution also reaffirmed this principle in Article 67/1, which provides that any defendant is innocent until proven guilty following a legal trial in which he is granted the right to defend himself.

3.1.6. Doubt is to be Interpreted in Favor of the Accused

The scope of application of this principle is in cases where it is impossible to determine what the legislature meant by the text. This actually means that the judge has resorted to different means of interpretation, but was unable to determine the intention of the legislature, in which case he reverts to the principle, i.e. non-criminalization, and acquits the accused. Practically speaking, this occurs only in rare cases where evidence of innocence is equal to the evidence of guilt and the doubt is then interpreted in favor of the accused and he is pronounced innocent by the judge. This is a well-established principle in modern criminal legislations, including Egyptian legislation.

3.2. Competent Jurisdiction

The accused is tried by a court of general or special jurisdiction.

3.2.1. Courts of General Jurisdiction

Courts of general jurisdiction include courts of misdemeanors and petty offenses, criminal courts and the Court of Cassation (criminal circuit).

(a) Summary courts deal with misdemeanors and petty offenses. They are composed of one judge. They decide on all misdemeanors, except those related to publication, which fall within the jurisdiction of the criminal court. Their decisions can be appealed before a court of appeal, which is composed of three judges from the court of first instance.
(b) Criminal courts try those accused of committing felonies or crimes of publication in the press. It is one of the circuits of the Court of Appeal. There is one in most of the governorates of the Republic. Such a court is composed of three counselors from the Court of Appeal.
(c) The Court of Cassation is composed of several circuits, including a criminal circuit to examine challenges against sentences handed down by the criminal courts or by courts of appeal for misdemeanors. It is composed of several counselors; its sentences being handed down by five of them.

3.2.2. Courts of Special Jurisdiction

These include military courts, state security courts and juvenile courts.

(a) Military courts: they include the central military court, composed of one judge; the higher central military court, also composed of one judge and sometimes three, and the supreme military court which is composed of three military judges, a prosecutor and a clerk.
(b) State security courts: Article 171 of the Constitution stipulates that the law shall regulate the organization of State security courts and shall define their jurisdiction and the conditions to be fulfilled by those who occupy the office of judge in them. Law No. 105 of 1980 established the courts of state security and divided them into higher and summary state security courts.
(c) Juvenile courts: they were established pursuant to the Law on Juveniles (No. 31 of 1974). There is such a court within the circuit of each summary court. It is composed of one judge assisted by two experts, one of whom, at least, is a woman. The presence of the two experts is mandatory. The juvenile court examines crimes committed by juveniles under the age of 18, be they felonies, misdemeanors or infractions.

3.2.3. Observations

A few observations to be noted regarding criminal jurisdiction in Egypt:

1. Ordinary courts are composed of professional judges. The Egyptian judiciary system does not include the 'jury' system applied in some western countries such as France. However, juvenile courts include non-judicial elements (two experts).

2. The investigation preceding the trial is undertaken by a special prosecution; this applies in all types of jurisdictions, general or special.
3. The Egyptian procedural system does not differentiate between the inquiry judge and the public prosecution, the latter combining the authority to investigate and to prosecute. The public prosecution may, however, request the appointment of a judge to investigate a particular case.

4. Applicable Provisions: Legislation

4.1. Criminal Law (General)

It has been stated above that substantive criminal law contains provisions related to criminalization and penalties and is divided into two main sections: general and special criminal law. The main chapters of the general section include:

4.1.1. General Theory of Crime

(a) Factors of the crime (material and moral).
(b) Attempt to commit a crime.
(c) Participation in a crime: whether primary participation – the perpetrator of the crime or the perpetrator in collaboration with other perpetrators – or accessory participation by instigation, agreement or abetment.
(d) Grounds for justification: these are the circumstances which negate the criminal nature of the act. In Egyptian law they are the following causes: legitimate self-defense; exercise of a right; performance of a duty; and consent of the victim. It is worth noting that legitimate self-defense as a ground for justification can be invoked for the defense of person or of property.
(e) Causes precluding criminal liability: they are the causes that negate the occurrence of the crime as a result of the absence of the moral factor; consequently, no penalty shall be imposed on the perpetrator. In the Egyptian Penal Code, those preclusive causes are: (1) age (if the perpetrator is a minor); (2) insanity or mental disturbance; (3) drunkenness; (4) duress and cases of necessity.

4.1.2. General Theory of Penalties and Precautionary Measures

The types of penalties included in Egyptian criminal legislation are: (a) primary penalties (death penalty, life or temporary hard labor; incarceration and fine); and (b) secondary and complementary penalties (deprivation of the rights and privileges stipulated in Article 25 of the Penal Code, police surveillance and confiscation). As for the manner of applying the penalties, it includes judicial individualization of the penalty, reasons for mitigating or aggravating the penalty, reasons precluding the penalty and stay of execution. There is also the compounded moral nature of crimes and its effect on the penalties, and, finally, reasons for extinguishing the penalty: death of the convicted person; prescription of the penalty; pardon; rehabilitation; and amnesty.

The Egyptian Penal Code contains a number of precautionary measures, even though no independent chapter has been devoted to them as is the case in some criminal legislations. Some of those measures are intended for adults and others for juveniles.

Some measures prescribed for adults are characterized in the law as penalties (police surveillance, mandatory confiscation of objects whose manufacture, use, ownership, sale or offer for sale is deemed a crime (Article 30/2), closure of unlicensed public places and other measures related to drug offenses). Other such measures are not listed as penalties, such as: placing insane persons in a mental institution; placing addicts in specialized hospitals; placing habitual offenders in labor institutions; prohibiting their residence in a certain area; preventing them from practising a certain profession or craft. There are other precautionary measures related to crimes of embezzlement: temporary suspension from practising a profession; temporary suspension from work (for civil servants); removal from work for no less than a year and no more than three years.

Moreover, the Law on Juveniles No. 31 of 1974 replaced by Child Law No. 12 of 1996, contains a number of measures to be adopted in cases of juvenile delinquency: (reprimand and delivery, remanding to vocational training, assigning to certain duties, placement in a social care institution, etc.). All the previous measures are applicable to juveniles under 15 years of age, or to those between 15 and 18 years of age if the judge decides to replace the penalty by one of the above measures.

Penal treatment of juveniles is characterized by:

(a) no penalty shall be imposed on a minor of less than 15 years of age, but rather such measures as are described above.
(b) penalties applied to juveniles between 15 and 18 years of age are alleviated in many ways: the death sentence and hard labor are excluded, all penalties are reduced by one or two degrees or replaced by precautionary measures.
(c) no juvenile shall be held in preventive detention.

4.2. The Penal Code (Special)

Egyptian jurisprudence has always divided crimes into three main categories within the scope of the Penal Code:

4.2.1. Crimes Affecting General Interest

(a) Crimes against state security; the provisions governing them appear in Chapters 1 and 2 of Part II of the Penal Code. They cover breaches of internal and external state security.
(b) Crimes committed by civil servants; they include bribery (Article 103 et seq. of the Penal Code) and related offenses (response to a request or recommendation (Article 105 bis), abuse of influence (Article 106 bis), offering a bribe that remains unaccepted (Article 109 bis), benefiting from a bribe (108 bis), acting as a go-between or acceptance of such an intercession (Article 109 bis).

It also includes embezzlement of public money (Article 112 bis), offer or acceptance of a right that is not due (Article 114 bis), benefiting from one's position (Article 115 bis) and intentional or unintentional damage to public money (Article 116 bis).

4.2.2. Crimes Affecting Public Trust

Such offenses include forgery and counterfeit (Article 202), dealing in or possession with the purpose of dealing in counterfeit currency; forgery of seals, labels, etc.

4.2.3. Crimes against Persons

(a) Aggression against life, (willful murder, manslaughter, abortion); (b) physical aggression (assault and battery, administering harmful substances); (c) aggression against dignity (adultery, rape, indecent assault, public act of obscenity); (d) offenses against honor and consideration (libel, slander, disclosure of secrets).

4.2.4. Crimes against Property

(a) Theft (Articles 311 to 327 bis) and related crimes, such as appropriation of lost objects, appropriation of pawned objects, appropriation of services without payment, appropriation of vehicles with no intention of owning them, theft of documents and signatures, extortion.
(b) Fraud (Article 336) and related crimes, such as: signing cheques without provisions (Article 337), abusing the weakness of a minor to obtain material gain (Article 338), habitual lending of money at usurious interest rates (Article 339).
(c) Breach of trust (Article 341) and related crimes, such as abuse of signature on blank paper (Article 340).

5. Applicable Provisions: Jurisprudence

The Court of Cassation plays a very important role in the interpretation and application of the provisions of criminal law. The court established many principles and set several judicial rules to complement the legislative rules.

5.1. Analogy is Not to be Applied in Relation to Criminalization and Penalties

In application of the principle of legality, the Court of Cassation decided *nullum poena sine lege*, i.e. there is no penalty without a provision defining the punishable act and the penalty thereof. Consequently, criminal law provisions are not to be interpreted loosely nor shall analogy be applicable thereto. The court added that no analogy shall be applied in the interpretation of the Penal Code against the interest of the accused since '*nullum crimen et nullum poena sine lege*' (Cassation, 19 May 1941. Digest of Legal Rules, Part 5, No. 471; Cassation, 4 December 1967, Digest of Decisions, Year 18, No. 254, p. 483). Analogy, however, has been admitted by the court if it is in the interest of the accused, to wit in cases of theft between spouses or between parents and children, where the court expanded the stipulation applicable to theft to include fraud and breach of trust which are not, consequently, penalized if occurring between the above (Cassation, 27 June 1932, *ibid.*, Part 2, No. 362, p. 596).

5.2. Number of Acts Necessary to Constitute Habit

As far as habitual offenses are concerned, the Court of Cassation has decreed the necessity of two acts of felony, at least, to constitute habit: for example, two loans with usury are required to constitute habitual usury (Cassation, 2 April 1945, Digest of Legal Rules, Part 6, No. 534, p. 671).

5.3. Application of the Law Most Favorable to the Accused

The Court of Cassation decided that the law most favorable to the accused must apply as soon as it is issued, without waiting for its coming into force. The accused shall benefit from such a law even if it were to be followed by a more stringent one before the final sentence is pronounced (Cassation, 17 April 1962, Digest of Decisions, Year 13, No. 91, p. 361).

5.4. Justifiable Acts

The Court of Cassation decided that overstepping the limits of what is justified entails the liability of the transgressor within the limits of the transgression (Cassation, 7 June 1965, Digest of Decisions, Year 16, No. 110, p. 522). The court also ruled that a misplaced tolerance does not deny the accused person's right to benefit from the reason of the tolerance granted him (Cassation, 11 November 1973, Digest of Decisions, Year 24, No. 193, p. 935).

5.5. Consent of the Victim as a Reason for Justification

The Court of Cassation ruled the invalidity of the victim's consent if the victim was 'mentally retarded', 'drunk' or 'asleep' when the act was perpetrated against him/her, or if the victim was also a victim of 'tort or fraud' (Cassation, 23 May 1966, Digest of Decisions, Year 17, No. 123, p. 674; Cassation, 23 November 1936, Digest of Legal Rules, Part 4, No. 16, p. 18; Cassation, 24 April 1950, Digest of Decisions, Year 1, No. 174, p. 534; Cassation, 14 May 1951, Digest of Decisions, Year 2, No. 337, p. 1089).

5.6. Criterion for Causality

The Egyptian Court of Cassation adopts the criterion of 'adequate causality', ruling that: 'a relation of causality in criminal matters is a material relation that begins with the act of the person who causes, and is morally linked to what that person should expect in terms of the usual consequences of his act if it was deliberate, or if in committing a mistake the perpetrator failed to consider the usual consequences of his conduct and the harm it may cause to third parties' (Cassation, 27 January 1959, Digest of Decisions, Year 10, No. 23, p. 91).

5.7. Criterion for Attempt

The Court of Cassation has adopted the subjective criterion where attempt is concerned, ruling that: 'it is sufficient to consider that the perpetrator attempted to commit a crime if he began to execute an act immediately preceding the material element of such crime and inevitably

leading to its consummation' (Cassation, 29 October 1934, Digest of Legal Rules, Part 3, No. 282, p. 375 and Cassation, 15 April 1970, Digest of Decisions, Year 21, No. 125, p. 518).

5.8. A Two-Pronged Expansion of the Notion of the Perpetrator

(a) The accused is considered to be a perpetrator of the crime by the mere fact that he was present at the scene of the crime, even though he has committed none of the acts involved in its execution. In this connection, the court ruled: 'Since the accused stood to observe the road while his colleagues collected the cotton for the purpose of stealing it, he, like them, is a principal perpetrator in the theft, because his action is one of the constituent elements of the theft' (Cassation, 8 January 1940, Digest of Legal Rules, Part 5, No. 45, p. 67).
(b) The theory of the moral perpetrator of the crime is accepted. If the accused has used another as a tool or as an innocent middle person to execute the material act of the crime he is a moral perpetrator (Cassation, 7 February 1944, Digest of Legal Rules, Part 6, No. 30, p. 395).

5.9. Trial of the Accomplice is Not Dependent on the Trial of the Original Perpetrator

'Trial of the accomplice does not necessarily depend on the trial and sentencing of the original perpetrator, if that would lead to imposing no penalty on the accomplice to a crime if the court was unable to try the original perpetrator, either because he is unknown or has died, or because of the absence of criminal intent or for any other particular reasons' (Cassation, 4 May 1942, Digest of Legal Rules, Part 51, No. 403, p. 659).

5.10. Participation in a Crime

The Court of Cassation decided that participation is never constituted by acts subsequent to the crime; they have to be prior to or contemporary to the crime (Cassation, 28 May 1945, Digest of Legal Rules, Part 6, No. 538, p. 719). On the other hand, the court established the principle that participation can only be by commission and never by omission (Cassation, 28 May 1945, *ibid*). Moreover, the existence of a direct relationship between the accomplice and the original perpetrator is not a condition for participation in the crime; the accomplice may have participated through another, i.e. the court admitted the idea of 'participation in the participation' (Cassation, 18 March 1945, Digest of Legal Rules, Part 7, No. 116, p. 110). Finally, the court rejected the idea of participation in unintentional crimes (Cassation, 1 May 1946, Digest of Legal Rules, Part 21, No. 38, p. 31).

5.11. Insanity as a Bar to Criminal Liability

In this respect, the court adopted the following principles:

(a) Psychopathy and excessive emotion are not considered to be insanity or a mental disturbance (Cassation, 30 June 1954, Digest of Decisions, Year 5, No. 270, p. 841; Cassation, 29 April 1973, Digest of Decisions, Year 24, No. 130, p. 631).

(b) Deafness, muteness or sickness do not preclude criminal liability (Cassation, 19 April 1966, Digest of Decisions, Year 17, No. 287, p. 455; Cassation, 23 June 1958, Digest of Decisions, Year 29, No. 76, p. 698). However, sickness is considered a kind of force majeure (Cassation, 7 June 1955, Digest of Decisions, Year 6, No. 318, p. 1084).

5.12. Voluntary Inebriation Negates Special Intent

The Court of Cassation ruled that voluntary inebriation, while not negating criminal intent, renders special intent unlikely in crimes where intent or willfulness is necessary as an element, such as willful murder. The court ruled: 'A drunken person, even if he has voluntarily become inebriated, is not liable for willful murder, a crime that requires a particular criminal intent which has to be present in the accused, and the court must, in its ruling, prove the existence thereof, which is not possible if inebriation has deprived the accused of his awareness and of his will' (Cassation, 21 April 1947, Digest of Legal Rules, Part 7, No. 348, p. 331).

5.13. Unintentional Error

The Court of Cassation admits the principle of the unity of the two errors, civil and criminal (Cassation, 8 March 1943, Digest of Legal Rules, Part 6, No. 133, p. 193). It has, moreover, ruled that there is no presumption of error in the context of criminal law (Cassation, 23 April 1931, Digest of Legal Rules, Part 2, No. 248, p. 30).

5.14. The Court of Cassation Admits the Idea of Precautionary Measures

Even though the Penal Code of 1937 did not stipulate a system of precautionary measures, yet the Court of Cassation recognized some of the measures stipulated in some supplementary criminal laws. The court also considered some of the penalties spelled out in the Penal Code to be such measures: placement of a drug addict in a treatment institution as stipulated in the Law for combating drugs; or prevention of residence as stipulated in that law (Cassation, 14 March 1961, Digest of Decisions, Year 12, No. 69, p. 360; Cassation, 12 April 1970, Digest of Decisions, Year 21, No. 135, p. 566). The penalty of mandatory confiscation stipulated in Article 30 of the Penal Code was also considered to be such a measure (Cassation, 14 February 1966, Digest of Decisions, Year 17, No. 223, p. 129).

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4. COMMERCIAL LAW

1. Introduction and Definition

Commercial transactions were organized by the Code of Commerce promulgated in 1883, inspired, if not copied from, the Napoleonic Code. A new draft Code of Commerce was prepared and submitted to the People's Assembly at its 1998 session, and was finally approved on 2 May 1999.

The new Code consists of 772 articles covering all matters related to trade which had not been covered in the previous legislation, such as transactions by banks and commercial agencies, cheques, contracts related to the transfer of technology and other matters. This Code was promulgated on 17 May 1999 to enter into force as of 1 October 1999, with the exception of the provisions related to cheques that would be applicable as of October 2000. The legislature gave an additional period of one year, up to 2001, to certify the date of post-dated cheques and hand-written cheques, which remained, governed by the rules prevailing prior to the promulgation of the new Code of Commerce (Article 3 of the promulgating law).

It is noteworthy that the new Code did not cancel the provisions related to personal companies, stipulated in Chapter 1 of Section 2 thereof (Article 1 of the promulgating law).

Commercial law refers to the group of provisions intended to govern all commercial transactions and all natural or juristic persons acting in their capacity as merchants.

Commercial transactions, according to commercial law, are individual commercial acts governed by the provisions of the Code of Commerce, even if carried out only once by a person, whatever his capacity. They are transactions involving the buying of moveables with the intent of selling or renting, and the establishment of commercial companies.

Among the commercial activities which are not subject to commercial law unless they are carried out by a person in his professional capacity are the following: supply of goods or services; industry; maritime transportation in internal maritime waterways; agencies; brokerage; insurance; banking operations; exchange; storage of goods; transport operations; publishing; printing; photocopying and typing offices; translation; broadcasting and press; news releases; mail; communications; advertisement; commercial exploitation of computer programs; extracting operations; animal husbandry projects; construction; renting or buying of real estate with the intent of selling or leasing all or part thereof; tourism office activities; export and import; hotel, restaurant and entertainment; distribution of water, gas, electricity or other sources of energy. All activities related to commercial maritime or air transportation are also considered to be commercial activities. The Code

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of Commerce also adopted the theory of commercial activities by extension (Article 8) and established special provisions for mixed activities (Article 3).

In accordance with Article 10 of the new Code of Commerce, the word 'merchant' refers to any person carrying out commercial activities in his/her name or on his/her account independently, provided he/she enjoys the legal capacity to trade professionally; also any company adopting one of the forms stipulated in the laws related to companies, whatever the purpose for which the company was established.

2. Obligations of Merchants

2.1. Commercial Book-Keeping

Chapter 3 of Section 1 of the new Code of Commerce organized the provisions governing commercial book-keeping. Previously, this was governed by Law No. 338 of 1953, as amended by Law No. 58 of 1954, which was abrogated by the promulgation of the new Code, since its provisions contradicted them.

Moreover, commercial book-keeping is also governed by Articles 16 and 17 of the Law on Evidence No. 25 of 1968, and by Articles 519 and 691 of the Civil Code.

Commercial book-keeping is an obligation for any person or company whose capital exceeds 20,000 pounds. Commercial book-keeping refers to the master daily register, or to the auxiliary daily register and to the inventory book as well as to the file containing copies of correspondence. Together, these represent the minimum every merchant is obligated to keep. A merchant is also obligated to keep all other books and registers required by the nature of his/her trade, as is the case for banks, export and import companies and other. There are also optional books and registers (Articles 21–24).

The Code stipulated a particular organization for commercial book-keeping (Article 25), to be kept by the merchant for five years starting from the date of termination or closure of the register (Article 26).

Unless otherwise stipulated, debts arising from traders' liabilities towards one another, in relation to their commercial transactions, become subject to prescription seven years after their due date. As for related final court decisions, they are subject to prescription after ten years (Article 68). The new Code of Commerce admitted microfilms as admissible evidence, for the first time, to be considered on an equal footing with originals (Article 26.2).

Articles 27 and 28 of the Code of Commerce regulate the submission of commercial registers as evidence in a court of law. So does Article 70 of the Code and Article 17 of the Law on Evidence No. 25 of 1968, be it in favour of or against the person of the trader. The latter Articles regulate the authority of the said commercial records, the court's authority to accept them as evidence, and the case of unregulated records.

2.2. Registration in the Commercial Register

The new Code of Commerce regulates provisions related to the commercial register in Articles 30–33, in addition to Law No. 34 of 1976 on registration. Article 2 of the latter

law makes registration in the commercial register mandatory for traders in business assets and companies whatever their objectives, as well as for public corporate persons involved in commercial activities and natural and juristic persons involved in all types of commercial agencies representing foreign establishments.

It is necessary to possess Egyptian nationality in order to register in the commercial register, except for such projects as are subject to Law No. 8 of 1997 on Investment Guarantees and Incentives, where the nationality of the owners is no obstacle and where a foreigner may be a partner in a partnership, provided one of the subscribers is an Egyptian who owns at least 51 per cent of its capital and is vested with the power of management and signature; and in relation to export-related commercial activities (1997 amendment of the Law on Registration).

Notwithstanding the above, the Egyptian commercial registration system does not generally recognize the absolute authority of the data recorded in the commercial register. Rather, such data is generally regarded as a simple presumption, which may be refuted by other parties or by the trader himself. Article 33 of the new Code of Commerce regulated the authority of said data more forcefully than the relevant provision of Law No. 34 of 1976. The new Code stipulates the authority of said data against third parties, unless the law provides otherwise, and the inadmissibility of claims against third parties on the basis of data that should have been recorded in the commercial register but was not duly entered, unless proof is provided of the third party's knowledge thereof. The trader may also not invoke the fact of non-registration with a view to evading his legal responsibilities.

3. Business Assets

Business assets consist of a number of material and abstract elements amounting to abstract movables. The new Code of Commerce regulates them in Articles 34–43, in addition to the provisions of Law No. 11 of 1940 on the Sale and Mortgage of Business Assets.

3.1. Elements

Elements of business assets consist of material elements such as goods offered for sale, and equipment including tools and such apparatus as may be set up for the purpose of fulfilling the activities of the business and which are not offered for sale. All or some or none of these material elements may exist, without prejudice to the entity of the business assets, so long as there is another element, i.e. communication with customers, this being the essential element in business assets. The trader has the right to attract customers, to keep them and to increase his clientele. This is a right protected by law.

There are other abstract elements such as the right of lease, trade name, trademark, patents or industrial designs, depending on the nature of the activities in which the trading post is involved.

3.2. Sale

According to the new Code of Commerce, all transactions that concern the transfer of the title of business assets, or the creation of a real right or usufruct thereon, can be considered null and void unless set down in writing (Article 37). Thus the contract of sale of business assets is not considered consensual, contrary to the state of affairs which existed under the Law on the Sale and Mortgage of Business Assets, the Articles of which are still in force, except for those that conflict with the provisions of the new Code.

Moreover, Article 38 stipulates that the transfer of the title of property between parties to contracts and regarding third parties comes into force only as from the date of registering the transaction in the commercial register and publishing a summary thereof in the commercial register publication.

Before the publication of the new Code, the Court of Cassation had established that writing was not an essential element in such transactions but only a means to prove the sales contract. (Challenges No. 391, 45th Year, session of 9 January 1980 and No. 629, 43rd Year, session of 18 May 1977, *A Compendium of Cassation Rulings in Civil Cases*, p. 1239.) Provisions of Law No. 11 of 1940 only apply where the sale is referred to in its prior definition, viz., abstract moveables of a commercial nature.

The vendor undertakes to transfer the title and deliver the business assets to the buyer. The vendor also undertakes not to damage the assets and to accept any claim of latent defects.

The purchaser undertakes to receive the business assets and pay the price. Where payment is effected in instalments, the advance payment is deducted according to the arrangements specified in Article 1 of Law No. 11 of 1940, which is a mandatory rule that stipulates that deductions be made in the following order: price of goods, equipment, non-material and abstract elements. The validity of the contract is not dependent on that order being respected. That order, however, is a condition for maintaining the buyer's lien.

On the other hand, the vendor's lien is maintained even in the event of bankruptcy of the buyer, provided that the transaction is consigned in writing, in a formal contract, or if the signatures thereon are legalized; and provided that the contract explicitly stipulates the method of payment in instalments in a specific order; and that it be registered in the regional Real Estate Office. Article 41 of the new Code of Commerce confirmed the right of the vendor to maintain a lien on the price despite the buyer's bankruptcy. Such a lien allows the vendor's right to claim and follow up, in keeping with general rules.

Law No. 11 of 1940 also stipulates another guarantee for the vendor if the buyer fails to pay the price on the agreed date, namely, the right of the vendor to file a rescission of contract suit in spite of the buyer's bankruptcy, provided that the vendor explicitly maintains his right for such an action in the special register of sale of business assets. It is to be noted that the right to terminate only covers such parts of the business assets as were subject to the sale. Article 41 of the new Code of Commerce also grants this same right to the vendor.

Article 42/1 also provides for the undertaking of the vendor or the lessor of the usufruct not to enter into competition with the buyer or lessee by setting up similar business assets.

Paragraph 2 of that same Article sets a term of ten years for such a restriction, starting from the date of the publication of the transaction unless a shorter term is otherwise agreed.

3.3. Mortgage

The ownership of business assets is not transferable to the mortgagee, notwithstanding the fact that they are movable property.

Specific conditions are set out in Law No. 11 of 1940 for the mortgage to take effect in relation to other parties, despite its non-transferability to the mortgagee: the contract must be legally consigned in a formal writing or in an informal document, the signatures thereon being legalized, and the document must be registered with the Real Estate Office within 15 days of the date of signature.

Where the mortgage includes real estate assigned to a specific purpose, real estate mortgage procedures must be pursued along with the above-mentioned procedures.

Moreover, the law sets out an essential condition derived from public order concerning the person of the mortgagee, namely, that it be a bank licensed by the competent minister.

Mortgages, moreover, give priority to the mortgagee over other creditors, insofar as claims on business assets are concerned. They also grant the former the right to pursue the title of the said business assets regardless of the owner.

4. Industrial Ownership

Industrial ownership entitles a person to the exclusive right of exploiting his creations (inventions, designs and industrial models) as well as to the right of using his distinctive logo (trade names, trade and industrial brand names).

4.1. Legislation

Neither the repealed Code of Commerce nor the new one contains provisions regulating industrial ownership. The first law regulating such rights was Law No. 57 of 1939 regulating trademarks and commercial data. Later, in 1949, Law No. 132 regulating patents, designs and industrial models was issued. Law No. 55 of 1951 was also issued with regard to trade names.

It is worth noting that the Egyptian legislature, when issuing the above-mentioned laws, took into consideration all the relevant international conventions concerning the protection of industrial property, even before Egypt officially signed those conventions, foremost among which is the Paris Convention (1883), which Egypt joined in 1950 by virtue of Law No. 165 and which became applicable as of 1 July 1951.

The Egyptian legislature also issued a new draft law regulating patents, designs and industrial models in accordance with the GATT Agreements, which were replaced by the World Trade Organization (WTO). The same holds true concerning trademarks. These draft laws are still under consideration.

4.2. Main Provisions Governing Industrial Ownership Rights

4.2.1. Patents

'Patent' means a certificate granted by the state to an inventor, giving him the exclusive right to exploit his invention, under certain conditions and for a definite period of time. Patent and right are thus interconnected and, consequently, interdependent: a patent holder is the holder of an exclusive right to his invention. 'Patent', therefore, refers to the right of the inventor in Egyptian legislation.

4.2.1.1. Forms of Creation

Invention may be a new industrial product or method, or a new application for existing industrial methods.

Inventions which fall under legal protection must be new, undisclosed and liable for industrial exploitation (Law No. 32 of 1949, Article 1).

Inventions or creations shall not conflict with public order, nor shall they cover chemical inventions, foods, medicines, or pharmaceutical compounds, though patents may be awarded in the latter cases, provided they are restricted to industrial methods and only for a term of ten years and not for 15 years as in the case of legal protection for all patents. The Patent Office examines each case objectively, and verifies its satisfaction of all formal conditions.

The new draft law for patents extends the protection term to 20 years for all patents, including medicines, pharmaceutical compounds and foods, in keeping with WTO regulations, subject to the enjoyment by Egypt of the period of grace set for said regulations, during which Egypt is exempted from their application. Egypt, however, has not joined the PCT Convention, also known as Private International Cooperation Convention, regulating international inspection of patents.

The award of a patent grants the holder of the patent, his heirs or assignees the right to exploit it and dispose of it during the term of protection, which currently extends to 15 years. Exploitation of patents is effected by the holder or by a third party licensed by the holder.

The Egyptian legislation stipulates the exploitation of patents within the Arab Republic of Egypt; otherwise, the holder may be subjected to a mandatory license by the Head of the Patent Office, if the conditions thereof are satisfied (Article 30 of Law No. 132 of 1949).

Moreover, that same Article entitles the Patent Office to empower a third party to exploit the invention.

4.2.1.2. Breach of Commitment

A patent holder is in breach of his commitment as regards the exploitation of his invention in the following cases:

(1) Failure to exploit the invention within the Arab Republic of Egypt in the course of the three years from the date on which the patent was granted. However, the Patent Draft Law extends the period to four years, and deems the import of the legally protected product or the utilization of the protected method of industrialization equivalent to its exploitation within the Arab Republic of Egypt.

However, if there are grounds that justify the failure to exploit the patent within the Arab Republic of Egypt, the Patent Office may extend the term for two more years (Article 31).

(2) Failure to exploit the invention for two consecutive years. The Patent Office may also grant the holder or user an extension of two more years, if justifiable (Article 30.1).
(3) Insufficient exploitation that does not meet the requirements of the country (Article 30.1).
(4) Inter-related inventions, when the exploitation of an invention depends on an invention owned by another who refines the use thereof or places excessive financial conditions thereon, and if the former invention is of particular technical and economic importance. Applicants for a mandatory license must prove themselves capable of exploiting the patent and must offer the original holder a fair compensation.

The Patent Office reserves the right to reject the award of mandatory licenses. Challenges to Patent Office decisions may be filed before the administrative courts within 30 days of the date of notice served to the applicant (Article 30.4).

The holder of a mandatory license shall exploit the invention within two years of being awarded the patent; otherwise, interested parties may apply for a cancellation of said patent.

4.2.1.3. Legal Protection of Patents

Egyptian legislation offers civil law protection in case of patent infringement, and criminal law protection (Article 48) where a trademark is registered in the Patent Office, in which situation a criminal case is filed by the owner of the trademark or the public prosecutor. Crimes related to patents include imitation of trademarks, the sale, offer of sale, importation or possession with the intention of sale of imitations of brand names and giving false data to pretend that a patent has already been awarded. Moreover, protection is guaranteed by international conventions, especially the Paris Convention which establishes the principle of equality for all citizens of the Union, priority right, and the principle of exploitation of patents.

4.2.2. Designs and Industrial Models

'Designs and industrial models' refer to planned lines, colored or non-colored figures used in industrial production, mechanically, manually or chemically. Law No. 132 of 1949, Part II, contains the provisions concerning designs and industrial models.

Designs and industrial models should be new and applicable in the industrial domain.

In case of infringement, both civil and criminal laws protect designs and industrial models, in addition to the protection provided by international conventions to which Egypt is signatory.

4.2.3. Trademarks

Trademarks refer to all logos or signs used by the trader or manufacturer on his goods or products to distinguish them from similar ones.

Commercial or industrial trademarks may refer to the manufacturing country, to the source of manufacturing, destination of sale, kind, quality, guarantee, method of preparation, or services rendered.

Forms of trademarks are varied: names, signatures of a particular shape, letters, words and numerals. The mark may be in the wrapping or the color or shape of the product.

Law No. 57 of 1939 stipulates that trademarks be new, distinctive, legitimate, and not used before on similar good or products.

Law No. 115 of 1958, Article 3, stipulates the use of the Arabic language in the writing of the trademarks. However, trademarks of foreign, internationally registered and exported goods and products are exempt from this condition.

The term set for trademark protection is ten years (Article 21), dating from the submission of the application for trademark registration, not from the registration date (Article 15). Registration is subsequently renewed.

Priority of usage rather than legal registration guarantees the ownership of the trademark. Litigation concerning such ownership may not be heard if the party who registered the trademark has continuously made us of it for a term of five consecutive years, during which its validity was uncontested in any court of law (Article 3 of Law No. 57 of 1939).

Ownership of a trademark entitles its owner trading rights thereof. However, the owner may not dispose of a trademark independently of the business asset or project which carries the said trademark. Usufruct may be agreed upon. The legislature, in Article 20 (Trademark Law as amended by Law No. 69 of 1959) stipulates that the transfer, usufruct or mortgage of ownership of a trademark is not admissible unless entered in the register in accordance with the method established by the executive regulations.

Trademarks are legally protected in both civil and criminal law in case of infringement thereof.

Criminal law protection is provided by Articles 33–62 of Trademark Law No. 57 of 1939. Unregistered trademarks, however, are not legally protected; besides, only owners of trademarks or the public prosecutor are entitled to file a criminal case if infringement occurs.

Infringement of trademarks includes forging, imitating (Article 33), or using a forged or imitated trademark (Article 37); it also includes illegally using a third party's trademark (Article 33); selling, offering to sell, or possessing with the intention of selling of products with forged, imitated or stolen trademarks (Article 33); and the affixing of false or misleading data or the use of legally prohibited trademarks (Article 34).

Trademarks are internationally protected by the Paris Convention and the Madrid Convention which establish protection for trademarks in the countries of the Union, similar to its registration in the countries of origin. A record of trademarks is kept in the International Office for the Protection of Industrial Ownership in Bern.

4.2.4. Trade Name and Address

A trade name is adopted by traders to distinguish their business assets from similar ones. Law No. 55 of 1951 regulates the subject of trade names.

A trade name is essential for all firms and business assets (Article 1). The personal name of the trader may be one of the essential elements of the trade name for individual traders as well as partnerships, subject to the provisions regulating names of limited liability and joint stock companies provided for in Law No. 159 of 1981.

The trader holds a relative right over his trade name whether in relation to the kind, place or term of trade. However, he may renew his registration every ten years. Trade names have a pecuniary value provided that, in case of sale, they are related to the business assets or firms that house the goods or products thereof.

Trade names are legally protected in both the Civil and Penal Codes against any infringement.

5. Commercial Documents

Commercial documents refer to bills of exchange, promissory notes and cheques.

The Code of Commerce, issued in 1883, used to regulate matters related to commercial documents in Articles 105–194. The term 'cheque' did not feature in these Articles. Consequently, cheques were subject to mandatory established usage, in addition to the general rules of commercial documents insofar as they did not conflict with the function of the cheque as an instrument of payment.

Since 1937, Egyptian legislation has deemed that the issuing of a cheque without sufficient funds to cover it is a crime. Article 337 of the Penal Code applies the penalty of fraud to such crimes. The penalty was amended in 1982 to mandatory imprisonment for not less than a year, in addition to the imposition of a fine, contrary to the established penalty provided for in Article 336 of the Penal Code.

Part IV of the new Code of Commerce contains full details of commercial documents. Cheques alone are dealt with in 67 Articles, besides the common Articles which deal with cheques and other commercial documents. It is to be noted that the Uniform Geneva Law has been taken into consideration with regards to bills of exchange, cheques or promissory notes.

Following are the salient legal rules concerning commercial documents:

5.1. Bills of Exchange

The text of the bill of exchange shall satisfy certain formal conditions, otherwise it is considered invalid. The word 'bill of exchange' shall be included in the body of the text, the bill shall contain an unconditional order to pay, as well as the signature of the drawer, the name of the beneficiary, the name of the drawee, the place and date of payment, and the place and date of establishment of the bill (Article 379).

The Code of Commerce allows the addition of discretionary conditions, such as a condition ruling out protest, or a condition for the acceptance or refusal of the bill.

Endorsement of bills is regulated in Articles 390–400 of the Code of Commerce.

The legislation provides several guarantees for the payment of bills; these include acceptance of the drawee and establishing his liability before the beneficiary, in addition to the presumption of the existence of a definite coverage for the beneficiary and the absolving of liable parties (Articles 409–417).

The Code of Commerce also establishes the right of the bearer of the bill to the ownership of payment coverage, in accordance with Article 404.

Articles 438–448 of the Code of Commerce provided for recourse in case of failure to pay; measures of protest against the drawee and the consequences of such protest and recourse measures. Precautionary seizure of the funds of the liable party may be decided, for the amount recorded in the bill (Article 449). Article 464 deals with misrepresentation of data in bills, while Articles 465–467 deal with prescription of bills, the scope and term of such prescription which is limited to three years for the person accepting the bill, and one year for claims by the bearer against endorsers, dating from the filing a protest, and six months for claims of endorsers against one another.

As mentioned above, the rules of the Code of Commerce concerning commercial documents are in accordance with the provisions of the Uniform Geneva Law (1930) for bills of exchange and promissory notes, and the Uniform Geneva Law (1931) unifying the provisions that deal with bills of exchange.

5.2. Promissory Notes

The new Code of Commerce regulates the use of promissory notes in Articles 468–471. A promissory note is defined as an undertaking by a person to pay a sum of money to the order of a beneficiary on a fixed date or at sight. Promissory notes are deemed an absolute commercial document similar to bills of exchange and cheques. The new Code of Commerce provides for the application of Part IV thereof, concerning commercial documents, for bills of exchange, promissory notes and cheques and all other commercial documents regardless of the quality of the persons involved or the nature of business for which they were established.

Thus, the new Code of Commerce dealt, in its Part IV, with bills of exchange, promissory notes, cheques and all other commercial documents as being equal, regardless of the quality of their signatories or the purpose of business.

Provisions of both bills of exchange and promissory notes square in so far as they do not conflict with the nature of the latter, which requires no acceptance or coverage.

The validity of the promissory note depends on the satisfaction of formal elements: the words 'to the order of', or any other words to that effect, shall be written in the promissory note in the same language of the note; it shall also contain an unconditional promise or order to pay a certain amount of money, the date and place of payment, the name of the beneficiary, and the date and place of its establishment and the signature of the drawer.

All provisions concerning endorsement of bills of exchange apply in the case of promissory notes, whether in relation to types and consequences of endorsement, precautionary guarantee (if any), satisfaction of value, and the debtor's absolution by waiver or prescription.

5.3. Exclusion of Bearer Bond from Commercial Documents

Article 190 of the repealed Code of Commerce used to provide for bearer bonds, deeming them negotiable instruments, just like material moveables, in addition to the application of

provisions relating to promissory notes. The new Code of Commerce, however, inspired by the Uniform Geneva Laws, does not provide for bearer bonds, thus excluding them from the commercial documents subject to the provisions of Part IV of the new Code of Commerce. However, bearer bonds are deemed a document that establishes the liability of its drawer, hence subject to both civil and commercial laws in accordance with its nature.

5.4. Cheques

5.4.1. Definition

Cheques are instruments written in accordance with certain conditions stipulated by the new Code of Commerce. A cheque includes an order issued by the drawer (the writer of the cheque) to the drawee (always a bank), to pay a certain amount of money to a third party (the beneficiary) or to its bearer at sight. The cheque should contain the word 'cheque' in the body of its text.

The former Code of Commerce did not include the word 'cheque'; however, it referred in Article 191 to drafts payable at sight, and documents that incorporated an order to pay. The word 'cheque', as aforementioned, did not feature in any Egyptian law before the introduction of the new Code of Commerce, with the exception of Article 337 of the Penal Code which, in 1937, made the issuing of 'flash' or uncovered cheques a crime. Cheques are subject to Articles 472–935 of the new Code of Commerce, in addition to the provisions for bills of exchange, by analogy, as well as to the joint rules set forth in Articles 540–549.

Cheques resemble bills of exchange as far as the number of parties and the relationship between them are concerned. However, cheques are always deemed an instrument of payment that is payable as soon as issued, regardless of any reference to other data. In an unprecedented provision in Egyptian legislation, Article 503 stipulates that cheques are payable at sight, and that all data in conflict with that provision shall be considered null and void.

The new Code of Commerce contains a comprehensive regulation of cheques in 67 Articles, in addition to the provisions that apply to other commercial documents.

The new Code of Commerce deems the issuing of a cheque to be a commercial operation in accordance with Article 378, and recognizes the equivalence of cheques to the other commercial papers. Provisions related to cheques in the draft Code coincide with the provisions unifying regulations of cheques in the Geneva Convention (1931).

5.4.2. Characteristics

The validity of the cheque depends on its satisfaction of certain formal elements, namely, that the word 'cheque' be mentioned in the body of its text and in the language in which the cheque is written; that it should contain an unconditional promise or order to pay a certain amount of money recorded in letters and numerals, the name of the drawee bank, the place of payment, the date and place of issue, the name and signature of the drawer and that it be written on the bank's printed paper as specified by the new Code of Commerce (Articles 473, 530).

Certain conditions should be satisfied for the payment of a cheque, commonly termed as the funds, being an amount of money corresponding at least to the value of the cheque and existing as of when the cheque was issued. Failure to meet this condition subjects the drawer to criminal penalties: imprisonment and a fine not exceeding 50,000 pounds (Article 534), or either penalty. The same penalty set forth in Article 534, is also applicable to whoever endorses a cheque with the purpose of transferring title, or whoever hands over a payable cheque to bearer knowing that there are no sufficient funds to satisfy payment. In case of recurrence within five years of the pronouncement of a final ruling, the penalty is set forth as mandatory imprisonment. If reconciliation takes place between plaintiff and defendant, the criminal proceedings ends, even if direct prosecution has been initiated. If the reconciliation takes place during the term of the penalty, the public prosecution orders a stay of execution even if a final ruling was pronounced in the case.

Article 535 of the new Code of Commerce imposes a penalty amounting to 1,000 Egyptian pounds on the beneficiary who in *mala fides* acquires a flash cheque.

Notwithstanding the fact that a cheque is payable as soon as it is issued, the absence of an explicit provision in the Egyptian commercial legislation that obliges drawee banks to pay the value of the cheque, even though it is postdated, led to a kind of business transaction known as 'a guarantee cheque' or 'credit cheque' or 'cheque in honour of a debt'. Moreover, the general rule for transactions in the markets is for debtors to write postdated cheques as guarantee of payment to their creditors, otherwise creditors may proceed to file suits of misdemeanor against debtors for issuing flash cheques. In this sense, a cheque is a means of threatening and coercing debtors. Post-dated cheques have been widely used by banks to guarantee payment of credit facilities extended to their clients. It is hoped that the new Code of Commerce will put an end to that kind of usage, which prevailed for a long time, and which is contrary to the nature of cheques as instruments of payment only.

In consideration of that common usage, the legislature allowed a one year grace period before the enforcement of the provisions related to cheques, dating from the enforcement of the new Code of Commerce. Thus, October 2000 was set for the entry into force of the new legislation. A second period of grace of one year, has, however, been granted to record the dates of all postdated or written cheques, so that they remain valid even after the repeal of previous legislation. Moreover, Article 337 of the Penal Code was abrogated from 1 October 2000 (Article 1 of the Promulgated Law).

It is to be noted that the Egyptian Court of Cassation does not recognize cheques of guarantee or post-dated cheques. Consequently, it considers as a crime the issuing of a 'flash cheque', in spite of the existence of available documents that point to the intent of issuing the cheque as an instrument of guarantee. The Court of Cassation thus discarded the intent of the accused not to cash the value of the cheque and his desire to hold on to them as security for his debt, stating that he was not in a position of changing the legal nature of a document (Challenge No. 640, 29th Year, 22 June 1959).

Common usage used to allow cheques to be written on forms not printed by banks. However, the new Code of Commerce stipulates that cheques are to be issued on bank printed forms only.

As mentioned above, endorsement of cheques with the knowledge that they are flash or uncovered was not a crime (Article 337 of the Penal Code). However, the new Code of Commerce imposes upon the endorser in this case, the same penalty imposed on the drawer who issues a flash cheque (Article 534.2).

A fine of 1,000 Egyptian pounds is imposed on the beneficiary, whether a natural or juristic person, who acquires a cheque *mala fides.*

5.4.3. Date of Presentation of a Cheque

Cheques drawn in Egypt and payable within its borders must be presented within three months from the date recorded on the cheque. Cheques drawn elsewhere and payable in Egypt must be presented within four months from the date recorded on the cheque. Presentation of the cheque to a legally recognized Clearance House is held to be a valid presentation (Article 504).

5.4.4. Prescription of Liability Stemming from the Issuance of a Cheque

A beneficiary is entitled to demand the satisfaction of his right within a definite term, otherwise his right is subjected to a short-term prescription set forth in Articles 531 and 532 of the new Code of Commerce. The prescription period, in accordance with the said Articles, is six months for the drawer, endorser and others, dating from the presentation of the cheque for payment or from the date of its expiry (Article 531).

The term of prescription of recourse by the beneficiary against the drawee is three years, dating from the presentation or expiry of the cheque (Article 531.2). All other claims of liability have a prescription term of six months dating from the payment of the cheque or the request by the plaintiff of its payment (Article 531.3).

It is to be noted that cases subject to this short term prescription are those that arose directly from the cheque. Other cases of non-payment, such as those that a beneficiary may bring against a drawer are subject to prescription as set forth in Article 68. The new Code of Commerce recognizes short-term prescription in accordance with the Geneva Convention.

6. Liabilities and Commercial Contracts

Part II (Articles 47–229) of the new Code of Commerce governs liabilities and commercial contracts.

6.1. General Provisions Related to Liabilities

The essential points in these general provisions are: considering the parties liable for a commercial debt as being liable in joint capacity, unless the law or an agreement stipulates otherwise (Article 47); the calculation of interest rates on a trader's trade-related loans are made on the basis of the rates of his transactions with the Central Bank, unless a lesser rate is agreed upon (Article 50); the inadmissibility of granting liable debtors a judicial period of grace to pay their debt in full or in instalments, except where it is absolutely necessary and subject to holding the creditor not liable for any gross loss (Article 59); the maturity of

interest rates on delayed commercial debts on the date due, unless the law or an agreement stipulates otherwise.

Article 67 governs the liability of the manufacturer and the distributor of products vis-à-vis anyone who suffers from any physical or material injury as a result of a defect in the product. Prescription of claims arising from commercial liabilities among traders follows a term of seven years, while prescription of final rulings follows a term of ten years (Article 68).

6.2. Transfer of Technology

Part 2, Chapter 1, Articles 72–78 of the new Code of Commerce regulate contracts of transfer of technology.

6.3. Commercial Sales

Articles 88–103 regulate general principles of sale. These principles apply only to contracts of sale of goods between traders for trade-related matters, unless the law stipulates otherwise. These principles are also only valid where consideration is in cash or in kind, and the value of the 'in kind' portion is less than the part in cash (Article 88.1).

Provisions of international conventions applicable in Egypt as well as the prevailing custom and the interpretation of terms used in contracts as issued by international organizations, apply to international commercial sales if referred to in the contract (Article 88.2).

6.4. Specific Provisions for Certain Commercial Sales

The new Code of Commerce regulates credit sale in Articles 105–107, according to which the termination of the contract is inadmissible where the purchaser who paid 75 per cent of his commitments fails to pay one instalment (Article 105). The purchaser may not dispose of the purchased item before paying all instalments, unless he obtains written permission from the vendor. The sale is not effected if the vendor proves the knowledge of the failure of the buyer to pay the whole price (Article 107.1). In such a case, a penalty of imprisonment for a period of no more than six months or the payment of a fine that does not exceed 500 pounds, or both, is imposed on the buyer (Article 107.3). In case of goods, Article 18 *bis* of the Code of Criminal Procedure (expiry of the possibility of a criminal proceeding or stay of execution notwithstanding the pronouncement of a final ruling) is applied.

6.5. Other Provisions

Sale through liquidation or public auction: regulated by Articles 108–114 of the new Code of Commerce.

Supply contracts: regulated by Articles 115–118 of the new Code of Commerce.

Real estate mortgage: regulated by Articles 119–129 of the new Code of Commerce.

Storage in public storing houses: regulated by Articles 130–147 of the new Code of Commerce.

Commercial agency: regulated by Articles 148–165 of the new Code.

Types of commercial agency:

1. Agency by commission: regulated by Articles 166–176.
2. Contract agency: regulated by Articles 177–191.

Brokerage: regulated by Articles 192–207 (Part II, Chapter 6) of the new Code of Commerce.

Transport contract: Articles 208–216; Transport of objects: Articles 217–254; Transport of persons: Articles 255–272.

Banking operations: in an unprecedented step, the new Code of Commerce regulated the provisions governing banking operations in an independent section, namely, Part III, Articles 300–377, as follows:

Long term deposits: Articles 300–309;
Deed deposits: Articles 310–315;
Rental of safes: Articles 316–323;
Mortgage of stock: Articles 324–328;
Bank transfers: Articles 329–340;
Provisions for ordinary and documentary credit: Articles 338–350;
Provisions for bank discount: Articles 351–353;
Letters of guarantee: Articles 355–360;
Current account provisions: Articles 361–377.

The fifth and last part of the new Code of Commerce is concerned with bankruptcy and reconcilement arrangement:

Chapter 1 is concerned with the declaration of bankruptcy (Articles 550–570).
Chapter 2 is concerned with bankruptcy officials (Articles 571–585).
Chapter 3 is concerned with the effects of bankruptcy (Articles 586–632).
Chapter 4 is concerned with the management of bankruptcy (Articles 633–659).
Chapter 5 is concerned with the termination of bankruptcy (Articles 660–661)
Articles 662–724 govern judicial conciliation.
Chapter 6 is concerned with reconcilement arrangements (Articles 725–767).
Chapter 10 is concerned with bankruptcy crimes (Articles 768–772).

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5. COMPANY LAW

1. Commercial Companies

1.1. Definition

A company is a contract according to which two people or more are committed to contribute to a financial project with a money share or a work share with the purpose of sharing the possible return of profit or loss (Article 505 of the Civil Code).

1.2. Different Types

Commercial companies in Egypt are organized by a number of laws:

- The Civil Code organizes the structure of the contract of companies in Articles 505–537, including the execution of the contract, the running of the company and its termination in general.
- The Code of Commerce was issued in 1883 and was copied almost literally from Napoleon's Codes. It deals only with partnership companies: general partnership (Articles 20–22), limited partnership (Articles 23–31), and joint venture (Articles 59–64). A new Code of Commerce was adopted in 1999. It does not include provisions relating to companies; however it is anticipated that a unified law applying to all companies in Egypt will be enacted soon.
- Company Law No. 159 of 1981 applies to limited liability companies, partnerships limited by shares and joint stock companies.
- Investment and free zone companies are governed by Law No. 8 of 1997 concerning investment incentives and guarantees.
- Law No. 97 of 1983 deals with public sector companies.
- Law No. 203 of 1991 also deals with public sector companies (holding and subsidiary companies).
- Law No. 146 of 1988 deals with companies working in the field of reception and investment of funds.
- Law No. 95 of 1992 concerns the stock exchange, which organizes companies that work in the field of stocks and shares. This law also includes modifications to company law, one of which is the introduction of shares in the name of the holder not exceeding 25 per cent of the capital of joint stock companies.

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Law No. 159 of 1981 is considered to be general legislation for all companies unless specific legal provisions exist (Article 2 of its promulgating law).

The general principles that govern companies will be dealt with first. These are the elements of the company contract, its juristic personality, its termination and its liquidation. Following on from this, a brief explanation of the different kinds of companies will be given.

2. Elements of Company Contracts

Company legislation requires the following elements for the company contract:

2.1. Objective Elements

2.1.1. Multiple Partners

No less than two partners are required in all companies, except for joint stock companies which need three partners at least in order to be valid (Article 8 of Company Law No. 159 of 1981). If the partners become less than the minimum requirement, the company will not be dissolved if the conditions are rectified within six months.

The Court of Cassation confirmed that if there are less than two partners, the contract is void (Cassation, Challenge No. 409/36, session of 18 May 1971; Challenge No. 2308/51, session of 16 December 1991).

Egyptian law does not recognize the one-man company which is recognized by both German and French law (société unipersonnelle).

However, the draft unified law on companies includes this kind of company.

A juristic person can be a partner in a company contract.

2.1.2. Participation in the Capital

Every partner shall contribute a share of money or work. The work share can be presented in general and limited partnership only. Mere financial trust which the partner enjoys cannot be considered a work share (Article 509 of the Civil Code), unless the trust is accompanied by serious useful work performed by the partner for the good of the company.

The Court of Cassation considered that a partner's effort in obtaining export licenses for the company and his commercial reputation could be considered as a share in the capital (Challenge No. 231/20, session of 6 October 1952).

The work done by servants and staff is normal work and cannot be considered to be a valid share in the company (Cassation, 22 June 1933).

Shares are governed by Articles 508–513 of the Civil Code.

The share can be in money or in kind. If the latter is contributed with the intention of transferring ownership (*apport en propriété*), it is no longer in the possession of the partner. In that case, the provisions of the sales contract are applied even if it is not a real sale. Thus the partner has to take all the measures required by the law for the transfer of the property right presented as a share, so that it can be used against third parties.

Precedents of the Court of Cassation are settled in this respect:

Giving a share in kind for the company in the form of a transfer of property is not in essence a sale even though it resembles it as far as procedures of registration are concerned, as well as the consequence of loss and the warranty of due rights and latent defects.

The party contributing a share in kind shall not obstruct or dispute the right of the company to benefit from it, even if the contract was not registered. On the termination of the company, the amount of the price of this property shall be distributed among the partners and not returned to its original owner (Challenge No. 725/41, session of 4 March 1985).

The share in kind may also be presented for usufruct only, which can be the right of property usufruct (*apport en usufruit*), where the ownership stays with the holder of the share, while it is depreciated on the part of the company as it is a relationship governed by the sales contract. It may also be presented as a means of personal use (*apport en jouissance*), i.e., the mere use of the property with no transference of any property right to the company. In this case the lease contract provisions are applicable and the share is depreciated on the part of the partner.

The company is obliged in both cases to return the property to the partner after the termination of the company's term. The position of the Court of Cassation is settled on this matter (Challenge No. 2296/52, session of 2 May 1988).

The rule is that the share in kind is presented to the company with the intention of transferring ownership, unless agreed otherwise (Article 508 of the Civil Code).

2.1.3. Distribution of Profits and Losses

All partners shall share the profits and losses of the company, otherwise the partnership is void; and any provision to the contrary is null (Articles 514 and 515 of the Civil Code).

According to the Court of Cassation, Article 515/1 of the Civil Code shall be understood to mean that if it was agreed that one of the partners shall not share profit and loss, the company's contract is void (Challenge No. 209/50, session of 18 May 1981).

2.1.4. The Intention to Share

The intention to share is the willingness of every partner to enter into positive cooperation in order to achieve the company's purpose. Academics and precedents both require this condition despite its non-existence in the definition of a company (Article 505 of the Civil Code). The judge on the merits has all the authority to determine how far this intention is present according to the particular case (e.g. Cassation, Challenge No. 305/34, session of 21 March 1968).

2.2. Formal Elements

The law requires that the contract of the company, as well as all its modifications be written down, otherwise it is void (Article 507 of the Civil Code). The law also requires the certification of the company's contract.

The same applies to the registration into the commercial register, according to the provisions of Registry Law No. 34 of 1976. Where this provision is violated, the contract is

considered to be void and cannot be used in litigation against a third party (Article 507/2 of the Civil Code).

The Egyptian judiciary adopted the theory of the partnership de facto. Thus, if a third party claims the nullity of the contract, it will have a retrospective effect, while if one of the partners requests the same, it will not have a retrospective effect (Cassation, Challenge No. 544/45, session of 8 January 1979).

Since the amendment of Article 23 of Company Law No. 159 of 1981 in 1998 (Law No. 3), it is possible to claim the nullity of the company contract on the basis of the violation of the procedures of establishment, even after its registration in the commercial register, within one year of knowledge thereof.

3. The Company's Juristic Personality

3.1. Acquisition

As a general rule, a company acquires its juristic personality the moment the contract is made (Article 506/1 of the Civil Code; Challenge No. 1706/52, session of 15 May 1986).

A company, thus, differs from an individual venture, which does not have a juristic personality (Challenge No. 1366/41, session of 5 April 1976).

The juristic personality is acquired after registration in the commercial register. All companies in Egypt are subject to this, whatever their nature, except for general and limited partnership.

Nationalization is a transfer of property of an economic establishment from private ownership to the ownership of the nation, which in turn entrusts it to the state to invest for the general good, in return for compensation paid to the owners for political, economic or social reasons. The nationalization of a venture may be total or partial.

It was judged that nationalization is a political act, which lies within the domain of the legislative authority alone. The company does not lose its juristic character by nationalization (Challenge No. 1581/50, session of 14 April 1986).

According to the General Assembly of the State Council, the transfer of the company does not end its juristic personality (Opinion No. 833, File No. 22/2, on 13 September 1965).

The state's liability concerning the nationalized venture, within the limits of the funds it has obtained, does not cover the liabilities of the owners of the nationalized venture (Challenge No. 459/48, session of 20 April 1981).

The Supreme Constitutional Court declared unconstitutional a law decree of 1961 which nationalized some companies and establishments and which stipulated that the property of the wives and children of the owners of the companies subject to nationalization were to be used as security to pay off the obligations in excess of the companies' assets and the due debts (SCC, Case No. 67/4, session of 2 February 1985).

In case of merger, the merged company or companies lose their personality, whether the merger is through fusion or mixing.

The merging company or the company resulting from the merger is responsible and answerable as to the commitments and liabilities of the merged companies, being

considered the legal person against which legal action can be taken (Challenge No. 1687/50, session of 13 May 1985).

It was judged that as a consequence of the merger of the financial responsibility, the personality of the merged companies comes to an end. The merger of the qualities of debtor and creditor in the personality of the new company entails the termination of the debt in the same ratio of the unity of the financial liabilities (Challenge No. 16/39, session of 21 May 1971).

If a judgment is issued for the dissolution of a company, its legal personality is terminated from the date of the judgment. It is possible for the other partners to sue the partner that caused the termination, for compensation from his own money and not the money of the company (Challenge No. 287/35, session of 12 June 1969).

The draft united company law adopted the company's acquisition of juristic personality as from the registration in the commercial register.

The company is represented by a natural person who is appointed specially to conduct business in its name and for it. The director or the board of directors represents the company's will, filing suits in its name and raising claims for its rights against third parties.

The replacement of the director or the board of directors does not affect the personality of the company.

The Court of Cassation has judged that the juristic personality of the company is independent from the personality of its legal representative, and that the mention of the name of the contesting company in the file of the challenge is enough for the validity of the latter, with no need for expressing the name of its legal representative (Challenge No. 1678/52, session of 27 March 1989).

A mistake in the natural persons' names of the representatives of a company does not nullify the declaration (Challenge No. 440/31, session of 8 December 1966).

Changes in the personality of the company's representative do not affect its juristic personality (Challenge No. 655/40, session of 26 January 1976).

The juristic personality entails the acquisition by the company of its own financial liability, independent from those of the partners; of a name, capacity, domicile and nationality (Challenge No. 122/52, session of 23 February 1987).

The sequestration imposed on a real estate property owned by a company to pay off a debt of a partner is void (Challenge No. 440/41, session of 28 March 1975).

The partner's share becomes the company's property. He will only retain his right to a certain ratio of the profits or a share in the capital on termination of the company (Challenge No. 28/40, session of 27 March 1974).

As regards the domicile of the company, Egyptian legislation expressly adopts the criterion of the headquarters as a general principle (Article 53 of the Civil Code). However, if the place of activity is different from the place of main administration, the latter being outside the territory of Egypt, the Egyptian legislature considers the place of local activity as the company's domicile, with the purpose of facilitating matters for the citizens dealing with this company (Article 53/4; Challenge No. 591/39, session of 4 February 1980).

The company shall be registered in its domicile within all the judiciary and official papers; otherwise it is void according to Article 13/3 of the Code of Procedure (Challenge No. 395/47, session of 1 April 1976).

As regards the nationality of a company, the criterion adopted is that the nationality of a joint stock company is not determined by the place of establishment alone but also by the existence of a relation between it and the main headquarters of the company.

Companies whose headquarters are based abroad are foreign.

According to Article 11/2 of the Civil Code, Egyptian law is applicable to companies that conduct their activity in Egypt, even if their actual headquarters is abroad.

3.2. Termination

The juristic personality of a company disappears with the end of its term or activity, the destruction of its property, its bankruptcy, the decision of the partners, the accumulation of all the share by one partner (Articles 526–531 of the Civil Code), its merger (Articles 130–135 of Law No. 159 of 1981); or the issuance of a judicial ruling of dissolution.

If the company is terminated because it came to the end of its term, the juristic personality is also terminated, even if the partners decide to extend the term of the company. The solution is different in case of extension of the term agreed upon within the lifetime of the company (Challenge No. 409/36, session of 18 May 1971).

The company may be terminated before the end of its term, by the agreement of its partners (Challenge No. 293/35, session of 16 August 1983).

If the company suffers bankruptcy, its juristic personality is terminated. The bankruptcy of the company also leads to the bankruptcy of joint partners (Challenge No. 471/46, session of 9 February 1981).

A ruling of bankruptcy of a company can be challenged by a joint partner even if he is not involved in the litigation (Challenge No. 471/46, session of 9 February 1981).

Partnerships are also terminated with the death of one partner or his bankruptcy or if a decision of seizure is made against him, unless the contract expresses an agreement on its continuation with the rest of the partners or the heirs of the deceased partner (Article 528 of the Civil Code; Challenge No. 27/33, session of 19 January 1967).

If the company continues between the rest of the partners or between them and the heirs of the deceased party in spite of the absence of an agreement on its continuation, the case is one of company *de facto* (Challenge No. 859/51, session of 5 January 1987).

If one of the partners suffers bankruptcy, this does not necessarily lead to the bankruptcy of the company, but it leads to its dissolution and the necessity of liquidation.

3.3. Liquidation

The termination of the company entails its dissolution and the winding up of the remaining property.

Dissolution provisions are regulated by Articles 532–537 of the Civil Code and Articles 137–154 of Law No. 159 of 1981. The director of the company is considered to be a liquidator until one is appointed (Challenge No. 1194 of 1956, session of 26 April 1993).

According to the Court of Cassation, the liquidation of a company covers all the necessary actions for determining the net property which is to be distributed on the partners after paying

off the dues and debts and selling the company's property (Challenge No. 833/54, session of 28 May 1990).

The company is considered to be in a state of liquidation after its termination whatever the reason for its dissolution (Challenge No. 611/53, session of 22 April 1985).

The juristic personality of the company continues during the time of liquidation, until it is over (Challenge No. 387/26, session of 7 June 1962).

The liquidator represents the company during the period of liquidation (Challenge No. 453/35, session of 24 November 1960).

The liquidator is considered as working as a proxy for the company, not its debtors (Challenge No. 311/43, session of 17 April 1978).

The liquidator takes over as soon as the company is dissolved. The task of the directors being over, they have to submit the company's books to him (Challenge No. 582/54, session of 14 May 1990).

The value of the existing company property, and whatever growth may have occurred, is assessed as of the time of liquidation, not the time when the cause of dissolution or liquidation took place (Challenge No. 710/49, session of 26 January 1981).

The contracts related to the company management should stay in force till the liquidation is accomplished, e.g. lease contracts (Challenge No. 41/45, session of 31 March 1979).

Changing the legal form of the company or replacing a partner during the liquidation period is invalid (Challenge No. 2/42, session of 28 November 1978).

The liquidator is as answerable as the holder of the power of attorney for every mistake committed (Challenge No. 314/43, session of 17 April 1978).

A partner is not allowed to get back his share in the capital before the liquidation, as it is the liquidation that determines the net property of the company which can be distributed among the partners (Challenge No. 287/25, session of 12 June 1969).

The termination of the liquidation must be certified (Challenge No. 293/35, session of 16 May 1983).

The time limit for legal actions against partners is five years starting from the date of the company's end of term (Article 65 of the Code of Commerce). This time limit affects only actions raised by a debtor against the partners or against the heirs or surviving spouse of a partner and not the legal action of the partners against one another or their actions against a third party or the company's actions against the partners or the debtor against the company or a partner against the company (Challenge No. 328/12, session of 17 February 1955).

4. Kinds of Commercial Companies

We shall confine presentation of kinds of commercial company to those not previously mentioned.

4.1. General Partnership

General partnership is regulated by Articles 19–22 of the Code of Commerce. It is considered to be the general law for commercial companies of no determinate kind (Challenge No. 74, session of 27 April 1944).

The partnership contract must be certified according to the provisions of the law (Challenge No. 125/18, session of 6 April 1990).

Registration in the commercial register does not exempt from the other certification measures (Challenge No. 298/41, session of 12 March 1976).

The partnership is subject to the aforementioned nullity provisions when the certifying measures are not taken.

Every partner has the right to demand the nullity of the company in the absence of certification. The company will be considered as a company de facto from the date of its creation till the time of the request of nullity, provided it has actually conducted its activity (Challenge No. 1326/55, session of 14 June 1993).

4.1.1. The Name of the Company

The title of the company shall include the name of one or more partners (Article 21 of the Code of Commerce); this title will be its commercial name (Article 5 of the Commercial Names Law No. 55 of 1951). It will be used in signing all the company's contracts. The signature of the company's name entails the liability of the company (Challenge No. 180/26, session of 18 May 1961).

4.1.2. Characteristics

4.1.2.1. The Shares

Free use of the share of a partner is forbidden as a general rule. The Court of Cassation has confirmed that this is the case unless a written approval from all partners is provided (Challenge No. 41/23, Session of 13 February 1956). It is also possible to offer the share to the partners before assigning it. The assignment must be certified and registered in the commercial registry.

If the partner uses his share without the agreement of the partners, or without complying with the terms of the contract, this act will be valid between him and the third party, as the partner is disposing of a personal right represented in his share in the profits and the company property at liquidation, but this disposal will have no effect against the company or the partners. The third party, therefore, will remain foreign to the company (Challenge No. 28/40, session of 27 March 1974).

If the assignment is achieved according to the terms of the contract, it should be certified as well as entered in the commercial register.

The partner who makes the assignment remains liable for the company debts previous to his assignment.

The action of revocation becomes obsolete five years after the certification of the assignment.

4.1.2.2. Personal and Joint Liability

Partners are personally and jointly liable toward third parties (Article 22 of the Code of Commerce) and there shall be no agreement on the contrary (Challenge No. 660/40, session of 7 June 1976).

A joint partner has an interest in challenging a judgment passed against the company (Challenge No. 180/26, session of 18 May 1961).

A judgment may be executed against the personal property of a joint partner (Challenge No. 660/41, session of 7 June 1976).

It is usual for the courts in Egypt to proceed against the company for its debts and get a judgment against it before executing a decree on the personal property of a partner (Mixed Court of Appeal, session of 18 November 1891).

4.1.2.3. The Quality of Merchant

A joint partner is a merchant. This applies even if he is an employee whom the laws forbid to practice commercial business (Challenge No. 2/43, session of 21 February 1974). The partner is obliged not to compete against the company.

4.1.3. Nationality of the Partner

The Code of Commerce did not stipulate that joint partners had to be Egyptians. However, Law No. 34 of 1976 concerning commercial registration states that the commercial register shall only register Egyptian nationals who have a license to practice commerce issued by the competent chamber of commerce.

According to Article 4 of the aforementioned commercial registration law, a foreigner may carry on business only in certain limited cases; these are the projects established according to the provisions of the investment laws (Law No. 8 of 1997 concerning incentives for investment).

This also applies to partnerships provided that one of the general partners is Egyptian and that he has the right to run the company and sign on its behalf. The share of the Egyptian partners should also be at least 51 per cent of the capital.

In addition, companies based abroad and wishing to conduct their commercial or industrial activities in Egypt may conduct business provided they get an authorization from the Investment Authority.

Article 4 of the law on commercial registration, as amended, authorizes foreigners to conduct commercial business individually or through a company of foreigners in the field of exports with the purpose of encouraging exporting activities.

4.1.4. Management

The management of the company is regulated by Articles 516–520 of the Civil Code. The director may be one of the partners or a third party. He can be a non-partner foreigner; in this case he is not considered a merchant and he may not be declared bankrupt as a result of the bankruptcy of the company he runs (Challenge No. 83/46, session of 10 March 1980).

If a partner director is appointed according to the company contract, he is a contractual director and cannot be dismissed without the agreement of all the partners, he himself included.

If the partners fail to appoint a director, every partner is considered authorized by the other partners to run the company. Every partner has the right to sign in the name of the company as well as to represent it before the courts (Challenge No. 107/37, session of 28 December 1971).

The director can be an individual or a group. His powers are defined by the company's contract or his contract of appointment. According to Article 516 of the Civil Code, the

partner delegated to run the company, according to a special provision in the contract of the company can perform all the actions included in the contract of the company despite objections by the other partners. If the powers of the director are limited, this has to be certified so that it can be used in litigation against a third party.

The company is committed by the actions of the director by virtue of his signature in the name of the company. If the powers of the director are limited, this cannot be used in litigation against a third party unless certified (Challenge No. 122/52, session of 23 February 1987).

If the director signs using his own personal name, there is a presumption that he acted in his own interest; however, the opposite may be proved by all means of proof (Challenge No. 91/22, session of 7 July 1955).

The director represents the company before the courts. He gets a salary and his responsibility is to be determined according to the general rules if he abuses his powers or if he uses the company's name for his own personal interest and if the company has to answer his acts before third parties (Article 22 of the Code of Commerce) (Challenge No. 122/52, session of 23 February 1987). The director can be dismissed by the body that appointed him or by the courts.

If a non-director partner conducts an action on behalf of the company, the company is not responsible for it, and this partner is personally answerable for its consequences unless the other partners consented to it afterwards (Challenge No. 22/23, session of 27 June 1957).

It was also judged that the responsibility of the non-director joint partner toward third parties is based on fraud (Challenge No. 22/23, session of 27 June 1957).

The relationship between a partner director and the company is not a work relationship, and all the cash accruing to him in return for his work is not a salary but a share of the profit (Challenge No. 686/46, session of 5 April 1982).

4.2. Limited Partnership

This kind of company is distinguished by the fact that its partners have limited responsibility (Article 27 of the Code of Commerce) and it is not necessary to list their names in the commercial register. The limited partnership has a juristic personality independent from the personality of its partners. The shares are transferred from the ownership of the partners to the financial ownership of the company (Challenge No. 28/40, session of 27 March 1974).

A company creditor has no right to sue a partner of a limited partnership unless it is through an indirect action (Challenge No. 283/35, session of 19 June 1969).

The partners of a limited partnership do not have the right to run the company (Article 23 of the Code of Commerce; Challenge No. 283/35, session of 19 June 1969) even with a power of attorney (Article 28). Running this company takes place with a title which has to be the name of one or more of the joint partners. The title may not be the name of one of the limited partners (Article 26). If one of the limited partners entered his name in the company's title, contrary to the text of Article 26, he becomes responsible, like a joint partner, for all the debts and obligations of the company (Article 29; Challenge No. 117/20, session of 12 March 1953). In addition, the limited partner does not acquire the status of merchant.

If the limited partner interferes in running the company, he becomes responsible, like a joint partner, for the company's debts and obligations that result from the work that he has carried out (Article 30; Challenge No. 283/35, session of 19 June 1969).

The limited partner may be responsible, like a joint partner, for all or some of the obligations of the company, according to the number and size of his actions and according to the credit the third party gives him because of these actions (Article 30/2 of the Code of Commerce). He will also acquire the status of merchant (Challenge No. 83/46, session of 10 March 1980).

The limited partner is not forbidden from carrying out internal management (Article 31). The limited partnership is terminated with the death or bankruptcy or interdiction of one of the partners unless agreed upon differently (Article 528 of the Civil Code).

4.3. Joint Venture

This kind of company is distinguished by its concealment as it is established in secret with no third party knowing about its establishment or its partners (Challenge No. 350/34, session of 21 March 1968). This company is not registered nor certified and has no juristic personality (Challenge No. 924/49, session of 28 December 1981).

The contract of such a company, written or not, remains with the partners alone (Challenge No. 34/15, session of 27 February 1946).

Its existence can be proven by all the methods of proof.

This company is regulated by Articles 59–64 of the Code of Commerce.

The company is usually run by one of the partners, called the director. He signs contracts in his personal name, then he transfers the result of the contract to the rest of the partners. It is sometimes agreed that every partner shall run his share or a part of the company's work, then each of them presents an account to be used as a basis for the distribution of the result of these actions.

If one of the partners enters a contract in the name of the company or registers its contract in the commercial register, the company loses its concealed quality and becomes a *de facto* general partnership with incomplete formal conditions while enjoying juristic personality (Challenge No. 74/13, session of 27 April 1944).

The judge has to give in his judgment the reasons why the company is considered a general partnership instead of a joint venture (Challenge No. 114/16, session of 9 October 1947).

A consequence of the absence of a juristic personality is the absence of a financial liability and the absence of a general security for the creditors of this company. The security is confined to the financial liability of the partner who deals with them, so they get a share together with the personal creditors of the partner.

A partner has no right to demand a third party to execute contracts made with another partner (Challenge No. 426/35, session of 25 February 1960).

It is up to the judge to determine whether the company has lost its concealment or not (Challenge No. 74/13, session of 27 April 1944).

The company is terminated for the same aforementioned general and special terminating causes.

In addition, the company is liquidated as soon as the partner director presents an account to the other partners, who audit this account according to the company's books if any. The liquidation cannot be contested, because there is no juristic personality (Challenge No. 151/40, session of 20 January 1976).

4.4. Limited Liability Company

4.4.1. Characteristics

The Egyptian legislature introduced this kind of company with the abolished Law No. 26 of 1954 as copied from the French law of 7 March 1925. It is now regulated by Company Law No. 159 of 1981.

Such a company is distinguished by the fact that it is composed of a number of partners not exceeding 50, otherwise the partners have to change its form to a joint stock company if the number is not rectified to 50 partners within a year starting from the date of increasing the number to over 50. Every member is responsible in ratio to his share in the capital and acquires the quality of merchant. This company may not be established, or its capital increased or money borrowed for its account by means of public subscription. It also cannot issue shares or stocks that can be circulated. The transfer of shares is subject to the partners getting back their shares according to the conditions required by the company's contract and the provisions of company law. The legislature defined the capital of such a company as not less than 50,000 pounds; the whole capital is to be paid up at the establishment of the company. A partner may not contribute his share in the form of work in this company or in joint stock companies.

If the partner's share is in kind, he has to indicate in the contract of the company its kind, value and price consented to by the rest of the partners, in addition to the name of the partner and the value of his share in the capital in return for his contribution (Article 29/2 of Company Law No. 159). The other partners are considered jointly responsible for paying the difference in assessment of the share if it is proven that the original assessment was exaggerated, unless it is proven that they were ignorant of that fact (Article 39/3 of the Law and Article 70 of the executive regulations). They are answerable towards third parties even if they agreed otherwise among themselves. This is in addition to the criminal sanction which is stipulated in Article 162/3 of the Law if one of the partners contributed shares exceeding their real value as a fraudulent practice.

Article 8 of Law No. 159 of 1981 introduced a new provision by giving the company a period of six months if the number of partners becomes less than two, to rectify this number. If this is not achieved, the company becomes dissolved by force of law. The legislature acknowledged the personal unlimited responsibility of the remaining partner. Article 8 is applied to the other companies which are regulated by Law No. 159 of 1981.

The limited liability company shall take a special name which may be taken from its object; or include the name of one or more partners. According to Article 6 of Law No. 159 of

1981 which regulates its statutes, its name must be followed by the phrase 'limited liability' also indicating the issued capital.

Article 5 of the Law defines the activities of such a company and prohibits it from dealing in insurance, banking, saving, and from collecting deposits or investing funds for others.

4.4.2. Establishment

The limited liability company is established by means of an official contract or with certified signatures (Article 15 of Law No. 159 of 1981). The contract of the company is to follow the model issued by the competent minister.

According to Article 7 of the Law, whoever participates in effect in the establishment of the company with the intention of bearing the responsibility arising from that is considered to be a founder of the company.

Whoever signed the preliminary contract or applied for a license to establish the company or contributed with a share in kind is also considered to be a founder.

The company's contract shall be certified and registered in the commercial register and has to be published in the company's bulletin at the expense of the company.

4.4.3. Management

The company shall be run by one or more directors, chosen either from among the partners or otherwise. The contract shall indicate the manner of management and the majority necessary for taking decisions. The director shall enjoy full capacity and must not have received a sentence for a felony or a dishonoring misdemeanor.

Law No. 159 of 1981 does not require that the director be of Egyptian nationality. However, Article 281 of its executive regulation requires that at least one of the members of the board of directors be Egyptian.

Any decision issued by the company with the effect of limiting the powers of the director shall not take effect in respect of third parties until five days after the date of its entry in the commercial register (Article 121/2 of Law No. 159).

There shall be a supervision committee if the number of partners exceeds ten, with the purpose of controlling the company's work, balance sheet and annual report.

Egyptian workers of the company in Egypt shall not be less than 90 per cent of the total workers; their wages shall not be less than 80 per cent of the total wages. If the capital exceeds 50,000 Egyptian pounds, the number of the Egyptian technical and administrative staff working in Egypt shall not be less than 75 per cent of the total workers, and the total of their wages shall be not less than 70 per cent of the total wages of the mentioned categories of workers. In exceptional cases, the competent minister may permit the employment of foreigners when Egyptian workers are not available (Articles 174–180 of the Law).

According to Article 285/1 of the executive regulation, the workers in such a company have no share in the profits unless two conditions are fulfilled: the first is that the capital of the company reaches the minimum of the capital of a joint stock company. The second is that the limited liability company carries out the same activity as a joint stock company.

However, the model contract of establishment of a limited liability company set only the first condition for workers to have a share in the profits. The model also defined a rate of

at least 10 per cent of the distributed profits provided that this does not exceed the total annual wages distributed among the workers.

If the partners in a limited liability company whish to change its form, they have to comply with the provisions of Article 136 of the Law and Article 299 of the regulation.

The limited liability company is not terminated with the death, bankruptcy or interdiction (following a criminal conviction) of one of the partners. His share is transferred to his heirs or to the beneficiaries of his will (Article 118/5 of the 1981 Law). If the heirs or beneficiaries of one share are many, the company may stop the use of the rights related to this share until they chose one person among themselves to be considered the individual owner of the share in priority to the other partners (Article 116/3 of the Law).

4.5. Partnership Limited by Shares

This kind of company includes two types of partners: general partners and shareholders. It is distinguished by the fact that its issued capital should not be less than 250,000 Egyptian pounds and that the paid up capital at incorporation should not be less than a quarter of that sum (Article 6/2 of the regulation). The name of the company is composed of the names of the general partners only, to the exclusion of those of the shareholders. It is necessary to add the phrase 'Partnership Limited by Shares' on all its correspondence and publications. It is prohibited from activities in the field of insurance, banking, saving, or collecting funds for investing.

The running of the company is done by the general partners and not by the shareholders or others (Article 111 of Law No. 159 of 1981). The powers of the director are determined by the limits certified in the contract of the company and its statutes, and there should be a supervision committee composed of at least three members of the shareholding partners (Article 112 of the Law).

The company shall have an auditor (Articles 103–109 of the law). The general assembly of the company is composed of the shareholders; its holding and decisions shall comply with the provisions of the joint stock companies.

The form of the partnership limited by shares may be changed, in accordance with Article 136 of the law and Article 299 of the regulation. It is terminated by the general and special causes mentioned above with respect to the termination of the juristic personality.

4.6. Joint Stock Company

4.6.1. Characteristics

Article 2 of Company Law No. 159 of 1981 defined the joint stock company as a company whose capital is divided into shares of equal value that can be circulated in the manner indicated by the law.

The responsibility of a shareholder is confined to the payment of the price of the shares of his subscription and he is responsible for the debts of the company only within the limits of the shares he owns. The company has a trade name derived from its purpose; that name shall not be that of a partner.

The capital of the joint stock company with public subscription shall not be less than half a million Egyptian pounds; for the immediate subscription company, the minimum is 250,000 pounds. The sum paid up at incorporation must not be less than a quarter, the rest should be paid in instalments over a period not exceeding five years (Article 32 of Law No. 159 of 1981 as amended by Law No. 3 issued on 18 January 1998).

After the amendment of Article 37 of the law of 1981 by Law No. 3 of 1998, it is no longer required that a certain ratio of the shares be offered to Egyptians. Previously, a ratio of 49 per cent of the shares had to be offered to Egyptians for a period of one month at the establishment of a company or when increasing its capital. If the given period elapsed without achieving the ratio, it was possible to cancel it. The legislature had exempted a number of companies from the ratio, such as investment companies established according to the investment laws (which became Law No. 8 of 1997 concerning securities and incentives for investment).

4.6.2. Establishment

The company shall be established and its statutes written according to the model issued by the competent minister. Whoever signed the contract of the company, contributed a share in kind to its capital or applied for a license for its establishment is considered a founder. This also applies to whoever participated effectively in the establishment of the company with the intention of bearing the responsibility for that (Article 7 of Law No. 159 of 1981). The founders shall subscribe no less than half of the issued capital, or 10 per cent of the authorized capital, whichever is greater. The founders represent the company in the process of creation. The contract must be official or with its signatures certified (Article 15 of the Law).

The joint stock company may be incorporated with a public subscription; its incorporation may be immediate, thus it becomes a closed company.

If the joint stock company is established in such a way that it breaches the provisions of the law, the company becomes null and void (Article 161/1 of the Law). However, the claim in nullity may not be filed if the concerned party knew of the breaching practice or decision for more than one year prior to the claim (Article 161/3).

The joint stock company is terminated by the general causes of termination of companies. The decision of the extraordinary general assembly to dissolve the company is considered an agreement on termination of contract before term, in which case the measures of certification stated in Article 57 of the Code of Commerce must be taken in order to use that in litigation against third parties (Article 58; Challenge No. 293/35, session of 16 May 1983).

4.6.3. Financial Instruments Issued

4.6.3.1. Shares

The provisions concerning the definition, value and types of share are regulated by Articles 31–36 of the Law. The shareholder is entitled to a share of the profits as this is a basic right, albeit only eventual (Challenge No. 421/48, session of 21 February 1983).

The shares are subject to the principle of circulation (Article 2/1 of the Law and Article 139/1 of the Regulation). Company law set limits on the circulation of the shares as no

circulation is allowed for the shares of the founders and the shares in kind before the publication of the balance sheet and profit and loss assessment and the other related documents for two complete fiscal years, not less than 12 months from the date of the company's establishment (Article 45/1). However, holders may transfer shares among themselves; the same applies in the case of death (Article 45/3; Challenge No. 856/49, session of 28 March 1983).

Exempted from this ban are the shares which arise as a result of a merger, or the shares contributed in return for the capital of the merged company, which can be circulated immediately after issuing them.

As for the security shares given by members of the board of directors, they may not be circulated till the end of their membership and the issuing of a decision by the general assembly declaring them free of obligations (Article 91 of the Law).

Articles 139–141 of the Regulation allow for setting agreed-upon limitations on share circulation, provided that these limitations do not reach the extent of depriving the shareholder of the right of assigning his shares. For these limitations to be valid, they shall be included in the statutes of the company, just like the requirement of offering the shares to the company before selling them.

4.6.3.2. Stocks

Issuing stocks in a public subscription is confined to joint stock companies and partnerships limited by shares. Their provisions are regulated by Articles 49–52 of the Law. The stocks can be turned into shares (Article 51 of the Law). The Law introduced the system of the group of stockholders at the same issue with the purpose of protecting the interests of its members. The group must have a legal representative (Article 52/1).

4.6.4. Management

The company is run by its general assembly, ordinary and extraordinary (Articles 59–76). The board of directors, regulated by Articles 77–102, is entrusted with the management. Article 92 of the Law formerly required that the majority of the members of the board be Egyptians; but this condition was rescinded by Law No. 3 of 1998.

The board of directors enjoys full powers to run the company and take all actions necessary to achieve the company's object, except what a special text of the law or the company's statutes consider as exceptions and acts or measures deemed within the domain of the general assembly (Article 54/1).

Article 55/1 of the Law, to protect *bona fide* third parties dealing with representatives of the company, allows them to complain against acts of any of the company's representatives, even if the act was conducted in breach of the powers authorized to the representative, or did not comply with the law.

5. Law No. 8 of 1997 Concerning Investment Incentives and Guarantees

Law No. 8 of 1997, in 45 Articles, describes the fields which are eligible for benefits and tax exemptions and provides guarantees not set for companies established according to any other law.

According to Article 1, the fields of implementation of the law are the following:

- reclaiming and cultivating the arid and/or desert lands;
- animal, poultry and fish production;
- industry and mining;
- hotels, motels, hotel apartments and touristic villages;
- touristic transport;
- chilled goods transport, agricultural crops refrigerators, industrial products and foods and container stations and grain storage barns;
- air transport and directly related services;
- overseas maritime transport;
- supporting petroleum services for drilling and transporting and delivering natural gas;
- housing, renting all units non-furnished for non-administrative residence;
- infrastructure of drinking water, sewage, electricity, roads and communications;
- hospitals and medical and treatment centers which offer 10 per cent of their services free of charge;
- financial leasing;
- security for subscription in stocks and shares;
- risk capital;
- production of computer software and systems;
- projects financed by the Social Fund for Development.

In addition, the Cabinet may add other fields needed by the country. The executive regulation of this law determines the conditions and limits of the mentioned fields.

Projects are established according to this law – whether in the form of a company or an establishment – with a contract whose signatures are to be certified. The competent body (currently the Investment Authority) issues a decision of establishment. They enjoy juristic personality starting from the day of registration in the commercial register.

Among the guarantees provided by this law are the following: they may not be nationalized or confiscated or put under administrative sequestration or under custody or frozen (Articles 8–9). No administrative body may interfere by imposing a price policy or determining profits or canceling or suspending the use of the real estate that was licensed except in the case of breach of the conditions of the license.

These companies and establishments shall have the right of owning lands and buildings necessary for conducting their business whatever the nationality of the partners or their place of residence or the ratio of their shares. These projects are also exempt from registration in the importers' registry when they import what they need; the same applies to the exporters' registry (Article 13).

Shares and establishment shares may be circulated in the first two years of the company with the approval of the prime minister (Article 14/2). Furthermore, these projects are not subject to the provisions of Law No. 73 of 1973 concerning the conditions and measures of election of workers' representatives in the boards of directors. The statutes of the company shall indicate the method of the participation of workers in the management (Article 14/4).

Articles 16–27 present the tax exemptions that private projects enjoy. Article 28 indicates that the prime minister may issue a decree based on a proposal by the competent minister for allocating state-owned lands free of charge to projects that are established in certain areas in the fields defined in Article 1. Articles 29–44 contain the free zone system and the guarantees and benefits set for the project in those areas.

No suit may be filed without a written request from the competent administrative body. Reconciliation is possible during the examination of the suit in return for a sum equal to the minimum fine (2,000 LE). Reconciliation entails the termination of the lawsuit.

The provisions of Law No. 159 of 1981 concerning joint stock companies, partnerships limited by shares and limited liability companies apply to the companies that are incorporated according to Law No. 8 of 1997 concerning investment incentives and guarantees. (Challenge No. 1578/55, session of 19 July 1993).

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6. TAX LAW

1. INTRODUCTION

Tax law is a major component of any country's economic law and a corner stone of its monetary tools. In Egypt, tax law has been used as a means for raising public funds, for undertaking monetary policy and for effecting some degree of income redistribution.

Taxation is not an alien concept to the Egyptian society. Under various Islamic empires throughout the centuries, taxes were imposed on incomes and on property. The payment of a portion of one's annual income in the form of *Zakat* – i.e. direct contribution to the poor or to the central treasury – is one of the five pillars of Islamic faith.

As Egypt was often ruled from places as far away as Baghdad or Istanbul, tax collection was sometimes the main concern of the central authority which was quite satisfied to leave local rulers run the affairs of the land as long as taxes were paid in a satisfactory manner. During the Mamluk era, a system called *Iltizam* was introduced whereby one wealthy or powerful individual, often a warlord, would be in charge of remitting to the central treasury a certain fixed amount of tax money on behalf of a whole geographical area, and was allowed to collect whatever taxes he could from the inhabitants of that area, often by brute force.

The introduction of modern tax laws – based on Continental European models – did not begin until Egypt began to adopt a new legal system based on codification and on principles of civil law.

Currently, tax law in Egypt is not found in a single act of legislation, but in a wide range of laws, each dealing with one or more specific areas of taxation. Moreover, whereas some of these laws deal exclusively with a whole type of taxation, others include some tax provisions in the context of treating a specific area of economic activity. The result is that Egypt's tax law is widespread in a large number of legislative instruments, and significant effort needs to be undertaken in order to unify and streamline the wide range of tax provisions and practices that currently exist.

This chapter will not attempt to present all of the substantive Egyptian tax laws. It will, however, discuss some of the main legal aspects of fiscal law in Egypt beginning with an analysis of the constitutional elements that govern taxation and that provide the broader legal framework. This will be followed by a brief overview of two of the most important taxes applied in Egypt, one directly, the other indirectly. Next, the chapter will assess the experience and precedents established by the Supreme Constitutional Court in reviewing

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various tax laws. And, finally, the chapter will conclude with a few overall remarks on the practice of tax administration in Egypt.

2. General Principles: Taxation in the Constitution and Jurisdiction

Constitutional considerations affect tax law in Egypt in two major ways; the first is with regard to imposition of taxes, the second is with regard to jurisdiction. Both issues are discussed below. However, it is important to point out that constitutional law plays another crucial role in the form of the judicial review imposed by the Supreme Constitutional Court over the legality of various taxes. This subject will be dealt with separately later in this chapter.

2.1. Power to Impose Taxation

The Constitution of Egypt, published in the Official Gazette on 12 September 1971, stated a fundamental principle of tax law in Egypt to be observed in any specific tax legislation. This is the principle embodied in Article 119, whereby no taxation may be levied, cancelled or amended except by law, and no exemption from taxation may be accorded except in cases stated in the law.

This principle has two practical implications. The first is that no municipal taxes are allowed nor any other levies imposed by any local or national authority without a provision in the Law. Taxes may not be imposed except by the central authority and through an Act of Parliament and all taxes are administered by the central tax authority under the supervision of the Ministry of Finance.

The second implication is that the government may not impose or amend taxes without permission from Parliament. In other words, the executive authority may only administer tax collection and may in this regard issue rules of procedure only, setting out how taxes are collected, by whom and under which rules. However, in terms of substance, only Parliament may impose new taxation, determine and amend tax rates and exempt from taxation.

Recent experience in Egypt, however, has shown that this principle has not always been observed and that it has been circumvented by consecutive governments, which have encroached on the Parliament's exclusive powers from time to time. This, needless to say, is an attitude that has been, and remains, subject to debate.

One of the most significant examples of the encroachment of the executive authority in the area of tax law is to be found in Investment Law No. 8 of 1997. To understand this aspect of tax law, it is important to recall the history and circumstances of the investment regime in Egypt.

Since the early 1970s, a gradual trend of economic liberalization began to dominate economic policy making in Egypt. The hallmark of this policy rested in consecutive laws aiming at encouraging foreign, and later local, investment in Egypt. This was achieved by identifying a number of activities which allow investors significant tax holidays. Although the scope of these activities and of the tax exemptions changed with every new law, and local capital was later allowed to benefit from the same privileges as foreign

capital, the basic philosophy of the investment regime did not change. Thus, the current legislation dealing with this subject – Law No. 8 of 1997 – also identifies certain fields of investment, and grants a tax holiday of five, ten or 20 years – depending on the geographical location – to projects established in those fields.

The fact that the Investment Law was passed by Parliament, in itself, complies with the constitutional principle stated above. However, Article 2 of the said law, after listing the 16 fields of investment, goes on to state that: 'Other fields of investment may be added upon the decision of the Council of Ministers'. In effect, although the Council of Ministers is not granted the right to impose or reduce taxation in general, it has, on the basis of this Article, the right to add new fields of investment, thus extending the tax holiday to other areas not specifically approved by Parliament. To be entitled to extend a significant tax holiday on any number of fields of activity not originally contemplated by Parliament amounts in effect to granting the Council of Ministers the authority to reduce and exempt from taxation.

The role of the Council of Ministers to exercise this discretion with regard to taxation has been the subject of debate in Egypt. Whereas some – including the writer of this chapter – consider it an indirect method of breaching a clear constitutional principle, others have argued that it is not. The latter argument has been based on the notion that as long as the authority of the Council of Ministers to add new fields of investment, thus indirectly exempting from taxation, is based on an explicit text of the law, then no constitutional principle has been breached. This argument, however, misses the spirit, if not the text of the constitutional principle, which is that imposing and exempting from taxation is the exclusive right of Parliament and not the executive authority.

The encroachment of the executive authority into granting exemptions from taxation is not found in the Investment Law alone, but is part of a growing trend in economic legislation.

2.2. Court Jurisdiction

The determination of which Egyptian courts have jurisdiction over tax disputes is not a straightforward matter. These disputes are, by their very nature, administrative disputes in the sense that they occur between private law persons and the state administration. According to Article 172 of the Constitution, the State Council (Egyptian *Conseil d'Etat*) has jurisdiction over all administrative disputes. On the basis of those two premises, jurisdiction over tax disputes should normally rest with various administrative courts. Moreover, the consecutive laws dealing with the formation and jurisdiction of the State Council have consistently stated that tax disputes are to be settled by administrative courts. The same is repeated in the current law dealing with the State Council – Law No. 47 of 1972 – in its Article 10/6.

However, the current state of affairs is that tax disputes are settled by ordinary civil courts. The reason for this is that according to the same law governing the State Council, tax disputes should be settled in accordance with the procedural provisions of the judicial department of the State Council. However, as these provisions have not yet been issued

with regard to tax disputes, the latter have remained within the jurisdiction of ordinary civil courts.

It is important that the procedural rules for reviewing tax disputes be issued so that such disputes may finally be reviewed and settled by the competent courts, i.e. the administrative ones. This would not only respect the constitutional principles, but, perhaps more importantly, allow such cases to be decided by a more competent judiciary in administrative matters.

3. Tax Law

As previously mentioned, this chapter will not discuss every substantive aspect of Egyptian tax law. It will, however, briefly mention two of the most important taxation laws, namely Unified Income Tax Law No. 157 of 1981 and Sales Tax Law No. 11 of 1991. The choice of these two forms of taxation is not merely based on their particular importance, but because the first is a direct tax levied on incomes, whereas the second is an indirect one levied on transactions; thus they represent the two main types of taxation known in Egyptian law.

3.1. The Unified Income Tax Law

The current income tax law in Egypt is Law No. 157 of 1981. This law deals with the taxation of incomes made by natural as well as juristic personalities. In 1993 the law was substantially reviewed – by Law No. 187 of 1993 – and became since known as the Unified Tax Law (in this chapter referred to as the Income Tax Law).

The main thrust of the law is to identify the taxable income of each person subject to its scope. Taxable income for this purpose means income derived from any source, excluding exempt ones, from which certain allowed deductions are made. The taxable income is then made subject to a schedule of tax brackets in order to determine the person's net tax liability.

The Income Tax Law, as described above, relies on a number of basic principles. The first is gradual taxation, whereby the tax rate paid by each person depends on that person's taxable income and escalates from one tax bracket to a higher one as that income increases. The second principle is the personality of taxation, meaning that no one but the person whose income is subject to taxation may be liable for its payment. Thus, an agreement between two persons where one undertakes to pay the other's taxes does not shield the latter from pursuit by the tax authorities, although it allows that person to request a refund from the former. The third principle deals with the mechanism of withholding a portion of the income and its remittance directly to the tax authorities by the person who pays the income. This does not contradict the second principle, because the obligation to pay on behalf of the taxed person is derived from law and not from contract. And the fourth principle subjects all decisions made by the tax authorities to judicial supervision, whereby the courts would have the final say about disputes arising between the tax authorities and any other persons with regard to the application of the tax law.

The Income Tax Law is divided into a number of sections, each dealing with a certain category of taxation. The main distinction in the law is between natural and juristic

personalities. The term natural personalities refers to ordinary individuals, whereas juristic personalities refers to corporations – mainly joint stock companies – which by virtue of law acquire an independent and collective personality.

3.1.1. Natural Persons

Natural persons are subject to five types of income taxation, depending on the nature of the taxable income:

(1) tax on income derived from moveable assets, such as the profit made from financial securities, or the interest rate on loans;
(2) tax on income derived from commercial and industrial profits, including profits made by partners in a commercial or industrial partnership;
(3) tax on salaries and other forms of regular remuneration, whether paid by private sector or public sector entities;
(4) tax on income earned by professionals, such as lawyers, accountants and architects;
(5) tax on income derived from real estate assets, whether agricultural land, built premises or otherwise.

3.1.2. Juristic Personalities

The Unified Income Tax Law deals in a separate manner with taxation on incomes made by corporations, which are joint stock companies, limited liability companies and partnerships limited by shares. It is worth noting that the same provisions apply for public sector entities with regard to the income derived from their commercial activities.

3.2. The Sales Tax Law

The Sales Tax Law was issued by Law No. 11 of 1991 to replace a previously existing Consumption Tax Law No. 133 of 1981. This is an example of indirect taxation whereby the tax is levied on a certain transaction and not on a person's income. This tax is levied on the value added portion of each transaction involving the sale of a commodity or a service, provided they are included in lists attached to the law. These lists may be amended by decision from the President of the Republic provided parliamentary approval is obtained within 15 days.

The scope of application of the tax was originally divided into three stages, which would come into effect by decision from the President of the Republic. The first stage involves the producer or importer of the commodity and the provider of the service, whereas the second involves the wholesale trader as well, and the third includes the individual sellers. The People's Assembly decided to apply stages 2 and 3 starting from 1 July 2001.

One of the interesting features of the Sales Tax Law is that it states that disputes arising out of its application shall be resolved by arbitration, and that the decision of the arbitral tribunal is final and binding. This is unlike the general principle established in Egyptian law whereby disputes are subject to judicial review, as mentioned with regard to the Unified Income Tax Law. Moreover, the arbitration provisions in the Sales Tax Law

may be deemed unconstitutional in view of the general principle established in Egyptian law, that arbitration has to be an optional decision by both parties to a dispute, even if their agreement precedes the dispute.

4. Judicial Review: Role of the Constitutional Court

Egypt's Supreme Constitutional Court has been at the forefront of law making in Egypt since its inception in the early 1980s. The decisions of this court with regard to the constitutionality of various laws has provided the Egyptian legal system with a valuable safeguard against the excessive powers otherwise accorded to the executive authority on the one hand, and against legislation by Parliament that contradicts constitutional principles.

In the area of tax law, the Supreme Constitutional Court has played a prominent role in deciding the unconstitutionality of some of the major tax laws. The most significant decision by the court with regard to taxation laws was issued on 6 December 1993 (No. 43/13 published in the Official Gazette on 23 December 1993).

In this case, the plaintiff filed a case requesting the declaration of unconstitutionality of certain provisions of Law No. 229 of 1989 concerning taxes on salaries earned by Egyptians working abroad, in order to annul a decision by the tax authorities to charge her with the payment of a certain sum due while she was on unpaid leave. And although the plaintiff originally challenged Articles 1, 2, 4 and 5 of the law, the court decided that the whole law was unconstitutional. The decision was based on two major considerations: the first is that the law was applicable only to government and public sector employees and in that respect violated the principle of non-discrimination, and the second is that it allocated a specific tax liability for each employment level, irrespective of the real income earned.

Perhaps more significantly, the court found that it had to pronounce a general rule on the philosophy governing tax legislation, quoted here for its value in establishing a precedent: '... there is no legitimate interest behind the enactment of legislation which aims solely at increasing the State's revenues through the establishment of a tax that lacks formal requirements and the right subjective motives. The collection of money in itself is not a goal protected by the Constitution, and [therefore] such collection has to be according to its rules and in application of its provisions'.

Another leading decision by the court concerns the Consumption Tax Law No. 133 of 1981 (Decision No. 16/16 of 23 November 1996 published in the Official Gazette on 5 December 1996). The decision of the court to declare the unconstitutionality of a Presidential Decree No. 209 of 1990 which amended a schedule attached to the law in accordance with the powers accorded to the President of the Republic in Article 2 of that law to amend the attached schedule. Here the court concluded that granting the executive authority – in the form of the President of the Republic – the right to amend a schedule in the tax law in a manner which leads to imposing taxation or exempting from it contravened Article 119 of the Constitution which states that the imposition of or exemption from public taxation may be stated in law only. This, unfortunately, has not led to the executive authority respecting the same principle in later legislation, as previously described above with regard

to the right of the Council of Ministers to add new investment fields that are tax-exempted to the list stated in the Investment Incentives and Guarantees Law No. 8 of 1997.

5. Concluding Remarks: Tax Administration

Tax law cannot be separated from tax administration. It is the administration of taxes that ultimately leads to the realization of the goals of the State in imposing them in the first place. In Egypt, tax administration has been a chronic problem for a long time. Tax evasion is widespread and the application of taxation rules is not uniform.

It is easy to say that the improvement of tax administration requires the continuous training of tax administrators, the improvement of their payment and work conditions and the introduction of modern technology. All of the above is true. But in addition to this, significant review of the tax laws has to be undertaken in order to facilitate the understanding of the law, and to reduce the procedural requirements for assessment and for payment. Moreover, a comprehensive review of the tax rate applied for various taxes needs to be undertaken in order to expand the tax base and possibly reduce the tax rates.

M. Abu el-Einein

7. COMMERCIAL ARBITRATION

1. HISTORICAL EVOLUTION

Before the promulgation of its new laws, the system of arbitration in Egypt followed the provisions of Islamic Shari'a according to the Hanafi doctrine, which sanctioned arbitration. Disputes at the time were usually resolved by conciliation as favored by Muslim scholars.

The Egyptian legislature began laying down an integrated arbitration system when it was decided to modernize Egyptian laws. Thus the Code of Civil and Commercial Procedure issued by a Supreme Porte edict dated 13 November 1883 included, in Part X, Chapter 6, Articles 702–727, the provisions governing arbitration under the title 'On the Arbitration of Arbitrators'. In these Articles, the legislature established a developed, comprehensive system for arbitration which provided that arbitration is contractual and that the arbitral clause must be evidenced in writing, specified the method of appointing arbitrators and set forth the modalities of challenging arbitral awards.

This system remained in force until the said Code of Procedure was repealed and replaced by the Code of Civil and Commercial Procedure No. 77 of 1949, which addressed the issue of arbitration in Part 3 of Book III in Articles 818–850.

Despite the availability of an advanced legal system for arbitration as a convenient dispute-resolution method since 1883, the importance of arbitration at the practical level remained negligible. Litigation remained the rule and arbitration the exception.

With the promulgation of the Nationalization Laws of 1961 and the establishment of a public sector that encompassed all public economic activities, the need for arbitration as a legal system based on the freedom of the contracting parties disappeared, and a new and entirely different need arose, namely, the need to resolve disputes between units of the public sector through arbitration. The underlying philosophy here was that since all these units were part of the public domain and, at the end of the day, subdivisions of one patrimony, it made more sense to resolve the disputes that arose between them through compulsory arbitration.

Hence, what is known as compulsory arbitration emerged in Egypt. The process was regulated by successive laws which laid down the legal organization of public sector entities and companies, the latest being Law No. 97 of 1983. The system of compulsory arbitration was based on the competence of arbitral tribunals – to be constituted pursuant to a decree of the Minister of Justice, presided over by a counselor and whose membership would be made

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up of an arbitrator for each of the parties to the dispute – to rule on disputes arising between public organizations, government entities or public sector companies.

In drafting the Code of Civil and Commercial Procedure No. 13 of 1968, the legislature downgraded the importance of optional arbitration, addressing it only in Articles 501–513 and giving it a less elaborate structure than those provided under the previous Codes of Procedure, whether that of 1883 or of 1949.

Despite the dwindling importance of arbitration at the domestic level, at the international level Egypt adhered to the New York Convention of 1958 on the Recognition and Enforcement of Foreign Arbitral Awards, to the Washington Convention of 1965 on the Settlement of Investment Disputes between State Members and Nationals of other State Members and to the Convention of 1974 for the Settlement of International Investment Disputes Arising in the Arab Region.

In the light of developments in the Third World in general and in Egypt in particular, the Egyptian government signed an international agreement in 1979 with the Afro-Asian Advisory Legal Committee to establish a Regional Center for International Commercial Arbitration, headquartered in Cairo, under the auspices of which international commercial arbitration would be conducted in accordance with the Rules of the United Nations Commission on International Trade Law concerning international commercial arbitration adopted by the United Nations General Assembly on 15 December 1976. A major achievement of the Commission, the UNCITRAL Rules were welcomed by the countries of the Third World, which saw in them rigorous rules capable of striking a balance between the legitimate interests of Third World countries and those of the advanced industrial countries.

On 21 June 1985, the said Commission ratified the draft Model Law for International Commercial Arbitration. Egypt contributed in no small measure to the formulation of the Model Law, as well as to the studies connected therewith and to the amendments that were subsequently introduced thereto, until it was ratified by the Commission and adopted by the UN General Assembly in September 1985.

Following a proposal of the Cairo Center, the Egyptian Minister of Justice approved the creation of a commission based in the head office of the Center under the chairmanship of the late Dr. Mohsen Shafiq and with the membership of the director of the Cairo Center and a number of prominent jurists to prepare a new draft law for arbitration. Immediately following the approval, the commission met at the head office of the Cairo Regional Center for International Commercial Arbitration and prepared the draft of a new law for commercial arbitration patterned on the model law. As soon as the draft was ready, the Egyptian Ministry of Justice took the necessary procedures to submit it to the executive authorities then to the People Assembly and it was promulgated as Law No. 27 of 1994 concerning Arbitration in Civil and Commercial Matters.

2. Principles Enshrined in the New Egyptian Arbitration Law

The new Egyptian Arbitration Law represents a substantial leap forward for the system of arbitration in Egypt and, indeed, in the Arab world at large, where many countries have adopted it as a model for their own legislations. The Egyptian Law concerning

Arbitration in Civil and Commercial Matters No. 27 of 1994 entered into force on 20 May 1994, and applied to all arbitrations subject to its provisions which were pending as at such date or which commenced thereafter, even if the said arbitration was based on an arbitral agreement concluded before the Law entered into force (Article 2 of the promulgating Law). The Law repealed Articles 501–513 of the Code of Procedure No. 13 of 1968 dealing with arbitration.[1]

With the promulgation of the new Law, the legislature put an end to many debates and controversies – not least those in respect of Article 502 relating to the appointment of arbitrators – which had been raging for several years and had affected the future of commercial arbitration in general and international arbitration in particular. The new Law applied to both local arbitration and international commercial arbitration.

The Egyptian Arbitration Law incorporates a number of principles that are included in all modern legislations in the field of arbitration. These principles are discussed in the following paragraphs.

2.1. The Autonomy of the Parties

With due regard to the rules of public order, the Law allows the parties to agree freely on the law applicable to the arbitral proceedings (Article 25) and on the law applicable to the subject-matter (Article 39). It upholds the UNCITRAL Rules in regard to the selection of arbitrators (Article 15), and allows the parties to choose both the situs (Article 28) and the language (Article 29) of arbitration.

2.2. Jurisdiction over Jurisdiction

By this is meant the jurisdiction of an arbitral tribunal to rule on motions related to its non-competence, including motions predicated on the absence of an arbitral clause, its expiry or nullity or its failure to include the subject-matter of the dispute, thereby ensuring that pleas of non-competence are not used as dilatory ploys to delay adjudication of disputes (Article 22.1).

2.3. Severability of Arbitral Clause

This rule means that the arbitral clause is deemed to be an agreement that is independent of the other conditions of the contract, so that the nullity, rescission or termination of the contract shall not affect the arbitral clause it contains, provided such clause is valid per se (Article 23).

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[1] Law No. 27 of 1994, art. 3.

2.4. Non-Amenability of Arbitral Awards to be Challenged by the Ordinary Means of Challenge

Arbitral awards rendered in accordance with the Arbitration Law may not be challenged by any of the means of challenge prescribed in the Code of Civil and Commercial Procedure, but only by instituting an initial action for nullity (Article 52).

2.5. Observance of the Fundamental Guarantees of Litigation in Arbitral Proceedings

The Law requires that the parties to arbitration be treated with equality and that each be accorded a fair and full opportunity to present his claims (Article 26). The Law lays down rules for challenging arbitrators and requires that the arbitral award be issued in writing including the grounds on which it is based, unless the parties agree otherwise or the applicable law does not require it (Article 43.2).

2.6. Requirement that Arbitrators Observe Rules of Conduct that Guarantee their Impartiality and Independence

The Law requires a nominated arbitrator to disclose, when accepting the mission entrusted to him in writing, any circumstances which cast doubts on his impartiality or independence (Article 16.3).

3. Expansion of Scope of Application of the New Law

The new Law is also characterized by the wide scope of its application and the generality of its provisions, as represented in the following:

3.1. Arbitrability of all Legal Relationships

Article 1 of the Law provides that its provisions shall 'apply to all arbitrations between public law or private law persons, whatever the nature of the legal relationship around which the dispute revolves'. With that, arbitration became permissible in all disputes, including disputes over administrative contracts. The only constraint, as prescribed in Article 11, is that arbitration is not permitted in matters which are not amenable to conciliation, including, first and foremost, matters contrary to public order. The legislature issued Law No. 9 of 1997 to alleviate doubts raised in respect of the applicability of the Law to disputes arising from administrative contracts and required the approval of the competent minister to the arbitral agreement.

3.2. Applicability of the Provisions of the New Law outside the Regional Scope of the State by Agreement of the Parties to Arbitration

Pursuant to Article 1 of the Law, its provisions shall apply to all arbitrations conducted in Egypt as well as to any international commercial arbitration conducted abroad when the parties thereto agree to subject it to the provisions of the said Law.

3.3. Blurring the Distinction between National and International Arbitration

The Egyptian Law makes no distinction in its provisions between domestic and international arbitration. However, there are some differences between the two, represented in particular in the designation of the court with jurisdiction over matters related to arbitration. Thus the general principle pursuant to Article 9 of the Law is that jurisdiction to review domestic arbitral matters lies with the court of first instance having original jurisdiction over the dispute, while in the case of international commercial arbitration, jurisdiction lies with the Cairo Court of Appeal unless the parties agree on the competence of another Court of Appeal in Egypt. As to jurisdiction over actions for the nullity of arbitral awards, this lies in the case of domestic arbitrations with the court of second degree to which the decisions of the court of original jurisdiction over the dispute are raised, and in the case of international commercial arbitration with the Cairo Court of Appeal (Article 54.2).

4. The Arbitral Agreement

From the point of view of form, the Law requires only that the arbitral agreement be concluded in writing, on pain of nullity. The legislature extends the scope of this requirement by ruling that the arbitral agreement shall be in writing if included in a document signed by both parties or in letters, cables or other means of written communication exchanged between them (Article 12), included facsimile transmissions (faxes).

The Law further provides that the arbitral agreement is valid if the parties agree to subject the legal relationship between them to the provisions of a model contract, an international agreement or any other document containing provisions related to arbitration (Article 6). And, in Article 10.3, the Law rules that: 'Any reference in the contract to a document containing an arbitral clause is deemed to be an arbitral agreement if the reference expressly provides that such clause is an integral part of the contract'.

Although the Law gives each party the right to select his arbitrator in the manner aforesaid, it addresses those cases in which one of the parties fails to nominate his arbitrator, ruling that in such case the competent court shall take the required procedures in this regard. If the arbitral agreement provides for a sole arbitrator, the court shall undertake to appoint him on the basis of a request by one of the parties. If the arbitral tribunal is composed of three arbitrators and one of the parties fails to appoint his arbitrator within 30 days of being requested to do so, or if both parties have appointed their arbitrators but the two arbitrators are unable to agree on the choice of the third arbitrator within the 30 days, the court shall undertake to appoint him on the basis of a request by one of the parties, provided that in selecting the arbitrator the court shall observe the conditions required by the Law and those agreed upon by the parties (Article 17.3). Among the most salient provisions of the Law in this regard is that the court's decision on this matter is not amenable to challenge by any of the means of challenge, although the arbitrator appointed by the tribunal may be challenged pursuant to Articles 18 and 19.

In addition, the same Article 17 provides in paragraph 2 that: 'If one of the parties violates the agreed procedures for the selection of arbitrators, or if no agreement was

reached between the two parties in this regard, or if the two appointed arbitrators fail to agree on a matter entailing their agreement, or if a third party defaults on the performance of a matter entrusted to him in this regard, then the court referred to in Article 9 hereof shall, on the basis of a request by one of the parties, carry out the required procedure or matter unless the agreement provides for another method of completing the said procedure or matter'.

5. Guarantees Provided by Law to Avoid Disruption of Arbitral Proceedings

For the sake of removing the obstacles that can impede the course of arbitral proceedings and lead to extending their duration, the Law requires a court seized with a dispute in respect of an agreement which includes an arbitral clause to rule the case non-admissible if the defendant invokes a plea of non-admissibility before raising any claim or defense in the case (Article 13.1). It also provides that the institution of the case before the court shall not preclude commencing the arbitral proceedings, pursuing same or issuing an arbitral award (Article 13.2). The Law further confirms the 'jurisdiction over jurisdiction' rule (Article 22.1), provides for the possibility of proceeding with the arbitration despite the challenge of an arbitrator (Article 19.4), and for the possibility of removing an arbitrator for failure to act by order of the court (Article 20).

The Law grants arbitral tribunals the powers that enable them to perform their mission and that protect the rights of both parties, ruling that the arbitral tribunal is empowered to order whatever provisional or protective measures it deems necessary, provided the parties agree to so empower it (Article 24). However, this does not affect the unrestricted right of the parties to resort to the competent court for such measures on the basis of an application from one of the parties (Article 14). The Law allows the arbitral tribunal to appoint experts in connection with certain matters it designates (Article 36), and invests it with broad organizational and procedural powers if the parties fail to agree on the procedures to be followed by the arbitral tribunal (Article 25), provided this shall be without prejudice to the rules of public order, to the principle of equality between the parties or to the fundamental guarantees of litigation (Article 26). The Law also allows the arbitral tribunal to determine the situs and language of arbitration if the parties fail to reach agreement thereon (Articles 28 and 29).

6. The Arbitral Award

The arbitral award is issued by a majority of opinions after deliberations conducted in the manner prescribed by the arbitral tribunal, unless the parties otherwise agree. This applies in the event the arbitral tribunal is composed of more than one arbitrator (Article 40).

Arbitral awards issued in the manner aforesaid shall be final and not subject to challenge by any of the means of challenge prescribed in the Code of Civil and Commercial Procedure, although an initial action for nullity of the arbitral award is admissible pursuant

to the provisions of Articles 53 and 54. The Law limits the reasons of nullity to eight cases as follows:

(1) if no arbitral agreement exists, or if it is void, voidable or expired (Article 53.1.a);
(2) if at the time of entering into the arbitral agreement one of the parties thereto was devoid of or lacking in capacity pursuant to the law governing his capacity (Article 53.1.b);
(3) if one of the parties to the arbitration was unable to present his defense because he was not properly notified of the appointment of an arbitrator or of the arbitral proceedings, or for any other reason beyond his control (Article 53.1.c);
(4) if the arbitral award fails to apply the law agreed upon by the parties to the subject matter of the dispute (Article 53.1.d);
(5) if the arbitral tribunal was constituted or the arbitrators were appointed in a manner contrary to the law or to the agreement between the parties (Article 53.1.e);
(6) if the arbitral award rules on matters not included in the arbitral agreement or oversteps the limits of such agreement (Article 53.1.f);
(7) if nullity occurs in the arbitral award, or if the arbitral proceedings are tainted by nullity affecting the award (Article 53.1.g);
(8) violation of public order in the Arab Republic of Egypt (Article 53.2).

A. el-Boraï

8. LABOR LAW AND SOCIAL INSURANCE LAW

1. PREAMBLE AND FRAMEWORK

Social law, which appeared with the industrial revolution and the subsequent division of the industrial society into classes, aims at achieving a balance in labor relations and providing social protection for the 'working class', or the 'proletariat' according to Marxist terminology.

This new branch of law includes the subjects listed below.

1.1. Individual Employment Contract

The individual employment contract belongs undoubtedly, to social law.

The individual employment contract is no longer solely left to the legislature to organize, nor to the will of the contracting parties alone. Now, 'social organization', and particularly labor agreements, have become an important source for the individual employment contract.

The individual employment contract is also characterized by the special rules it contains with regard to the procedures preceding its conclusion, the limitations of 'freedom to contract' with regard to the rules of proof and interpretation, the clauses aimed at facilitating and expediting means of litigation for the workers, as well as the guarantees pertaining to disputes, particularly concerning arbitrary breach of the contract.

All such special clauses cannot be found within the general rules of the contract theory. They can only be rooted with reference to a general principle, totally apart from traditional legal classifications.

1.2. Collective Work Relations

Provisions related to the organization of collective work relations also fall under studies pertaining to social law.

Collective work relations are becoming more and more important because of the special legal systems they include (trade unions, labor agreements, conciliation and arbitration in litigation) and because of their impact on the relations that stem from the individual employment contract.

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1.3. Social Insurance

As for social insurance, everything that pertains to it as a 'legal system', and not as a mere 'social concept', also falls within the study of social law.

Social insurance appeared and developed as a result of the demands of the working class and their insistence on obtaining such security to cover the risks to which workers are subjected. That insurance is obtained by sums deducted from the workers and the employers to guarantee a minimum income or an alternative income for the worker in case of accident.

We shall proceed to explain the three components of social law in the light of Egyptian legislation.

A separate chapter will be devoted to each component.

Firstly, the historical development of social law in Egypt will be briefly examined.

2. The Development of Social Laws in Egypt

The 'guilds' system existed in Egypt until Mohamed Ali decided to set up European-style industries. The 'guilds' system then began to gradually disappear, to be replaced by unions and by industrial relations between workers and employers. The labor and trade union movement started in Egypt with the promulgation of the law on 'patents' in 1890, which was followed by several laws organizing labor relations. The first among the latter was the Civil Code promulgated in 1883 wherein a chapter was devoted to 'the licensing of persons and craftsmen'. The first trade union was organized in 1898 for workers of the tobacco industry who first went on strike in 1899. Collective labor continued to develop as of that date, and so did social laws. Following are the most important laws promulgated in the area of labor and social insurance.

2.1. Organization of Individual Labor Relations before 1952

Law No. 48 of 1933 organizing the work of minors in industry;
Law No. 80 of 1933 organizing the work of women in commerce and industry;
Law No. 147 of 1935 limiting working hours in certain industries;
Law No. 41 of 1944 organizing the individual employment contract;
Law No. 72 of 1946 organizing working hours in stores and hospitals.

The employment contract was organized on the basis of the Civil Code promulgated in 1948 (a chapter was devoted to the employment contract: Articles 674–698).

2.2. Organization of Individual Labor Relations after 1952

Law No. 317 of 1952 concerning the individual employment contract;
Law No. 244 of 1953 organizing the appointment and employment of unemployed people;

Law No. 46 of 1958 organizing the employment of workers in mines and quarries;
Law No. 14 of 1959 regarding professional rehabilitation and employment of incapacitated workers;
Law No. 91 of 1959, the first comprehensive law comprising all labor laws and replacing them;
Ministerial Decree No. 96 of 1962 regarding disciplinary sanctions, rules and procedures of workers, which led to the establishment of tripartite committees entrusted with the examination of cases before a worker could be dismissed from employment;
Law No. 111 of 1961 on sharing profits;
Law No. 133 of 1961 reducing the number of working hours in industrial establishments;
Law No. 27 of 1981 concerning workers in mines and quarries;
Labor Code, promulgated by Law No. 137 of 1981 (in force until now);
Law No. 33 of 1982 exempting workers in the public sector from the application of Law No. 137 of 1981;
Law No. 10 of 1991 amending Law No. 119 of 1983 on the organization of the work of Egyptian workers abroad.

With the transition to market economy, a new draft labor law was prepared, with the participation of the three parties concerned and the assistance of the ILO (International Labor Organization) as well as that of a high technical committee. The draft law was adopted by the State Council in January 1996 and is to be submitted to the People's Assembly.

2.3. Collective Labor Relations before 1952

Law No. 2 of 1931 prohibiting workers and employees from relinquishing part of their salary to a trade union or association;
Law No. 37 of 1933 adding new articles to the Penal Code to limit the right to strike (nevertheless, the National Court of First Instance issued a ruling admitting the workers' right to form trade unions without the need for a special law. The court based its ruling on the 1923 Constitution);
Law No. 85 of 1942 on trade unions;
Law No. 105 of 1948 on conciliation and arbitration in labor disputes;
Law No. 97 of 1950 on labor agreements.

2.4. Collective Labor Relations after 1952

Law Decree No. 318 of 1952 on conciliation and arbitration in labor disputes;
Law Decree No. 319 of 1952 on trade unions;
Law No. 30 of 1957 establishing the Egyptian General Federation of Trade Unions;
Law No. 114 of 1961 on the participation of workers in the board of directors of companies and institutions (and of cooperatives as per the amendment to the Law in 1964);
Law No. 73 of 1973 on the participation of workers in the board of directors of companies and institutions (by at least 50 per cent);

Law No. 35 of 1976 on trade unions (the organization of trade unions was removed from Chapter 4 of Labor Law No. 91 of 1959 and became an independent law);
Law No. 112 of 1995 amending some articles of the law on trade unions.

2.5. Social Insurance before 1952

Law No. 64 of 1936 making the employer liable for the treatment and compensation of a worker injured during or as a result of his work;
Law No. 89 of 1950 on work injuries;
Law No. 116 of 1950 on social security;
Law No. 117 of 1950 on compensation for job-related diseases.

2.6. Social Insurance after 1952

Law No. 202 of 1958 on insurance and compensation for work injury;
Law No. 92 of 1959 on social insurance (this is considered the first law making participation in social insurance institutions obligatory);
Law No. 50 of 1963 on insurance and pensions for government employees;
Law No. 63 of 1964 on social insurance;
Law No. 79 of 1975, the first unified and comprehensive law regulating social insurance (this was amended several times by Laws No. 25 in 1977, No. 22 in 1978, No. 44 in 1978, No. 93 in 1980, No. 48 in 1981, No. 61 in 1981, No. 47 in 1984, No. 110 in 1985, No. 107 in 1987, No. 30 in 1992, No. 204 in 1994 and No. 207 in 1994).

Several complementary laws on social insurance were then promulgated:

Law No. 108 of 1976 on insurance of employers;
Law No. 50 of 1978 on insurance of persons working abroad;
Law No. 112 of 1981 regarding comprehensive insurance.

Egypt joined the ILO in 1936 and the Ministry of Labor was created in August 1961.

The Arab Labor Organization was founded in Cairo and held its first conference in March 1971.

3. A Study of Major Rules Related to the Individual Employment Contract

To explain the main provisions related to the individual employment contract pursuant to Egyptian legislation, we must determine the parties to the contract; the contract's characteristics (salary and elements of the relation of dependence); the main liabilities stemming from the contract and, finally, how to terminate the contract.

Yet before dealing with this in detail, we must first determine the scope of application of labor law in Egypt.

3.1. Scope of Application of the Labor Code (Law No. 137 of 1981)

The Labor Code is applicable to all persons 'working for a salary, employed by another and working under his direction and supervision, whatever the nature of the work undertaken'.

The problem in Egypt, however, is that labor relations are governed by several laws such as, for example:

- Law No. 47 of 1978 on civilians employed by the state;
- Law No. 48 of 1978 on employees of the public sector;
- Law No. 203 of 1991 regulating the sector of public work.

Moreover, there are special laws regarding certain categories of workers, such as workers in mines and quarries, workers in the press and workers in private schools.

In addition to such multiple legislations Law No. 137 of 1981 excludes three categories of workers from its scope of application:

- persons employed by the State administration, by units of local government, by public authorities and the public sector (except as regards provisions dealing with professional safety and health as per section 5 of Law No. 137 of 1981);
- domestic workers and the like;
- members of the employer's family whom he actually supports (husband, wife, direct and indirect descendants).

The two latter categories fall under the provisions of the Civil Code regulating labor relations.

This legislative multiplicity governing labor relations in Egypt has given rise to many problems of application and to differences in the rulings issued by the judiciary (particularly the administrative and ordinary courts) in a number of issues. This led to the preparation of a draft Labor Code comprising a general principle to the effect that it be considered 'the General Code governing all relations of dependent labor' (Article 3 of the draft).

3.2. The Parties to the Individual Employment Contract

Article 1 of the Labor Code defines the two parties to the labor relation as follows: 'For the purposes of applying the provisions of this Law, the following is meant by:

The worker: any natural person, working in exchange for remuneration for an employer and under the direction and supervision of the latter.

The employer: any natural or juristic person using the services of one or more workers in exchange for remuneration'.

The draft unified Labor Code (Article 1) borrowed the above definitions textually. It follows that the worker must be a human being, male or female, but not a juristic person.

Work is a voluntary effort undertaken by a human being, regardless as to whether the effort is physical or mental.

It is to be noted that the legislature used the term 'worker' without confining it to a particular description. Hence, the term 'worker' applies to anyone working in the service of an employer for remuneration, regardless of the work he does: physical, mental or technical, and regardless of whether the worker occupies a modest or high position.

As for the employer, he may be a natural or a juristic person (a company, an association, an institution), so long as he carries out an activity and in so doing requires the efforts of natural persons working under his supervision for remuneration.

The activity of the employer may be 'a production activity' or 'an activity providing services'; the type of activity has no relevance.

Moreover, the employer need not be a professional in the field, for all the successive labor laws (Law No. 91 of 1959 or Law No. 137 of 1981), contrary to Law No. 317 of 1952, did not exclude the possibility of entrusting to another a job that one does not personally exercise.

It is, therefore conceivable for someone to hire a number of technicians to undertake a certain job for which he is not technically qualified; the latter is considered 'employer' so long as he supervises his project in terms of management or organization.[1]

3.3. Dependence and Salary

Judicial rulings in Egypt have taken into consideration the two elements of dependence and salary in order to differentiate the employment contract from other types of contracts (such as a piece-work contract or a representation contract). The notion of labor was, however, extended to include some free professions (such as an attorney's services to a company or a doctor's services to a hospital).

Following are some details pertaining to the two elements:

3.3.1. The Relationship of Dependence

The Egyptian Court of Cassation decided that the element of dependence 'takes the form of the worker's submission to the employer, and to the latter's supervision and control'.

Dependence means that the worker works 'under the direction and supervision of the employer', which entitles the latter to issue orders and instructions determining the work required from the worker, the way it should be done and the time and place to do it, as well as giving the employer the right to sanction the worker if he does not comply.

Dependence so defined is a legal dependence, which is different from economic dependence, that latter meaning that the employer is, alone, entitled to the worker's labor in exchange for a salary that is the worker's only source of income, and on which he totally

[1] It is not compulsory for the employer to carry out the work himself, regardless of whether he seeks profit or not (Challenge No. 512/44, session of 17 December 1977 and Challenge No. 193/41, session of 24 April 1976).

depends for his livelihood, so that it can be said that the worker is economically dependent on the employer.

The fact that the Egyptian legislature did not mean economic dependence is proven by Article 676 of the Civil Code which stipulates that the provisions regarding individual employment contract shall apply to middlemen, even if they are at the service of several employers, the only condition being their dependence (subordination) to the employers and their submission to their control.

Even though the legislature, the judiciary and most of the jurisprudence in Egypt have adopted the criterion of legal dependence, we believe, however, that there is nothing to prevent the adoption of economic dependence as well in order to expand the application of the provisions of the Labor Code so that it may, in addition to legal dependents, include those who, even if not legally dependent, do work for an employer and who are not different, as regards their social or economic status, from the worker who works for an employer and who submits to the latter's supervision and control at the work place (see, for instance, Challenge No. 38/32, session of 23 February 1972).

3.3.2. Salary

The salary being one of the basic commitments in the employment contract, the Civil Code only deals with the employer's commitment to pay a salary (Articles 690-691), referring all other commitments of the employer to special laws (Article 693).

Rulings of the Egyptian judiciary and of arbitration authorities seem to indicate that, in exchange for a salary, the worker's commitment is not 'to perform the work', but rather 'to be present in the place of work for the period specified in the employment contract and to declare himself ready to do his work during that period'. If the worker is prevented from working, he is entitled to his full pay (if he is prevented from working by the employer); or to half pay (if he is prevented from working by reasons due to a 'force majeure').[2]

The legal texts and their judicial applications indicate that the employer's commitment to pay a salary is not limited to payment of the basic salary, it also includes other payments attached to the salary and which become part thereof however they may be labeled, so long as they are paid out in exchange for the worker's services.

In defining the salary, the Egyptian legislature made a point of giving some examples of such supplementary payments. Article 1 of the Labor Code defines the salary as inclusive of:

1. periodic increments;
2. increments for inflation and family obligations;
3. commissions (for traveling salesmen and trade representatives);
4. privileges in kind;

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[2] See for instance Cairo Arbitration on 3 April 1955, Al Fakahany Record, part 1/1 No. 255, p. 264 and Civil Cassation, Challenge No. 347/41, session of 13 March 1977.

5. any bonus given to the worker over and above his salary as a reward for honesty, efficiency or the like, if such bonuses are included in the individual or collective employment contract or stipulated in the basic labor system or even if they are customary;
6. the tips given to a worker in public establishments, if such tips are customary and if there are rules allowing such tips to be determined as a percentage of what the clients pay in exchange for services in tourist establishments.

The above is almost the same definition as the one adopted in the draft Labor Code, except for some drafting and technical amendments (Article 1 of the draft).

The salary is protected by several provisions, vis-à-vis the employer (where salary deductions are concerned), vis-à-vis the worker's creditors, or in cases where the worker relinquishes part of his salary.

The legislature gives the salary a privilege of the fourth degree (Article 1141 of the Civil Code and Article 5 of the Labor Code). Article 662 of the Civil Code stipulates that workers are entitled to directly sue the original employer or the sub-contractor, for the salaries due to them.

The prescription of the right to a salary is sometimes one year and sometimes five. The Egyptian courts have settled such contradictions by considering the one-year limitation to be 'a simple presumption' with possible proof to the contrary by means of a decisive oath. However, the five-year limitation is considered an irrebuttable presumption with no possible proof to the contrary.

3.4. Effects of the Employment Contract

In keeping with the principle of sovereignty of free will, the contracting parties are free to determine the consequences of their contract. Such freedom does, however, have its limits where labor relations are concerned. It is limited by the accepted minimum protection of the worker's rights, thus not allowing any disregard of the obligations stipulated by the legislature 'unless the contrary is of greater benefit to the worker' (Article 4 of the Labor Code and Article 7.1 of the draft).

The employment contract gives rise to mutual obligations for both parties:

3.4.1. Obligations of the Employer

3.4.1.1. Payment of the salary

The basic obligation of the employer is the payment of the worker's salary.

That may be the reason why the legislature, when drafting the Civil Code, only stipulated the employer's obligation to pay the salary (Articles 690 and 691), referring all other obligations to special laws (Article 693).

The Labor Code, however, stipulates several obligations for the employer, well beyond the single obligation stipulated in the Civil Code.

Therefore, we support the majority opinion of jurisprudence, which is that a worker who is party to an employment contract governed by the Labor Code is in a better position than a worker whose contract is governed by the Civil Code.

Even so, the differences are not enormous, because the general rules do place a number of additional obligations on the employer, some of which stem from the contract itself and some from the requirements of good faith. The contract makes it obligatory for the employer to provide the worker with work, to enable the worker to perform such work, to provide the place and the tools for the work to be done and to give the worker a certificate of end of service when the contract expires.

Among the requirements of good faith is the employer's decent treatment of the worker, that he should not overburden him with work and that he should provide an acceptable work environment as well as a healthy one.

Therefore, it seems that many of the obligations explicitly stipulated in the Labor Code, and imposed by the legislature on employers governed by the Labor Code, manage to find their way into the employment contracts governed by the Civil Code, even if not explicitly stipulated.

Having already explained the legal provisions related to salary, albeit briefly, we shall deal hereafter with the employer's additional obligations.

3.4.1.2. Obligation to Grant the Worker Annual Leave with Salary

Article 43 of the Labor Code covers the annual leave and the rules thereof. The legislature linked the duration of the leave to the duration of service (21 days for anyone with a year of service, to be increased to one month after ten years of service).

A month's leave is also due to workers having reached the age of 50, regardless of their years of service.

The provisions governing annual leave in Egyptian law are in conformity with the standards of the Arab and International Labor Organizations.

The employer, alone, has the right to determine the duration of the worker's leave, provided he does not use such a right arbitrarily. He is, therefore, entitled to break up the leave, provided any portion of the leave is not less than six consecutive days in one given year (Article 43 of the Labor Code, the duration was increased to 15 days in the draft Labor Code).

The right to annual leave with pay is a principle of public order that cannot be relinquished by the worker. It is meant for him to renew his energy. If it is proven that he has, during the leave, gone to work for another employer, the original employer is entitled to the salary received by the worker during his leave; the employer may also withhold his salary.

3.4.1.3. Other Holidays

In addition to the annual leave, the employer has to give the worker a weekly leave, as well as a leave on national and religious holidays (with a maximum of 13 days a year). The employer may make the workers work on such holidays, if necessary, at double their salary.

The worker is also entitled to sick leave at 75 per cent of his salary for the first 90 days and 85 per cent for the following 90 days (in the course of a given year).

The worker also has the right to one month's leave for religious pilgrimage to Mecca or Jerusalem, during which he will receive half pay. He is entitled to such a leave only once during his entire service.

A working woman is entitled to 50 days maternity leave with full pay (at least 40 days of which following birthgiving), with a maximum of three such leaves during her entire service.

Finally, a worker may absent himself from work, for an unforeseen reason, for no more than three days in the course of one year, to be deducted from his annual leave.

3.4.1.4. Other Obligations Imposed on the Employer

- to establish a file for each worker (Article 55 of the Labor Code);
- to transport the worker from the place of contract to the place of work (Article 56 of the Labor Code);
- to ensure equality among workers (Article 57 of the Labor Code);
- to establish a set of internal regulations and a set of rules for disciplinary measures (Article 59 of the Labor Code);
- medical care (Articles 121 and 122 of the Labor Code);
- to provide means of transportation in certain cases (Article 123/1 of the Labor Code);
- to provide food and housing in certain cases (Article 123/2 of the Labor Code);
- to provide social and cultural services (Article 124 of the Labor Code);
- to establish a nursery (Article 158 of the Labor Code).

3.4.2. Obligations Imposed on the Worker

Having organized the obligations of the employer, the legislature proceeded to define the obligations of workers.

Article 58 of the Labor Code defines such obligations, along with Articles 685 and 686 of the Civil Code. They are similar except for a few details.

Article 58 of the Labor Code (Article 56 of the draft Labor Code) stipulates the following:

3.4.2.1. Obligations

(1) The employee must perform the work himself according to the instructions and under the supervision of the employer, in accordance with the contract and with the provisions of the Labor Code, of labor systems and their collective agreements. He must perform his work with the care expected from an ordinary person (this is similar to the text of Article 685/a of the Civil Code).
(2) He must obey the orders of the employer regarding the execution of the work agreed upon as being part of his work or his profession, if such orders are not contrary to the stipulations of the contract, or the law or morality and if nothing in those orders puts the worker at risk (this is similar to Article 685/b of the Civil Code).
(3) He must safeguard the means and tools of production placed at his disposal as would any ordinary person, and must take all the necessary steps for their safe-keeping (this is similar to Article 685/c of the Civil Code).
(4) He must respect the confidentiality of his work (similar to Article 685/d of the Civil Code).
(5) He must continuously endeavor to develop his professional and cultural skills and experience in accordance with the system and procedures established by the

employer, in coordination with the specialized trade union organizations and within the means available.

(6) Work tools are not to be used outside the workplace except with the permission of the employer. The tools must be kept in their appropriate place.

(7) He must abide by all the professional safety and health instructions set by the establishment, either in compliance with the law or with collective and individual employment contracts, and to comply with the work regulations and instructions.

Moreover, Article 686 of the Civil Code regulated the prevention of competition between worker and employer. Article 688 established the employer's rights to the worker's inventions.

This list of obligations is not exhaustive, and these are merely examples. The individual or collective employment contract may stipulate other obligations, or further obligations may be inserted by the employer in the work regulations. The additional obligations are deemed appropriate and binding so long as they are not contrary to public order nor to public interest, nor conducive to any danger.

3.4.2.2. Disciplinary Measures

In keeping with the employer's authority to organize his establishment and to supervise the good conduct of work therein, and by virtue of the worker's relation of dependence to the employer, which imposes submission to the latter's orders and instructions, the employer is entitled to apply the appropriate sanctions to non-complying workers.

This is the 'employer's disciplinary authority'. The legislature, taking into consideration the fact that the employer is both judge and party, established provisions governing the sanctioning of workers in such a way as to protect workers from the arbitrary use of the employer's authority.

The legislature first stipulated that the sanction must be one included in the regulations governing disciplinary measures which are pursuant to Ministerial Decree No. 42 of 1982: warning, fine, suspension from work, deprivation of the worker's annual increment or part thereof, written warning of dismissal and, finally, dismissal.

Since dismissal is the ultimate and harshest sanction, the legislature allows it only in a case of serious error. Article 61 of the Labor Code gives some examples of such errors as being:

1. If the worker presents a false identity or false certificates or recommendations.
2. If the worker makes a mistake that results in serious material loss for the owner, provided the latter notifies the authorities concerned of the accident as soon as he finds out about it.
3. If the worker does not follow the instructions related to the safety of the workers and the establishment, after having been given warning in writing, and provided such instructions are in writing and clearly displayed.
4. If the worker is absent for more than 20 separate days or for more than ten consecutive days in one year, for no legitimate reason. Dismissal must be preceded by a warning in writing from the employer after ten days in the first case and five days in the second case.

5. If the worker does not fulfill his basic obligations stemming from the employment contract.
6. If the worker reveals the secrets of the establishment where he works.
7. If the worker is convicted by a final court sentence of a felony or dishonorable misdemeanor, or a sentence related to public morals or honesty.
8. If the worker is found inebriated or under the influence of drugs during work.
9. If the worker attacks the employer, the manager in charge or any foreman during work or because of work.

3.5. Termination of the Contract

Article 71 of the Code covers the reasons leading to the termination of an employment relation. The text stipulates that fixed-term or indefinite employment contracts do have some reasons in common which may lead to their termination. Other reasons are specific to each type of contract.

3.5.1. Reasons Leading to the Termination of Both Types of Employment Contracts

Article 71 of the Labor Code defines some of those reasons such as: the worker's demise, his resignation, if he becomes totally incapacitated, or if the worker proves to be unqualified during his probation period.

Moreover, there are also cases of termination of contract in accordance with general rules and with the provisions of the Civil Code, such as the impossibility of executing the contract or the breach thereof.

3.5.2. Termination of Fixed-Term Contracts

A fixed-term contract is a contract where both parties agree on a definite date for its termination, at a specific and definite time, independent of the will of either party.

The contract is, consequently, for a determinate period of time if both parties agree to terminate it on a given date. It is also a fixed-term contract, even without a specific date for its termination, if the contract is for the purpose of performing a specific task.

A fixed-term contract is automatically terminated on the date specified, or with the completion of the task for which it was drawn (Article 694/1 of the Civil Code). Neither party can unilaterally terminate the contract before the end of the period specified, unless there is a cause for so doing, such as what is stipulated in Article 678/2 of the Civil Code where it states: 'If the duration of the contract is for the worker's or the employer's entire lifetime, or if it is for more than five years, the worker may, after five years, terminate the contract without compensation, provided he gives the employer six month's prior notice'.

Originally, however, a fixed-term contract is to be terminated at the end of the fixed period, without need for any procedure, as stipulated in Article 71 of the Labor Code where it says:

'The employment relation is terminated at the end of the period fixed for the contract, if it is a fixed-term contract'. The legislature did not make such a termination dependent on any procedure.

The above was confirmed by the Egyptian Court of Cassation in a decision which states: 'If the duration of the contract is specified to end at a given time, as agreed between the worker and the employer, it cannot be said that the employer's termination of the contract at the time specified is contrary to the law' (Challenge No. 248/24, session of 1 January 1959).

The fixed-term contract is renewed if both parties continue to abide by it, at the end of its specified time; it then becomes an indefinite contract. This was stipulated in Article 72 of the Labor Code, and confirmed by judicial rulings in Egypt (Cairo Court of First Instance on 24 February 1954; Court of Cassation, Challenge No. 228/25, session of 1 January 1960 and Challenge No. 19/40, session of 10 January 1976).

As for a contract to perform a given task, if both parties continue to undertake a similar task after the first task has been accomplished, it is renewed for the performance of the same new task.

3.5.3. Termination of an Indefinite Contract

In accordance with prevailing custom, pursuant to the revoked Labor Law No. 91 of 1959, to the provisions of the Egyptian Civil Code and to judiciary rulings, there are two conditions for the termination of an indefinite contract:

1. prior notice;
2. absence of arbitrary use of the right to terminate.

The legislature's silence in Labor Code No. 137 of 1981 cannot transform an indefinite contract into a permanent contract. Each of the two parties to the contract retains the right to terminate it on condition of giving notice and of not using such a right in an arbitrary manner, pursuant to the provisions of Articles 694 and 695 of the Civil Code.

Article 694/2 of the Civil Code stipulates that: 'If no definite period is specified in the contract or can be inferred from the kind of work or its purpose, either party may terminate his employment relation with the other.

The exercise of the above right must be preceded by a notice; the means and duration of which are to be specified by special laws'.

3.5.3.1. Prior Notice

A notice is a declaration of a contracting party's confirmed desire to terminate the contract at the end of the delay stipulated by the law.

That is why the notice must clearly express the notifying party's desire to terminate the contract.

A notice is considered a legal measure undertaken by one party. Consequently, it only produces its effect when the other party is informed thereof (Article 91 of the Civil Code). Thus the worker may withdraw his notice so long as the employer has had no knowledge of it.

The receipt of the notice allows presumption of knowledge thereof, unless otherwise proven.

The capacity required for appropriate notice is the same capacity required for signing an employment contract.

The purpose of the notice is to preclude the element of surprise, thus allowing the notified party to prepare for the situation following the period of notice.

3.5.3.2. Legitimate Justification

The legislature brought forward several cases of illegitimate termination. We shall study them first, then deal with some court applications.

3.5.3.2.1 Cases of Illegitimate Termination

1. Breach of the contract by the employee due to unfair treatment by the employer (Article 696/1 of the Civil Code and Article 121 of the draft Labor Code; Cairo Court of First Instance, 30 January 1955).
2. Dismissal for reasons of sequestration or of debts owed by the worker (Article 695/2 of the Civil Code, Article 120 of the draft Labor Code).
3. Termination of contract because of the worker's illness (Article 50 of the Labor Code and Article 127 of the draft Labor Code; Court of Cassation, Challenge No. 252/24J, session of 19 June 1958 and Challenge No. 346/23J, session of 4 April 1957).
4. Refusal to reinstate the worker after his having been preventively suspended (Article 67 of the Labor Code and 67 of the draft Labor Code; see for instance Court of Cassation, Challenge No. 126/34J, session of 4 February 1970 and Challenge No. 378/32J, session of 15 February 1967).

3.5.3.2.2. Court Applications. The above legislative applications are given as examples only. There are, obviously, other cases where the termination of the contract is considered arbitrary. The judiciary shed light on the court's authority to assess the legitimacy of such termination of a contract.

The principle is that the trial judge has the discretionary power to determine whether the termination was legitimate, as long as his ruling is based on a valid deduction.

See, for instance, Court of Cassation, Challenge No. 1/25J, session of 23 April 1959 and Challenge No. 84/37J, session of 6 January 1973.

3.5.3.2.3. Termination for Economic Reasons. Rulings of the Egyptian judiciary have established that if circumstances are such that the employer has to close down his enterprise or suspend its activity, the termination of employment contracts with some or all of the workers in the enterprise is justified, hence a legitimate termination.

The Court of Cassation has confirmed this view in several of its rulings and has established the following principles in connection with the matter:

It is within the employer's prerogative to organize his enterprise and to take whatever measures he deems necessary to reorganize it, even if that may lead to a reduction of its activities or expenditure, if circumstances of the work so require.

If such organization requires the closure of one of the branches or units pertaining to the enterprise, and the termination of some workers' contracts, such termination is justified and not arbitrary.

The employer alone has the discretionary power to evaluate the situation. The judge cannot replace the employer in such a matter, he can only verify the seriousness of the reasons advanced for such termination.

In such cases, the employer is not committed to providing alternative employment for the worker (see, for instance, Court of Cassation, Challenge No. 360/32J, session of 22 February 1967; Challenge No. 44/45J, session of 17 May 1980; and Challenge No. 11/25J, session of 23 April 1959).

3.5.3.2.4. Justifications Related to the Worker's Behavior. The dismissal of the worker is also justified, i.e. not arbitrary, if it is caused by the worker's behavior, particularly if he has failed to fulfill his basic commitments. We have previously explained that cases governed by Article 61 of the Labor Code regarding serious errors justifying the worker's dismissal, were but a few examples, a fact confirmed by the Article in question which stipulates that: 'The worker's failure to fulfill his basic obligations pursuant to the employment contract is considered a serious error justifying his dismissal'.

In this respect, the Court of Cassation ruled that the employer's right to terminate the contract, if the worker fails to fulfill one of his basic obligations in the contract, stems from the fact that the contract is binding on both parties, and thus creates mutual obligations.[3]

The following actions have been regarded as failure to fulfill basic commitments, justifying dismissal of the worker and termination of contract: failure to perform his work in good faith and thus losing the employer's confidence;[4] failure to obey the orders given to him by the employer;[5] destroying tools or machinery as a result of error or negligence; disclosure of professional secrets; aggression against the employer;[6] failure to live up to the trustworthiness expected of him in his work.[7]

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3 'The employer's right to terminate the contract because of the employee's failure to fulfill one of his basic obligations as per the contract stems from the fact that the employment contract is binding on both parties and, thus, creates mutual obligations that allow one party to sever the contractual relation if the other party fails to or refrains from fulfilling his obligations' (Court of Cassation, Challenge No. 39/25, session of 25 June 1959).

4 The Court of Cassation ruled that Article 685 of the Civil Code makes it incumbent on the worker to keep good faith throughout his years of service and not to be remiss in carrying out the requirements of his duties, all being basic obligations created by the employment contract. If it is proved that the worker has not carried out his work in good faith, thus shaking the employer's confidence in him, and confidence being indivisible, such loss of confidence in the worker's ability to carry out one task makes the employer unable to trust him to carry out another task. Thus the employer may dismiss the worker without compensation (Civil Cassation, session of 9 May 1957).

5 Challenge No. 202/33J, session of 14 March 1957.

6 Challenge No. 159/31J, session of 31 March 1965.

7 Challenge No. 1/31, session of 17 March 1965.

The fact that the above actions are not crimes does not prevent civil courts from examining them as gross negligence that would justify the dismissal of the worker.[8]

Dismissal may also be justified by the worker's failure to fulfill his basic obligations; even if his failure was due to his seeking to serve his legitimate interests.[9]

The failure to implement laws and regulations is also considered sufficient cause for dismissal of the worker, regardless of whether the dismissed worker has or has not committed an error.

For example, the employer must comply with the provisions regulating the work of foreigners. Thus if the establishment dismisses some of its foreign employees in keeping with the quotas permitted, the dismissal is justified.[10]

Finally, it is to be noted, regarding the legitimate termination of an indefinite contract, that failure to respect the rules pertaining to discipline as stipulated in the law does not preclude legitimate dismissal, and does not affect the decision to dismiss, so long as the latter is justified, particularly by the worker's failure to fulfill his obligations (Challenge No. 125/36J, session of 18 March 1973).

4. A Brief Account of the Provisions of Social Security in Egypt

Egypt has known its first comprehensive system of social security at a seemingly late time, compared with other countries of the world, especially the industrial nations. Before 1959, and the adoption of the first comprehensive social security law in Egypt, several laws were passed related to insurance against work injury, professional diseases and old age pension.[11]

The Social Security Law No. 92 of 1959 replaced Law No. 419 of 1955 establishing savings and insurance fund) and Law No. 202 of 1958 concerning insurance against and compensation for work injury.

Following this law, there was a succession of social security laws. These all targeted the expansion of the beneficiary base of social security and increased the number of risks

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[8] Challenge No. 277/27J, session of 23 June 1973.

[9] Challenge No. 215/31J, session of 24 March 1965.

[10] Challenge No. 235/30J, session of 25 December 1963.

[11] One of these laws is Law No. 64 of 1936 on compensation for work injuries, which was amended by Law No. 86 of 1942, and which obliged employers to insure, with insurance companies or cooperative insurance societies, against employers' liability in respect of accidents at work. It was decided, under Law No. 89 of 1950, to expand the application of work injuries insurance to include, in addition to industry, workers using mechanical machines in the agricultural sector.

In a later development, Law No. 117 of 1950 obliged employers to compensate workers against the professional diseases specified in the table annexed to the law.

Following the Second World War and under the influence of international trends in this respect, especially the Philadelphia Declaration and the Beveridge Report, the Egyptian government attempted to set up a comprehensive system of social security. However, economic and financial circumstances stood in the way, so the government issued a law of social aid that was known as Social Security Law No. 116 of 1950. Because of lack of funds, this law was never effectively applied.

covered by social security.[12] The latest of these laws, which is currently applied, is Law No. 79 of 1975 as amended.[13]

Currently, this law is considered the general law on social security in Egypt.

4.1. Scope of Application

According to Articles 2 and 3 of the social security law, the general system of social security is applicable to the following categories:[14]

- employees of the government administration, public bodies and the public sector: Law No. 79 of 1975 decreed, for the first time, the inclusion of this category in the general system of social security just like private sector employees. By submitting them to the general social security law, the Egyptian legislature made an important step toward the unification of the social security system.

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[12] Law No. 63 of 1964 was issued to add unemployment to the risks covered. In addition, it set a scaled system for health security.

[13] Official Gazette, No. 35 cont., 28 August 1975. The law entered into force on 1 September 1975. It was amended by the following laws:

- No. 25 of 1977, Official Gazette, No. 17 bis (2), 30 April 1977.
- No. 32 of 1978, Official Gazette, No. 22, 1 June 1978.
- No. 44 of 1978, Official Gazette, No. 29, 2 July 1978.
- No. 93 of 1980, Official Gazette, No. 18 bis, 3 May 1980.
- No. 48 of 1981, Official Gazette, No. 36, 25 June 1981.
- No. 61 of 1981, Official Gazette, No. 27, 2 July 1981.
- No. 47 of 1984, Official Gazette, No. 13 bis (w).
- No. 110 of 1985, Official Gazette, No. 27, 4 July 1985.
- No. 107 of 1987, Official Gazette, No. 22 cont., 27 July 1987.
- No. 30 of 1992, Official Gazette, No. 22 bis (b), 1 June 1992.
- No. 204 of 1994, Official Gazette, No. 24 bis, 18 June 1994.
- No. 207 of 1994, Official Gazette, No. 24 bis, 18 June 1994.
- No. 24 of 1995, Official Gazette, No. 16 cont., 20 April 1995.
- No. 26 of 1995, Official Gazette, No. 16 cont., 20 April 1995.
- No. 86 of 1996, Official Gazette, No. 24 bis, 21 July 1996.
- No. 88 of 1996, Official Gazette, No. 24 bis, 21 July 1996.
- No. 83 of 1997, Official Gazette, No. 22 cont., 29 May 1997.
- No. 85 of 1997, Official Gazette, No. 22 cont., 29 May 1997.

[14] In addition, the following persons are also subject to the social security law:

- employers (according to Law No. 108 of 1976 as amended by Law No. 61 of 1981 and Law No. 33 of 1984);
- Egyptians working abroad (according to Law No. 50 of 1978 as amended by Law No. 48 of 1984);
- whoever is protected under the general system or by a private one (Law No. 112 of 1980 as amended by Law No. 61 of 1981, which is known as the comprehensive insurance for the working classes of the people).

- workers subject to the provisions of the Labor Code: Article 2(b) of the social security law states the applicability of its provisions on 'the workers subject to the provisions of the Labor Code'.

The worker according to the Labor Code is a natural person 'working for a salary for an employer under his direction and supervision'. Thus, the social security law applies to every person working for a salary for an employer and under his direction and supervision in the private sector, whether in the field of industry, commerce or agriculture.

To sum up, a worker to be eligible for the application of the social security law has to fulfill four conditions:

- he must work under the direction and supervision of an employer;
- he must gain a salary for his work;
- he must not be under the age of 18 years;
- the work relationship must be organized.

4.2. Professional Risks

4.2.1. Unemployment

4.2.1.1. Financing the Insurance

The financing of insurance against unemployment has known important developments. The previous law (No. 63 of 1964) stated in Article 63 that the funds for insurance against unemployment should be financed by:

- the monthly subscriptions paid by the employer at the rate of 2 per cent of the wages of the employees working for him;
- the monthly subscriptions deducted from the workers' wages at the rate of 1 per cent;
- the annual subscriptions paid by the public treasury to the Social Security Authority at the rate of 1 per cent of the wages of the workers.

Law No. 79 of 1975, on the other hand, was keen not to burden either the insured employee or the state with any subscription, contrary to the previous law. This was based on the fact that 'the risk of unemployment, like that of work injury, is a professional risk intrinsic to the productivity costs. Therefore, employers alone must finance the unemployment insurance'.

Thereupon Article 90 of the social security law stated that unemployment insurance should be financed by:

- the monthly subscriptions paid by the employer at the rate of 20 per cent of the wages of the employees insured;
- the return from investing the sum of these subscriptions.

The term 'employers' refers, here, to employers in the private sector, since government employees are not eligible for unemployment insurance. Hence, government and public bodies do not pay the subscriptions mentioned.

4.2.1.2. Scope of Application

In principle, the range of persons covered by the insurance against unemployment is the same as that of social security law. This was asserted by Article 91 which states: 'the provisions of this chapter are applicable to those subject to this law'. However, the Article itself puts the following categories outside its scope:

- government administration and public bodies personnel;
- members of the employer's family in individual partnerships till the second degree and partners working for wages in their companies;
- workers who reach 60 years of age;
- temporary casual workers.

4.2.1.3. Conditions of Eligibility

Article 93 of the social security law enumerated the conditions for eligibility for unemployment compensation as follows:

1. The insured must not have resigned his job.
2. The insured person's service must not have been terminated as a result of a final court sentence in a felony or dishonorable misdemeanor, or a sentence related to public morals or honesty.
3. Period of subscription: the insured should have subscribed to this insurance for a period of at least six months, three continuous months of which should precede unemployment.
4. The insured should be capable of and willing to work. It is not a condition that he is able to do the same work that he was doing before unemployment; it is sufficient if he is able to carry out work suitable to his experience and qualifications and his state of health. If the worker's service was terminated because of disability to work or due to his long disease, he will be entitled, according to the particular circumstances, to compensation for disability or disease.
5. Registration in the Manpower Office. The unemployed person must show his willingness to work by registering his name in the unemployment registry in the competent Manpower Office and by frequenting the relevant office at the times specified by a decree issued by the minister of Manpower, to prove the continuing nature of his unemployment.

4.2.1.4. Value of the Compensation

According to Article 94 of the social security law: 'unemployment compensation is estimated at 60 per cent of the last wages of the insured', i.e., the wages the worker was getting before the termination of his services and according to which the subscription was assessed.

This principle applies to cases where the service was terminated for reasons outside the power of the insured. In consideration for the family of the unemployed, the legislature decided to define certain specific cases where compensation will be given, but with a reduction of the due compensation to 30 per cent of the wages.

Article 95 of the social security law specified these cases as follows:

- if the insured worker presented a false identity or false certificates or recommendations;
- if he was within the probationary period;
- if he made a mistake that resulted in serious material loss for the owner, provided the latter notified the authorities concerned of the accident within 24 hours of his finding out about it;
- if the worker did not follow the instructions related to the safety of the workers and the establishment, provided such instructions were in writing and clearly displayed;
- absence for no legitimate reason for more than the period allowed by laws and regulations;
- non-fulfillment of the basic work obligations;
- disclosure of work secrets;
- if the worker is found inebriated or under the influence of drugs during work;
- if he attacks the employer, the manager in charge or any foreman during work or because of work.

4.2.2. Work Injury

4.2.2.1. Financing the Insurance

According to Article 46 of the social security law, work injury insurance is financed through the following:

1. The monthly subscriptions that the employer is committed to pay according to the following rates:
   (a) One per cent of the wages of the insured working in the government administration, the public bodies and establishments.
   (b) Two per cent of the wages of the insured working in the economic units affiliated to the bodies mentioned in the previous item as well as other public sector economic units.
   (c) Three per cent of the wages of the other insured workers. This rate of subscription will be reduced when the employers undertake medical treatment and care of the injured themselves.
2. The return of the mentioned investments.

4.2.2.2. Meaning of Work Injury

The Egyptian legislature included four risks in the concept of work injury.

4.2.2.2.1. Work Accident. The Egyptian legislature defined work injury as: 'injury resulting from an accident occurring during or because of work'.

To be considered by the Egyptian judiciary as a work accident, the injury has to be the result of a sudden accident that has inflicted physical damage on the worker and had a cause extrinsic to the worker. If those conditions are not fulfilled, then the accident will not be considered by the judge to be a work accident. Therefore, is not enough for the

injury to occur during work to be considered a work injury. For instance, the Egyptian judiciary refused to consider a heart stroke as such as a work injury.

4.2.2.2.2. Injury as a Result of Overwork or Exhaustion. The legislature expressly stated (Article 5) that 'the injury resulting from overwork or exhaustion is considered a work injury if it fulfills the conditions and rules defined by the decree of the minister of Social Security in collaboration with the minister of Health.'

The Ministerial Decree No. 239 of 1977 stated those conditions as follows.

- the insured worker must be less than 60 years of age;
- the overwork or exhaustion is due to exerting extra efforts that surpass ordinary ones;
- the extra effort is due to entrusting the insured worker to achieve a certain work in a limited time less than the time usually needed to accomplish the work, or entrusting him to achieve a particular work in a certain time in addition to his original work;
- the overwork or exhaustion is as a result of the work;
- the medical authority acknowledges the direct relation between the overwork or exhaustion and the illness;
- the state resulting from the overwork or exhaustion is severe enough to cause the illness;
- the overwork or exhaustion inflicted the insured with one of the following diseases: brain haemorrhage or brain stroke, clinically proven, blocking the coronary arteries, proven beyond doubt.

These conditions shall all be fulfilled for the overwork or exhaustion to be considered a work injury.

The injury need not occur during work. Neither does it need to lead to complete or partial disability, or to death. It will be considered a work injury even if the worker recovers completely.

4.2.2.2.3. Road Accident. According to Article 55 of the social security law, any accident that occurs during the worker's journey to work or back from it is a work injury, provided the journey took place without stopping or deviating from the normal journey.

What is meant by 'normal journey' is left to the judge's discretion. The legislature cannot set a comprehensive exclusive definition, as this is dependent on the particular circumstances of every case.

Although the Egyptian legislature did not refer to the reasons for stopping on the way, we believe with the Egyptian jurisprudence that the cause motivating the worker to stop, deviate from the natural way or lag behind should be taken into consideration.

4.2.2.2.4. Professional Diseases. The Egyptian legislature compiled a comprehensive list of professional diseases in annex 1 to the social security law. This table contains 29 illnesses among which are:

- poisoning diseases;
- diseases resulting from exposure to changes in atmospheric pressure;

- diseases and pathological diseases resulting from hormones;
- professional deafness;
- radiation diseases.

Article 70 of the social security law authorizes the Minister of Social Security to add other diseases to the aforementioned table.

For the disease to be considered a professional one it has to be on the list and the relation of causality must be established between the disease and the task performed by the worker.

A professional disease may take time before its symptoms show and the worker may have left his former work by then. That is why the legislature stated in Article 67 of the social security law that the rights of the worker will be guaranteed for a year starting from the date of termination of his service with his former employer.

4.2.2.3. Wages Compensation

Article 89 of the social security law states that if the injury prevents the insured worker from doing his job, compensation will be paid during the period of failure to work because of the injury. The compensation is assessed as equal to the wages according to which the subscriptions were paid. The compensation is to be cashed on the same dates of the regular weekly or monthly wages.

The compensation will be paid during the period of the inability to work, or until permanent disability is proven or until death.

The daily compensation is calculated against the monthly wages according to which the subscriptions were paid, divided by 30 days.

If the treatment period of the insured worker has elapsed without recovery of his affliction, he is entitled to a pension or compensation.

In case of death or complete disability (complete and permanent inability to work), the pension will reach 80 per cent of the wages (Article 51). It shall be increased by 5 per cent every five years till the insured worker reaches the age of 60 (normal age of retirement). Workers under the age of 18 will get a monthly pension of ten pounds (Article 54/1 as amended by Law No. 61 of 1981). Some insured workers may get an additional pension of 20 per cent of the amount of their pension if they suffer from a disease listed in Article 54 of the law (e.g. complete loss of eyesight, paralysis of two limbs, hemiplegia, mental disease, etc.).

The pension is due starting from the first month in which the injured dies or is proven completely disabled according to Article 25 of the social security law which states that: 'the pension is due starting from the month when the right to the pensioned is established.'

In case of permanent partial disability greater than 35 per cent, the injured worker is entitled to a pension equal to the rate of disability measured against the complete disability pension (Article 52/1).

If the rate of disability is less than 35 per cent, the injured worker is not entitled to a pension but to a lump sum compensation of the rate of his disability multiplied by the value of four years of pension of complete disability, paid in one lump (Article 53).

4.2.2.4. Rights of the Injured Worker

The General Insurance Authority offers treatment to the injured. Article 47 of the social security law explained what is meant by treatment and medical care, while Ministerial Decree No. 140 of 1976 defined the minimum services the Authority is committed to offer to the injured. Besides, Ministerial Decree No. 141 of 1976 defined the terms and conditions for securing rehabilitation services offering artificial limbs.

The termination of the injured worker's service for whatever reason does not result in treatment for his injury ceasing (Article 11 of Ministerial Decree No. 310 of 1976).

4.3. Physiological Risks

4.3.1. Insurance against Sickness

4.3.1.1. Financing

Medical insurance financing depends on two major sources: workers' subscriptions and employers' subscriptions.

As for the workers' share, the subscription is estimated at 1 per cent of the wages.

The same rate, 1 per cent of the pension, is applicable to the pension earners who request the benefit of the provisions of treatment and medical care.

As to the share of the employers, the case differs from one sector to the other:

- As for the government and the public sector, the subscription is estimated at 3 per cent of the monthly salaries of the employees. These employers bear the expenses of travel to places of treatment according to Article 80 of the social security law and the relevant executive ministerial decree.
- As for the private sector, the employer is committed to pay a subscription of 4 per cent of the monthly salary of the worker (3 per cent for treatment and medical care and 1 per cent for wages compensation and transport expenses).

This rate is reduced to 1 per cent of the value of the wages if the employer takes upon himself the treatment and medical care of the workers. It is reduced from 4 per cent to 3 per cent if the private sector employer bears wages compensation and transport expenses.

4.3.1.2. Compensations

4.3.1.2.1. Treatment and Medical Services. According to Article 47 of the social security law, treatment and medical care mean the following:

- medical services rendered by general practitioners;
- medical services at the level of specialists, including dentist specialists;
- medical care at home when necessary;
- treatment and accommodation in a hospital, a sanatorium or a specialist center;
- surgical operations and other types of treatment as necessary;
- X-ray examination and necessary lab tests and other medical examinations and the like;
- dispensing medication in all the previously mentioned cases;

- providing rehabilitation services, artificial limbs, prosthetics according to the terms and conditions that are defined by the decree of the Minister of Health in collaboration with the Minister of Social Security.

All these services are available to insured women during pregnancy and delivery according to Article 85/2 of the social security law.

4.3.1.3. Monetary Compensation

Article 78 of the social security law states that if illness prevents the insured from doing his job, the relevant body that pays wages compensation is committed to pay, during his illness, a compensation equal to 75 per cent of his daily wages for a period of 90 days, to be increased later to 85 per cent. The compensation should not be below the minimum legal wage.

This compensation is paid all through his illness or until complete disability is established or until death, provided that the period does not exceed 180 days in one year.

In certain cases (e.g. tuberculosis, leprosy, mental illness), the patient is given a compensation equal to his full wages all through the period of illness till he recovers and can return to his work or till complete disability is established.

The insured woman in case of pregnancy or delivery is entitled to wages compensation of 75 per cent of her relevant wages (Article 79), to be paid for the period of pregnancy and delivery leave as defined in the Labor Law or in the regulations of civil workers in the government and the public sector. The period of subscription in the social security shall not have been less than ten months.

4.3.1.4. Scope of Application

Insurance against sickness applies to all those subject to Law No. 79 of 1975.

Moreover, the provisions of treatment and medical care apply to pensioners, if they asked for benefiting from them when they applied for the pension.

In the private sector, the worker must have been a subscriber to the insurance for a continuous period of three months or an intermittent period of six months, provided that the last two are continuous.

4.3.2. Insurance against Old Age, Disability and Death

4.3.2.1. Financing

The Egyptian legislature specified the sources of financing insurance against old age, disability and death according to the provisions of Article 17 of the social security law as follows:

- monthly subscriptions of employee and employers. The insured is obliged to pay 10 per cent of his monthly salary;
- the sums pledged by the public treasury at 1 per cent of the monthly salary of the insured;
- the amount earned by the money in the total fund;

– sums due from previous periods of subscription to social security or insurance and pensions.

4.3.2.2. Cases of Entitlement to a Pension
A pension is due in the following cases:

1. At the end of the service of the insured for reaching the age of retirement or for exceeding the age of 60 years when the subscription period reaches 120 months at least.
2. At the end of the insured person's service because of death, complete disability or permanent partial disability.
3. The death of the insured or his complete disability within a year of the end of his service.
4. The end of the insured person's service for reasons other than those stated in items 1 and 2, provided the period of his subscription is at least 240 months.

4.3.2.3. Pension, Compensation and Other Benefits
4.3.2.3.1. Pension Value. The social security law has organized the rules according to which the pension is settled. They are based on two elements: the wages; and the period of subscription.

The wage that is used as a base for the pension settlement is the subscription wage, i.e., the wage according to which the subscription to social security was paid.

Article 21 of the law explains how to calculate the period of subscription.

4.3.2.3.2. Compensation and Other Benefits. In addition to the pension, or instead of it, the insured is entitled to compensations and additional rights. If his service ends without his right to a pension being fulfilled (e.g. the insured reaches the age of 60 while the legal conditions entitling him to a pension are not met), the insured is given a lump sum compensation.

Article 27 of the law determined that the lump sum compensation should be calculated at the rate of 15 per cent of the annual wages for each year of subscription.

In addition, the legislature determined some additional rights for the insured or his beneficiaries, such as additional compensation, pension loan (right of the insured or pensioner to get a sum of money in one lump capital instead of a pension), death grant (at the death of the insured or pensioner, a grant is due to the person specified by the insured or the pensioner for the month of death and the following two months), funeral expenses, marriage grant and end of service award.

4.3.2.4. Beneficiaries
Article 104 of the social security law states that if the insured or pensioner dies, the entitled beneficiaries have the right to obtain a pension starting from the beginning of the month of death.

The widow is entitled to a pension if the marriage is certified or proven by a final court ruling.

The divorcee is entitled to a pension if she was divorced against her will, did not marry again and does not have an income equal to the pension.

The husband is entitled to a pension of his wife if he is unable to earn a living and if the marriage is certified.

A son is entitled to a pension if he is less than 21 years of age and the daughter if she is not married.

The legislature, for humane reasons, decided to resume the right to a pension for the daughter and the sister who become widows or get divorced, or where the son or brother is unable to earn a living after the death of the insured.

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9. LAND LAW

1. INTRODUCTION

Following the Revolution of 1952 in Egypt, there was a prevalent trend towards achieving national sovereignty, since this was considered to be a symbol of independence along with the evacuation of the British occupation. The state's effort to accomplish this concentrated on the agricultural aspect, since agriculture represented, both then and now, the basis of economic life in Egypt.

It is against this background that the statutes banning the holding of agricultural land by foreigners in Egypt evolved.

In this respect, the state not only confined the tenure of agricultural land, as a public asset, to nationals, excluding foreigners, but the legislature also set a maximum limit on the amount of land each national could own. It requisitioned the agricultural land in excess of the maximum limit and redistributed it to peasants who had no agricultural holdings.

As a result of recent agricultural and economic developments in Egypt, the cultivable land has undergone severe shrinkage, due to erosion of the land, to the fact that it has been allowed to lie fallow and to building on it. Inevitably, in view of these facts, the legislature has had to take steps to protect the cultivable land, which is discussed below.

1.1. Definition

We can define land law concisely as 'a set of legal rules organizing the agricultural activity in all its aspects with all the legal actions this entails'.

From this definition we can point out a number of characteristics that distinguish land law, the most important of which are:

(1) it is a professional law addressing those who practice agriculture as a profession. In addition it is a mixed law combining rules of both private and public laws;
(2) it is a relatively new branch of the law.

1.2. Contents

The study of land law in Egypt deals with the following major topics:

- agrarian tenure;
- agricultural exploitation.

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2. A Synopsis of the History of Land Law in Egypt

2.1. Introduction

Land law is a set of legal rules that organize the agricultural activity or project in respect of tenure or exploitation and what legal actions this may require.

Land law primarily deals with the tenure or the holding of the land used for practicing this activity, namely agricultural land. Hence legal thought began to consider the topic of the property of agricultural tenure, and subsequently to organize it.

Secondly, and in the same stream of thought, land law deals with the exploitation of agricultural land through the owner's usufruct of his land by cultivating it himself or by renting it to others.

Finally, the cooperative systems emerged, i.e., cooperative societies became one of the most important tools of the agricultural activity. In addition, agricultural credit societies became one of the most significant supports of the agricultural activity.

In brief, the contents of land law can be summed up as: agricultural tenure; agricultural exploitation; and the cooperative societies and agricultural credit.

2.2. Stages of the Historical Development of Land Law in Egypt

1. Land law, as mentioned above, consists of a number of rules organizing tenure and exploitation of the agricultural land, i.e. its ownership. These rules were first included in the Egyptian Civil Code, scattered around it. Initially, there was a tendency towards merging the rules of land law into civil law and its rules.

This was reasonable until the beginning of the nineteenth century, since the civil legislature dealt with the provisions of real estate ownership in general, agricultural tenure being a part of it. The Civil Code catered for the agricultural activity of the Egyptian citizen, providing no separate rules for that.

Conseuently, the Civil Code, in the second part of its first section, dealt with the rent of agricultural land whether for cash or a sharecropping under the title 'Some Types of Rents'. In the first part of the second section, it dealt with the limitations imposed on irrigation and drainage in addition to fixtures and the rights of easement.

2. In the middle of the nineteenth century until shortly before its end, change began to affect the economic structure of Egyptian society. Agriculture became a specialized branch of human activities of society side by side with industry and commerce, entailing the intervention of the legislature to set out legal rules appropriate to this branch.

3. After the Egyptian Revolution of 1952 and the overthrow of the monarchy, the first law concerning agriculture and agrarian tenure was passed in September of the same year. This was Land Reform Law-Decree No. 178 of 1952, the most important element of which was what was called then 'the elimination of agrarian feudalism'. The expropriated land was redistributed to landless peasants and farmers of very small holdings. A maximum limit of holdings per individual was set, to be followed by agrarian laws after that. One of the most important of these statutes, after the Land Reform itself, was the non-termination of the agri-

cultural land rent with the death of the tenant. The contract continued to benefit the heirs on the condition that they included one person whose profession was agriculture. This condition was then dropped. These statutes were amended and the relationship between landlord and tenant was reorganised in Law No. 96 of 1992 which revoked, inter alia, the legal extension of the rent to the heirs and set a maximum limit on the amount of rent, which had negative effects on land exploitation in Egypt.

4. Since the first Land Reform Law-Decree No. 178 of 1952 was concerned with the elimination of agrarian feudalism, especially family agrarian feudalism, the legislature set a maximum limit on individual ownership at 200 feddans (one feddan = 1.038 acres).

5. Law No. 24 of 1958 followed, and added a maximum limit for family ownership of 300 feddans. The family consists of husband, wife and under-age children.

6. This was followed by Law No. 127 of 1961 reducing the maximum individual ownership to only 100 feddans.

7. Law No. 50 of 1969 was passed to reduce the maximum limit of both individual and family ownership to 50 and 100 feddans respectively, taking in consideration that the family consists of husband, wife and under-age children even if married.

8. Law No. 15 of 1963 banned foreigners from owning agricultural land in Egypt, considering it a national resource. This ban included agricultural land and cultivable, fallow or desert lands.

The legislature introduced some exceptions to the ban on foreign holdings of agricultural land, the most important of which were the Palestinians, the foreign charity societies and the Rome Holy Synod.

As regards desert land, Law No. 143 of 1981 was passed to ban foreign ownership of such lands. Then that provision was amended by Law No. 55 of 1988 to the effect that citizens of Arab countries may be allowed by a presidential decree to buy desert lands in Egypt after the approval of the Cabinet, provided that Egyptians were treated in the same way in this particular Arab country.

9. In order to protect the cultivable land in Egypt from what had begun to endanger it, the legislature issued Land Law No. 53 of 1966 amended by Law No. 116 of 1983 banning the erosion of agricultural lands, i.e., the scraping off the top layer of the soil for manufacturing bricks for building was forbidden.

10. Lastly, Military Order No. 1 of 1996 was issued by the Prime Minister in his capacity of Deputy General Military Chief, banning the erosion of agricultural lands as mentioned before. It also banned letting the land lie fallow in order to turn it into building land and it also banned building on agricultural lands.

3. Provisions of the Legislation

3.1. Agricultural Tenure

The following areas of agricultural tenure shall be studied:

(1) banning foreign holdings of agricultural lands;

(2) the maximum limit of agricultural tenure;
(3) the protection of cultivable land.

3.1.1. Banning Foreign Holdings of Agricultural Lands

At the time of the July 1952 Revolution, the holding by foreigners of agricultural lands in Egypt was considered contrary to the sovereignty of the state. It was even considered an aggression against this sovereignty. Thus legislation tended towards prohibiting foreign holdings of agricultural lands.

The first law issued in Egypt which directly banned foreigners from owning agricultural lands was Law No. 37 of 1951, immediately before the Revolution. According to its Article 1, non-Egyptians, whether natural or juristic persons, were banned from the acquisition of agricultural land holdings, be it ownership or usufruct.

It is clear that the legislature stipulated the ban of the *acquisition* of agricultural land holdings, which means the law did not touch the holdings of foreigners which already existed. The ban was confined to future holdings.

The legislature included in the law a number of exceptions from the general rule of the ban, including the following cases:

(a) if the land was bequeathed to a foreigner through a will or inheritance from another foreigner;
(b) if the agricultural land was a *waqf* and was transferred to the foreigner at the end of the period allotted or was cancelled (Article 2 of Law No. 37 of 1951).

The legislature then issued Law No. 15 of 1963 banning foreigners from ownership of agricultural land in order to rectify the defects of Law No. 37 of 1951. The real importance of the passing of the new law was that it came in the midst of the measures of socialist changes, which had begun in Egypt in 1961.

Article 1 of Law No. 15 of 1963 states that foreigners, whether natural or juristic persons, are banned from ownership of agricultural land and the like of cultivable, fallow or desert lands ... This includes ownership and usufruct.

This general rule concerning the ban imposed on the foreigners includes important exceptions.

(a) The third paragraph of Article 1 of Law No. 15 of 1963 excepts the Palestinian people from the application of this ban.
(b) The first paragraph of Article 1 of Law No. 35 of 1971 states the exemption of the then standing foreign charity societies from the ban of Law No. 15 of 1963, explaining that they can keep what they already have.
(c) Law No. 35 of 1971 states the exemption of the Rome Holy Synod from the ban.

Article 2 of Law No. 15 of 1963 states that the state acquires the ownership of agricultural lands and the like of cultivable, fallow or desert lands which are in the possession of foreigners at the time of enacting this law, together with the buildings, fixed and non-fixed equipment, trees and others.

Article 4 states 'a compensation shall be given to the owners of the lands mentioned in Article 2 …'.

3.1.2. The Maximum Limit of Agricultural Tenure

The provisions regarding the maximum limit of agricultural tenure have varied in content. The first one mentioned the maximum limit of personal holdings as in Law-Decree No. 178 of 1952, the first agrarian reform law. Then came Law No. 127 of 1961 and Law No. 50 of 1969 defining the maximum limit for the holdings of the individual and the family.

We will sum up the maximum limit of personal and individual holdings, then move on to family holdings.

The maximum limit of personal and individual holdings. The legislature addressed the subject of the maximum limit of agricultural holdings of a person making it 200 feddans. After that and under Law No. 127 of 1961, the legislature reduced the maximum limit of agricultural holdings of an individual to 100 feddans. This was followed by Law No. 50 of 1969, the first paragraph of Article 1 of which stipulates that: 'no individual shall hold more than 50 feddans of agricultural land and the like of cultivable, fallow or desert lands …'. Lastly, Law No. 143 of 1981 concerning desert lands was issued, which raised the maximum limit of the individual holding of such lands to 200 feddans.

The maximum limit of family holdings. Paragraph two of Article 1 of Law No. 50 of 1969 stated that 'the total holdings of a family, taking into consideration the previous provision [the maximum limit of individual holdings not exceeding 50 feddans], may not exceed 100 feddans of these lands (agricultural land and the like of cultivable, fallow or desert lands)'.

This means that the maximum limit of family holdings which is 100 feddans is limited by the fact that an individual holdings should not be in excess of 50 feddans.

It is worth noting that Law No. 24 of 1958 set the maximum limit of family holding at 300 feddans and Law No. 143 of 1981 has set it at 300 feddans of desert lands.

The family, according to Law No. 50 of 1969, consists of husband, wife and under-age children even if married.

Article 6 of Law No. 50 of 1969 stated that the government shall expropriate, within two years of the entry into force of this law, the lands in excess of the maximum limit. This expropriation will be considered valid and as taking effect starting from the date of the entry into force of this law irrelevant of the actual date of the expropriation. Owners' transactions will be invalid unless they took place before this deadline.

Law No. 50 of 1969 entered into force on 23 July 1969.

Some of the most important judicial rulings applying Law No. 50 of 1969. On 14 January 1975, the Supreme Administrative Court ruled that due to the direct effect of Law No. 50 of 1969, its ruling shall apply to all the land holdings of a person at the time of issuing this law, regardless of ownership deeds of these lands.

On 26 February 1980, the Supreme Administrative Court ruled that Law No. 50 of 1969 states the non-validity of the owners' previous transactions unless these were documented to have taken place before the entry into force of that law on 23 July 1969.

3.1.3. The Protection of Cultivable Land

3.1.3.1. Banning the Erosion of Agricultural Lands or Letting Them Lie Fallow

Threats endangering the cultivable land in Egypt. We have previously referred to the severe shrinkage of cultivable land undergone in Egypt. This is caused by farmers committing aggression against the cultivable land, e.g. by eroding their agricultural lands through scraping off the uppermost layer of the soil to sell the product to brick factories. Considering the meager amount of silt in the Nile water after constructing the High Dam in Aswan, we can perceive the enormity of the danger that the fertility of agricultural land faces. In addition, because of the pressing problem of housing and the high prices of building land, some farmers took to building on their agricultural land for the purpose of living or renting. Others have let the land lie fallow so that they can obtain a permit to use or sell it as building land.

Obviously these acts represent grave danger to the cultivable land. They led to the intervention of the legislature to protect the cultivable land against eroding and fallowing.

3.1.3.2. Prohibiting the Erosion of Agricultural Land

The legislature intervened for the first time to protect the cultivable land against erosion with Law No. 59 of 1973. This protection came in the form of prohibiting erosion. This was followed by Law No. 19 of 1978 and Law No. 116 of 1983. With these laws the legislature has added new provisions to Land Law No. 53 of 1966 which had been issued with no provisions in this respect.

Definition of erosion. According to the law, erosion means scraping off the uppermost layer of the soil of agricultural land.

The principle and essence of banning erosion. The legislature stated for the first time the principle of banning erosion of agricultural land in Law No. 59 of 1973.

Article 71 bis stated that it is prohibited, without a license from the Ministry of Agriculture, to erode agricultural lands and to remove earth for making bricks or for any other purpose.

The legislature later issued Law No. 116 of 1983 amending Land Law No. 53 of 1966, adding an Article 150, which stated in its first paragraph that it is prohibited to erode agricultural lands or remove earth for use other than for agricultural purposes. Article 153 was also inserted, and this stipulated that: 'It is prohibited to set up factories or brick mills on agricultural lands. Owners and operators of factories or brick mills shall discontinue any operation which breaches the provisions of Article 150 of this law'.

Exception from the principle of banning erosion. Paragraph 3 of the aforementioned Article 150 stated that: 'The agricultural land may be eroded and earth removed from it for the purposes of agricultural amelioration or maintaining its fertility. This shall be determined by a decree of the Minister of Agriculture in accordance with agricultural custom'.

Penalty for breaching the ban on erosion. The legislature specified a penalty in the aforementioned Article 150. The penalty is imprisonment and a fine of no less than 10,000 pounds and not exceeding 50,000 pounds for every feddan or part thereof in the relevant land. The second paragraph of Article 154 states that if the party in breach of the law is the owner, imprisonment shall not be less than six months. If the party in breach of

the law is the tenant, a further sentence of termination of the tenancy lease shall be passed, the land returning to the owner.

3.1.3.3. Prohibiting Letting Agricultural Lands Lie Fallow

The principle of prohibition. The legislature has interfered for the first time to protect the cultivable land against fallowing with Article 151 of Law No. 53 of 1966 which was completed by Law No. 116 of 1983. This Article stipulates that the owner or the holder of the agricultural land, in whatever capacity, is prohibited from leaving the land without cultivation for two years from the last time it was cultivated despite its availability for cultivation, which is to be determined by a decree of the Minister of Agriculture. He is also prohibited from committing any action or abstaining from any act that can lead to turn the land fallow or affect its fertility.

Penalty for breaching the prohibition. According to Article 155, the penalty is imprisonment and a fine of no less than 500 pounds and not exceeding 1,000 pounds. If the breaching party is a tenant, the rent contract shall be terminated and the land returned to the owner. The enforcement of the fine penalty may not be suspended.

3.2. Agricultural Exploitation

3.2.1. Preamble

If the study of agricultural tenure is one of the most important topics in land law, it is due to the fact that it is the study of the framework containing the agricultural activity dealt with by this law. The term 'agricultural activity' means agricultural exploitation.

Agricultural exploitation appears in two forms: regular rent; and sharecropping. A brief illustration is set out below.

3.2.2. Regular Rent

The rent contract of the agricultural lands follows the provisions of rent in the Egyptian Civil Code.

An amendment determining the relationship between owner and tenant was introduced by a new law in 1992, which we shall deal with later.

Before that, the rent relationship was subject to the Land Reform laws, which used to determine the bases of this relationship as follows:

(a) Article 32 of Agrarian Reform Law No. 178 of 1952 stipulated that: 'the lease of an agricultural land goes to the person who cultivates it himself; the tenant may not sub-let it or assign the lease to a third party or sharecrop it with a third party'.

On 19 February 1980, the Supreme Administrative Court ruled that: 'Although the legislature prohibited subletting in Article 32 of the Decree Law No. 178 of 1952 as amended by Law No. 53 of 1966, the tenant may get help in working the land from his family or clan or any other person as long as this is done under his supervision and on his behalf'.

The ruling focuses on the provision concerning the exploitation of the land by the tenant himself. It also focuses on banning subletting and the use of middlemen; the court makes an exception of help under the supervision of the tenant or on his behalf.

(b) The lease should be in return for a definite rent. Article 33 of Decree Law No. 178 of 1952 states: 'the annual rent of the agricultural land may not exceed seven times the amount of the real estate tax [...] If the land was not subject to the real estate tax at the time of the lease or if the tax was no more than two pounds per feddan annually, the rent value is estimated at the landlord's request by the competent assessment committee'.

(c) Article 37 of the aforementioned law states that no individual or family, including wife and underage children, may hold, through a lease, more than 50 feddans.

3.2.3. Sharecropping

Sharecropping means that the landlord entrusts his land through a contract to a person to exploit it in return for a property rent in the form of a certain portion of the crop.

Sharecropping is not greatly different from regular renting. For instance, the tenant should work the land himself; subletting is forbidden. As to the determination of the property rent, Article 33 bis (b) of Law No. 178 of 1952 states: 'the share of the landlord in sharecropping may not exceed half the crop after the deduction of expenses which are halved between tenant and landlord'.

Furthermore, the maximum limit imposed on agricultural holding must be complied with. This maximum limit is 50 feddans as we mentioned in the case of regular renting.

3.3. Relationship between Landlord and Tenant in Agricultural Lands (Law No. 96 of 1992)

The new point introduced by the legislature in the new law regarding the relationship between landlord and tenant of agricultural lands is the general idea that this relationship is subject to the provisions of the Civil Code. Thus it is no longer subject to the provisions of the Land Reform Law.

The first consequent result is the application of the principle of the contract as the law of the contractors within the framework of this rental relationship. This did not exist before.

Accordingly, it can be said that the new point introduced by the aforementioned law can be summed up in two principles:

1. The legislature has cancelled the maximum limit for the rent of agricultural lands, which was seven times the value of the real estate tax as mentioned earlier.

   Determining the rent has become freely done by both landlord and tenant according to the principle of the contract as the law of the contractors, with the consequent result of freedom of the two parties to formulate the provisions of the contract.
2. The legislature has abolished the previous laws' principle of extending the legal right to the lease to the heirs of the tenant.

The principle of legal extension existed in paragraph one of Article 35 of the Decree Law No. 178 of 1952 as amended by Law No. 67 of 1956, which stated that: 'the landlord shall

not demand the evacuation of the lands rented even after the end of the agreed upon term of the contract unless the tenant breaches an essential obligation of the law or the contract …'.

The principle of legal extension meant that the lease contract of agricultural lands was not terminated at the end of its term. The landlord could not demand the evacuation of the tenant when no essential obligation of the contract was breached.

The tenant could therefore stay in the agricultural land even after the expiration of the lease period; the landlord was not allowed to demand evacuation. The lease contract was legally extended.

The Court of Cassation ruled on 9 December 1965 that 'The extension of the lease contract of agricultural lands is done by the force of law without the need of the tenant to declare his desire to stay on the land leased to him. The landlord may only seize this land with the consent of the leaseholder and after his willing to evacuate the land'.

Law No. 96 of 1992 abolished the extension principle. The contract shall be concluded for a certain period according to the Civil Code and the contract is terminated with the expiration of its term.

W. Mahmoud

10. CIVIL AND CRIMINAL JUSTICE

1. HISTORICAL BACKGROUND

The concept of the state and the rule of law both necessitate the existence of an authority entrusted with the settlement of disputes. This is the responsibility of the judiciary, which stands between the legislative and executive powers within the state while remaining independent of both, governed by the law alone and committed to respect and implement it.

The present study deals only with civil and criminal justice, i.e. ordinary justice, thus excluding administrative courts and special or exceptional courts such as state security courts (both ordinary and emergency ones), the Court of Values, military courts and the 'Socialist Public Prosecutor'.

This chapter deals with that part of the judicial system in Egypt that regulates the branches of the judiciary, their jurisdiction as well as the rules governing the organization and composition of courts and that of the public prosecution.

Prior to the setting up of mixed and national courts in 1876 and 1883, the Egyptian judiciary was not national. It had no jurisdiction over civil or criminal disputes between foreign nationals of the same nationality. Nor did it have jurisdiction in litigation between foreigners of different nationalities, the latter having the option of resorting to their respective ambassadors at the Sublime Porte or to local consular courts. As for disputes between foreigners and nationals, they were to be settled by local courts, on condition that the case could only be heard in the presence of the consul or an interpreter. If the value of the lawsuit exceeded a certain limit, it came under the exclusive jurisdiction of an Ottoman Council. This led to a chaotic judiciary situation in Egypt until it was finally decided that one single foreign court would replace the different foreign courts in existence. The Mixed Courts system was established in 1876, temporarily for five years, with jurisdiction over any litigation involving mixed interests.

On 31 December 1883, the national courts were established. They were composed of a court of first instance and a court of appeal. In 1937, foreign capitulations were abrogated as well as consular courts. In 1949 mixed justice disappeared and Egypt, like other nations, became entitled to the independent management of justice within its territories and among all residents therein. In 1955, the judiciary bodies were unified: the national courts became competent to rule on personal status matter of all Egyptians, Muslims and non-Muslims alike. The long-awaited reform was achieved and matters related to

N. Bernard-Maugiron and B. Dupret (eds.), Egypt and Its Laws, 135–180.
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personal status laws were no longer divided between Sharia courts (Islamic courts) and other religious judicial councils.

Following on from the above brief historical review of the Egyptian judiciary system, this chapter will now deal with civil and criminal courts. The remainder of the chapter is divided into two parts: (1) the Egyptian judicial system; and (2) the judicial principles established by the Egyptian courts.

2. The Egyptian Judicial System

2.1. Rules of Jurisdiction in the Criminal and Civil Domains

2.1.1. Introduction

The notion of jurisdiction of a court is determined by the classes of cases examined by that court and by the judges' function in respect of the cases which fall within the scope of the competence of the court to which they pertain.

Jurisdiction differs from legal authority. All courts enjoy legal authority within the state. Such authority is distributed between ordinary and administrative courts, in addition to other types of courts with limited competence such as that of military courts. The concept of jurisdiction also differs from the idea of the distribution of work among different circuits within the same court. If there are several courts within the one court, this is not considered a distribution of jurisdiction; it is an organizational distribution; the lack of respect thereof does not justify a judgment of non-competence.

2.1.2. Distribution of Jurisdiction within the Civil Domain

2.1.2.1. Territorial Jurisdiction

This refers to the jurisdiction of a given court over a given part of the territory. A certain number of first instance courts are attached to a specific court of appeal which is exclusively competent to rule on challenges related to their judgments. The general rule is that the court cannot be deemed as validly constituted except in its permanent and specified seat. However, the Minister of Justice, by virtue of Articles 6/3, 9/5 and 11/2 of the Judicial Authority Law – and at the request of the court's president – is entitled to convene a court of appeal, a first instance court or a summary court in any other location lying within its jurisdiction and, if necessary, even outside the scope of its jurisdiction. In every administrative rural or urban district of the governorates, there are summary courts, 244 in all. In each governorate capital there are courts of first instance, 24 in all, responsible for a number of summary courts. They deal with cases involving more important amounts of money than the summary courts do, as well as with challenges against judgments passed by summary courts. As for the courts of appeal, there are eight of them, five in the Delta region: the Cairo Court of Appeal; the one of Alexandria; that of Tanta; that of Mansoura; and that of Ismailia. There are three others in Upper Egypt, in Beni Suef, in Assiut and in Qena. The jurisdiction of each court of appeal extends over a number of

courts of first instance. The jurisdiction of the Cairo Court of Appeal, established in 1883, extends over the Cairo and the Guiza courts of first instance. The jurisdiction of the Alexandria Court of Appeal extends over the Alexandria and Damanhour courts, while the jurisdiction of the Tanta Court of Appeal extends over the courts of first instance of Kafr El Sheikh, Tanta, Banha and Shebin El Kom. The jurisdiction of the Mansura Court of Appeal extends over Mansura, Damietta and Zagazig. The jurisdiction of the Ismailia Court of Appeal extends over those of Ismailia, Suez and Port Said. The jurisdiction of Beni Suef Court of Appeal extends over the Beni Suef, Fayoum and Minia courts of first instance. The jurisdiction of Assiut Court of Appeal extends over Assiut and Sohag courts of first instance. The jurisdiction of Qena Court of Appeal extends over the Qena and Aswan courts of first instance. At the apex of the judicial pyramid is the Court of Cassation, located in Cairo and established by decree in 1931, pursuant to Law Decree No. 68 of 2 May 1931. The Court of Cassation is responsible for the unification of judicial principles and is made up of 17 civil circuits, 12 criminal circuits and a circuit for hearing the complaints of members of the judiciary and the Parquet.

Where civil actions are concerned, territorial jurisdiction lies, in principle, with the defendant's court, pursuant to Article 49.1 of the Code of Procedure. Actions instituted against a public juristic person fall under the jurisdiction of the court within the district of which the main seat of the administration lies. Contrary to the general rule, however, real estate actions are heard by the court within the district of which the immovable is located. Actions against public juristic persons will be submitted to the summary court within the district of which the seat of the governorate is located. As for bankruptcy actions, these fall within the jurisdiction of the courts where the commercial activity or the shop of the merchant is located, and not in the court of his domicile or place of residence.

As for territorial jurisdiction in criminal actions, pursuant to Article 217 of the Code of Criminal Procedure, jurisdiction is determined by the place where the crime was committed, by the place of residence of the accused, or the place where he was arrested.

The explicit consequence of the foregoing provision is that jurisdiction in criminal actions is not confined to a single court; three courts may hear the case: the court in whose territorial jurisdiction the crime was committed, the court in the jurisdiction of which the accused resides, and the court where the arrest of the accused took place. The law gives no precedence to one over the other, so that jurisdiction lies with the court where the action is first brought. The scene of the crime is where the material element of the crime is realized. In cases of attempted crime, jurisdiction is decided pursuant to Article 218 of the Code of Criminal Procedure, in relation to each and every location where an attempt was made. In cases of continuous crimes, the scene of the crime is any place where continuity takes place and in cases of habitual crime, any place where any of the actions contributing to the element of habit takes place. If a crime is committed outside Egypt and the accused has no place of residence in Egypt, nor is arrested therein, proceedings are instituted before the Cairo Criminal Court if it is a felony, or before the Abdin summary court if it is a misdemeanor (Article 219 of the Code of Criminal Procedure).

2.1.2.2. Jurisdiction in Value and Kind

Jurisdiction according to value serves for the designation of the court in relation to the value of the action, while jurisdiction in kind designates the court in relation to the legal relationships concerned, notwithstanding the value involved. Summary courts located in any rural or urban district will hear civil and commercial actions the value of which do not exceed L.E. 10,000 as well as cases of minor importance allotted to them by the legislature so that litigants in actions for distribution, boundary delimitation, wages and salaries, notwithstanding their value, may find these courts within reach. The courts of first instance, located in governorate capitals in Egypt, hear all actions the value of which exceeds 10,000 pounds. The jurisdiction of these courts also covers all actions which do not fall within the scope of jurisdiction of a summary court. Courts of first instance are also considered courts of second degree in relation to appeals against court decisions handed down by the summary courts.

The legislature has also allocated particular actions to courts of first instance according to their kind, regardless of their value, such as declaration of bankruptcy, preventive conciliation, declaration of insolvency, tenancy disputes pursuant to Law No. 49 of 1977 concerning the lease of premises and the organization of the relationship between landlord and tenant, as well as certain actions provided for in the law governing agricultural cooperatives, No. 122 of 1980, such as challenging decisions to dissolve the board of directors of the cooperative society (Article 52 of the Law). Taking into consideration the fact that a system of specialized judges is essential in modern times for better performance, the legislature adopted Article 12 of the Judicial Authority Law and set up a system of specialized courts as follows:

(a) Summary labor courts: pursuant to Article 13 of Judicial Authority Law No. 46 of 1971, these courts hear all actions related to labor disputes. Appeals against the rulings of these courts are heard before courts of first instance.

(b) Courts dealing with urgent cases: pursuant to Article 45 of the Code of Procedure, a specialized summary court is located in the seat of each court of first instance to hear urgent actions.

(c) Courts of execution: pursuant to Article 275 of the Code of Procedure No. 11 of 1968, these specialized courts are set up to supervise mandatory execution and to hear all disputes related thereto. A court of execution is made up of a single judge in the circuit of each summary court chosen from among the judges of the court of first instance. Such a judge is different from the judge of interlocutory injunctions, who is authorized to issue ex parte injunctions.

2.2. Distribution of Jurisdiction within the Criminal Domain

2.2.1. Jurisdiction in Kind

The criterion determining jurisdiction in kind for criminal courts is the circuit of crimes into: felonies; misdemeanors; and petty offences. Felonies fall within the jurisdiction of

criminal courts, by virtue of their kind. Misdemeanors and petty offences fall within the jurisdiction of summary courts.

2.2.1.1. Jurisdiction in Kind for Criminal Courts

Article 216 of the Code of Criminal Procedure stipulates that the jurisdiction of criminal courts covers crimes liable to capital punishment, life and temporary hard labor, and imprisonment. Criminal courts also hear misdemeanor actions related to felonies referred to them pursuant to Article 283 of the Code of Criminal Procedure, as well as misdemeanors suspected as felonies until recognized as misdemeanors after a hearing takes place, pursuant to Article 382 of the Code of Criminal Procedure. An exception to this rule is that criminal courts exercise jurisdiction over misdemeanors committed through the press or other means of publication (except for torts).

2.2.1.2. Jurisdiction in Kind for Misdemeanor Courts

In accordance with Article 215 of the Code of Criminal Procedure, summary courts have jurisdiction over all acts recognized by the law as being petty offences or misdemeanors, except for misdemeanors committed through the press or other means of publication against parties other than individuals. The latter misdemeanors are heard in criminal courts as set forth in the previous paragraph.

2.2.1.3. Jurisdiction of Courts of First Instance

Criminal circuits in courts of first instance have jurisdiction over appeals in petty offences and misdemeanors, pursuant to Article 410 of the Code of Criminal Procedure.

The legal characterization of a crime determines the court's jurisdiction. Crimes are classified into three kinds: felony; misdemeanor; and petty offence, regardless of the characterization filed with the action which is not binding for the court, the latter being the only authority entitled to give the legal definition to the facts referred to it. Consequently, it may disregard the Parquet's characterization of the facts and may, at its discretion, declare the hearing of the action to be outside the scope of its jurisdiction.

2.2.1.4. All Rules of Criminal Jurisdiction are Part of Public Order

All rules of criminal jurisdiction belong to public order, in accordance with Article 332 of the Code of Criminal Procedure. This stipulates that if the invalidity of a court decision stems from failure to comply with the rulings of the law governing the court's competence, its jurisdiction as to the kind of crime, or from any other reason related to public order, the court may hand down the decision even without a request in that sense. It is the prevalent view that rules of territorial jurisdiction are also part of public order (see Court of Cassation, 18 November 1979, Court of Cassation Digest, Vol. 30, p. 805, Rule 172).

2.2.2. Personal Jurisdiction of Criminal Courts

As a rule, the person of the accused does not count in determining the jurisdiction of criminal courts, as all citizens are equal before the law. The legislature has, however,

made an exception, specifying that certain persons will appear before specialized courts according to their age or in view of their military or political status.

(a) In accordance with Article 1 of the Law on the Youth No. 31 of 1974, juvenile courts are set up to rule on crimes committed by minors whose age does not exceed 18 years at the time the crime was committed.

(b) Pursuant to Law No. 25 of 1966, military courts have jurisdiction over disputes involving officers and enlisted men of the Armed Forces. The jurisdiction of these courts is exercised whenever the military identity of parties to the action is ascertained at the time the crime was committed. Article 48 of the above-mentioned law also stipulates that the military judicial authority is the sole judge as to whether the crime falls within its jurisdiction; such a judgment has a determinative effect before ordinary courts.

(c) Article 85 of the Constitution furthermore stipulates that the trial of the President of the Republic takes place before a special court whose constitution, proceedings and penalties are to be decided by the law. No law has yet been issued to set up such a court.

(d) Article 1 of Law No. 79 of 1958 defines a special court for the trial of ministers. It is made up of 12 members, six of whom are members of the People's Assembly, to be chosen by ballot, the other six of whom are counselors of the Court of Cassation. This court exercises its jurisdiction over persons in ministerial positions only; it has no jurisdiction over public officials with the financial status of a minister. Such a court has not yet been convened.

This was a brief survey of the rules of jurisdiction for civil and criminal courts, covering the different types of court jurisdiction in relation to territory, subject matters, value and personal status. The rules underlying the organization and composition of the different kinds of civil and criminal courts will be the subject of the coming section.

3. Rules Underlying the Composition of Civil and Criminal Courts

3.1. Composition of Civil Courts

The cornerstone of civil courts is the judge, who is vested with the competence to rule on actions, as well as to handle and supervise other court activities. The composition differs from one court to another.

(a) Because of their number, because of the small amounts involved in the action submitted to them and because of their relative unimportance compared to courts of general jurisdiction, summary courts are made up of a single judge. The same is true of the courts dealing with urgent cases, courts of execution and courts of interlocutory injunctions, albeit for different reasons, such as the urgency of the cases which require brief and rapid procedures, unlike other courts composed of several judges where lengthy deliberations are called for.

(b) Courts of first instance consist of a number of circuits. Each circuit has three judges: one judge heading the circuit and two members. A counselor, seconded from the

Court of Appeal where the court of first instance is located, heads the administrative bodies of circuits of the court of first instance. He is chosen by the Minister of Justice with the approval of the Supreme Judiciary Council, pursuant to Article 9 of the Judicial Authority Law.

(c) Courts of Appeal are made up of a number of circuits: each circuit is composed of three counselors. There are 84 civil circuits in the Cairo Court of Appeal, the jurisdiction of which covers all branches of civil and personal status law.

(d) The Civil Court of Cassation is made up of a number of circuits. There are 17 civil circuits, each of which is composed of five counselors. Circuits are headed by the President of the Court of Cassation or by one of his deputies. The civil circuits of the Court of Cassation are made of tenancy circuits, labor circuits, commercial circuits and personal status circuits. The General Board of the Court of Cassation is made up of 11 counselors; decisions are issued by a special majority of seven votes. The Board has a particular jurisdiction, stipulated in Article 3/4 of the Judicial Authority Law, namely, to rule in cases where one of the court's circuits decides to reverse a legal principle on which previous rulings were issued by this very circuit or by any other circuit belonging to the same civil board. Besides, if the civil and commercial circuit, the labor circuit or the personal status circuit decides to reverse a legal principle decided by rulings of the criminal circuit, or vice versa, the circuit hearing the challenge must refer the matter to a joint session of both boards made of 22 counselors. A ruling is then decided by a majority of 14 votes.

Clerks assist the judges as an element of the composition of the court. They prepare the sessions, keep a record of the proceedings and sign the minutes. The presence of the clerk is essential for the validity of court sessions.

A number of bailiffs are assigned to each court and these serve notices on the litigants concerned, and implement applicable rulings and measures of preventive custody.

3.2. Composition of Criminal Courts

In addition to the above members of the courts, i.e. the judge and the clerk, a representative of the public prosecution is present at the criminal courts sessions. The absence of any of the three categories of members renders the criminal court sessions invalid. Criminal courts differ as to their degree: summary courts, courts of appeal for misdemeanors, Criminal Courts and the Court of Cassation:

(a) Summary courts: these are located in the rural districts and police stations of urban districts. They are made up of one single judge who belongs to the court of first instance in the jurisdiction of which the summary court is located, pursuant to Article 13 of the Judicial Authority Law. A clerk assists the judge and the presence of a representative of the public prosecution is necessary for the validity of the sessions.

(b) Misdemeanor courts of appeal: these are appeal circuits, each of which is made up of three judges from the courts of first instance. They convene in the capitals of each governorate. A clerk and a representative of the Parquet (public prosecution) assist the

judge. The jurisdiction of these courts extends over appeals against decisions issued by the summary courts attached to them in criminal and subsidiary civil actions. They also look into impediments to the execution of decisions issued by courts other than criminal courts.

(c) Criminal Courts: one circuit at least is set up in each Court of Appeal to determine on felony actions. These courts sit in judgment once a month in all areas where a court of first instance is located. The opening of each session is set at least one month prior to its convening by decision of the Minister of Justice, at the request of the President of the Court of Appeal. It is the President of the Court of Appeal who is responsible for the establishment of the lists of cases to be heard in the session of each court circuit, and for the forwarding of case files and photocopies of documents to the members of the circuit, as well as for the notification of the accused and the witnesses as to the day of the hearing.

The Criminal Court is composed of three counselors, and one of its members represents the Parquet. The jurisdiction of these courts extends over crimes of contempt of court whether inside or outside court sessions. There are 42 criminal circuits in the Cairo Court of Appeal.

(d) The Court of Cassation is the highest judicial authority, and is located in Cairo. Twelve circuits are set up for criminal cases, each of which is headed by the President of the Court of Cassation himself or one of his deputies; five counselors sit on each circuit. The Court of Cassation is not considered to be a stage in litigation; consequently, actions are not referred to it in full as is the case with Courts of Appeal. The Court of Cassation is a court of legal matters and is not concerned with the facts of the case. At its inception in 1883, it was part of the Courts of Appeal in the form of a general assembly, with a jurisdiction confined to criminal cases. Later, in 1904, the Code of Criminal Investigation stipulated that the Cairo Court of Appeal, sitting as a Court of Cassation, should deal with challenges against final rulings in felonies and misdemeanors. Challenges before the Court of Cassation in civil and commercial matters were not known prior to Law Decree No. 68 of 1931, which established the Court of Cassation. Article 30 of that law sets forth the types of challenge as follows:

1. where the challenged ruling is based on a contravention of the law, or an error in its application or interpretation;
2. where invalidity of the ruling is claimed;
3. where invalidity of procedures affecting the ruling, including errors in the application of the law, are claimed.

3.3. Public Prosecution (the Parquet General)

The Parquet is a branch of the judiciary vested with the authority of investigating and instituting public actions. The following is a study of the Parquet divided into three sections: composition; jurisdiction; and properties.

3.3.1. Composition

Article 23 of the Judicial Authority Law sets forth the composition of the Parquet as follows: 'The function of the Parquet within all courts, except for the Court of Cassation, is carried out by the Attorney General or one of his assistant deputies, by senior and other public attorneys, or by heads of the Parquet, or their deputies, or assistant deputies or auxiliary deputies'. This provision reveals the Parquet as a hierarchical structure: the Attorney General is at the apex and the base of the pyramid is composed of deputies and assistants of the Parquet. In the absence of the Attorney General, all his prerogatives are taken over by his longest serving assistant deputy.

Pursuant to Article 25 of the Judicial Authority Law, a senior public attorney, assisted by a number of public attorneys, heads of the Parquet, their deputies and assistant deputies and auxiliary deputies, is assigned to every Court of Appeal. The senior public attorney exercises all the powers of the Attorney General in the Court of Appeal under its supervision.

In each court of general jurisdiction, a general Parquet is headed by a public attorney assisted by members of the Parquet. The general Parquet is subject to the supervision of the senior public attorney of the Court of Appeal within whose jurisdiction it is located.

A summary Parquet, subordinate to the Attorney General, is also located in the seat of summary courts. Deputies of the Parquet preside over those Parquets, assisted by other members of the Parquet, under the supervision of the public attorney at the court of general jurisdiction. As for the Court of Cassation, an independent Parquet is formed, headed by a director chosen among the counselors of cassation or appeal, or the public attorneys, assisted by an adequate number of members.

Article 21 of the Judicial Authority Law stipulates that members of the Parquet are subordinate to their superiors according to their degrees and, ultimately, to the Minister of Justice who has a right of supervision and control over the Parquet. Thus, the Minister of Justice is at the head of the administrative body of the Parquet, while only the Attorney General represents the body social, is at the head of the Parquet as a legal body and has a power of supervision over the members.

The position of the Minister of Justice at the head of the Parquet is a purely administrative superiority with no judicial effects (Digest of Cassation Rulings, 15 November 1985, Vol. 26, No. 166, p. 865). The Attorney General is appointed by presidential decree from among deputies or presidents of Courts of Appeal, or counselors of the Court of Cassation, or, at least, from among senior public attorneys. The Attorney General is in charge of the public action and is vested – in his capacity as a general prosecutor to whom all members of the Parquet are subordinate – with all powers afforded by law to members of the Parquet, in addition to his having extended jurisdiction over all parts of the Republic of Egypt. Moreover, the Attorney General has the following exceptional powers:

First: Pursuant to Article 211 of the Code of Criminal Procedure, the Attorney General may, within three months of the date of issuance, cancel orders issued by members of the Parquet to the effect of absence of justification for actions for lack of proper grounds.

Second: The Attorney General may, within 30 days of the date of ruling, appeal against rulings issued in misdemeanors and petty offences; whereas a period of only ten days is allowed to members of the Parquet to present their appeal, pursuant to Article 401/1 of the Code of Criminal Procedure.

Third: The Attorney General may request reconsideration of final penal sentences in actions of felonies and misdemeanors, pursuant to Articles 441 and 442 of the Code of Criminal Procedure.

Fourth: The Attorney General may take conservatory measures regarding the funds of those accused of embezzlement of public money, pursuant to Articles 112–119 bis of the Penal Code, as a guarantee to enforce sentences imposing fines or restitution.

Fifth: Pursuant to Article 63/3 of the Code of Criminal Procedure, the Attorney General may institute actions against public officials and criminal investigation officers for felonies or misdemeanors committed by them during the accomplishment of their duties.

Sixth: The Attorney General may request the lifting of judicial immunity from judges and Parquet members so that they may be subjected to investigation procedures.

3.3.2. Jurisdiction

Article 1.1 of the Code of Criminal Procedure, as well as Article 21 of the Judicial Authority Law, singles out the Parquet as the sole body responsible for setting actions in motion and for the pursuit thereof. Setting actions in motion refers to the Parquet's responsibilities for investigating the case, or assigning such investigation to some criminal investigation officers or to an inquiry judge (juge d'instruction). As to the Parquet's pursuit of actions, this refers to calling upon the accused to appear before the competent court, to representing the prosecution side before the said court and to following the criminal proceedings until a ruling and challenges to that ruling are handed down, even if the said challenge is in favor of the accused. Besides these principal areas of jurisdiction, the Parquet's jurisdiction extends to secondary areas, such as supervising public prisons and funds deposited in court safes. Furthermore, the Parquet enjoys jurisdiction in civil actions as follows:

First: The Parquet brings an action against whoever transgresses the legal status that fall within its protection, as in the case of bankruptcy actions.

Second: The Parquet jointly intervenes in certain pending litigations to guarantee the administration of law in such a way as to safeguard the public interest as perceived by logical legal principles. The intervention of the Parquet may be mandatory or optional:

(a) It is mandatory in all challenges and requests in relation to civil, commercial and personal status actions presented before the Court of Cassation, pursuant to Article 88/2 of the Code of Criminal Procedure and Article 1 of Law No. 628 of 1955, which stipulates the mandatory intervention of the Parquet in all actions of personal status law.

(b) It is optional, pursuant to Article 89 of the Code of Criminal Procedure, in actions related to those devoid or lacking of capacity, absent or missing persons, actions related to *waqfs*, challenge of judges, claim for damages against judges as well as in crimes related to public order and morality. Such a comprehensive jurisdiction of the Parquet over public action does not make them the exclusive property of the Parquet, since these

rights are vested in the body social, while the Parquet is only given the power of proxy on behalf of society (Court of Cassation Digest, 2 March 1964, Vol. 15, No. 33, p. 159). Consequently, the Parquet has no right to waive criminal charges (Article 1/2 of the Code of Criminal Procedure), nor the right to effect a reconciliation with the accused or leave the case on file in return for indemnity to the victim, nor is it entitled to waive challenges against decisions.

Though the Parquet is a party to any criminal litigation, being the adversary of the accused, it is, however, an honest, neutral and objective adversary. The Parquet, like the judges, may not, therefore, be prejudiced against the accused by concealing evidence which may prove favorable to the position of the accused. The Parquet fairly presents all the elements of the action before the court, with a view to arriving at the truth. The Parquet is also responsible for ensuring that the investigation officers working under its supervision abide by the same principles.

3.3.3. Properties

The Parquet is a branch of the judiciary. However, it has three particular characteristics: hierarchical subordination; indivisibility; and independence.

3.3.3.1. Hierarchical Subordination

Articles 26 and 125 of the Judicial Authority Law stipulate the subordination of members of the Parquet to their superiors by order of seniority up to the Attorney General and, ultimately, to the Minister of Justice who has the right of supervision over the Parquet and all its members. The Attorney General is also entitled to the supervision of all members of the Parquet. Public attorneys exercise the same right over members of the Parquet in their courts.

This property draws a line between the status of a judge and that of a member of the Parquet. Judges are not subordinate to a superior whom they must obey, their authority being derived from the law alone, and their opinions dictated by their conscience, since no directives or instructions are to be given to judges. Members of the Parquet, however, are subordinate to their superiors who issue directives and instructions for them to follow. It has already been mentioned that the subordination of the members of the Parquet to the Minister of Justice is no more than an administrative subordination, contrary to their subordination to the Attorney General, which is of a legal nature since they perform their duties as deputies of the Attorney General. Consequently, members of the Parquet adhere to the instructions issued by the Attorney General and if ever they go against these instructions, they transcend the limits of their position and their actions lose their validity.

3.3.3.2. Indivisibility

The Parquet is a single, indivisible unit; each of its members represents the Attorney General, and their actions are seen as those of the Attorney General. Thus, the members of the Parquet, together with the Attorney General, form a unified body (Court of Cassation Digest, 15 November 1985, Vol. 26, rule No. 166, p. 865). Consequently, the work done by each member of the Parquet complements the work of the others; thus any

number of members may join in a single procedure, bearing in mind the rules of territorial jurisdiction and jurisdiction according to subject matter.

This characteristic trait is at variance with that of judges, as no judge may replace another, and no judge may complement the work of another, deliberations being open only to judges who heard the pleading, otherwise the court decision shall be invalid (Article 167 of Code of Criminal Procedure).

3.3.3.3. Independence

This characteristic trait has a dual nature: its independence from the executive power and its independence from the judiciary.

(a) Independence of the Parquet from the executive power: The Court of Cassation was, at first, of the opinion that the Parquet is a branch of the executive power responsible for the administration of public actions on behalf of said power (Court of Cassation Digest, 31 March 1932, Part II, No. 342, p. 492). However, in a subsequent ruling, the Court of Cassation looked upon the Parquet as a branch of the judiciary (Court of Cassation, 9 January 1996).

Apart from the authority vested in the Minister of Justice over the Parquet, no other executive official has power over the Parquet. However, this independence of the Parquet does not prevent it from carrying out supervision and guidance of investigation officers who are subordinated to it. The Parquet evaluates their work pursuant to Article 22 of the Code of Criminal Procedure which stipulates that investigation officers are subordinate to the Attorney General and to his supervision over their assigned tasks. Article 22 of the Judicial Authority Law also stipulates the subordination of investigation officers to the Parquet in whatever tasks they are assigned to perform.

(b) Independence of the Parquet from the judiciary: Pursuant to the rule of separation of the authority to prosecute and the authority of judgment, each of these functions is assigned to a separate body to ensure neutrality. Consequently, the judiciary may not intervene in the work of the Parquet nor take over the power of prosecution except in those cases allowed by the law, as in the cases of the right to interference and cases of contempt of court. The court may also not require from the Parquet the completion of investigations presented before it; rather, a court of law carries out the appropriate investigations or assigns the task to one of the court members, pursuant to Article 294 of the Code of Criminal Procedure.

Moreover, judges may not prevent the Parquet from presenting its opinions while the court is in session. Judges may also not direct criticism or blame to the Parquet, whether orally during the session, or in written form in the decision taken. The only recourse judges have in this respect is to the Attorney General or the Minister of Justice (Court of Cassation, May 1932, Court of Cassation Digest, Part II, No. 356, session 547).

3.3.3.4. Inadmissibility of Challenge of Members of the Parquet

While challenge of judges or members of courts is admissible, Article 248/2 of the Code of Criminal Procedure stipulates the inadmissibility of challenge of members of the

Parquet, as the Parquet is a party to the litigation and not the judging party. However, there are certain cases provided for in Article 494 of the Code of Procedure where litigation against a member of the Parquet is admissible if he commits fraud, deception, or a serious professional error.

4. Proceedings of Litigation

Judges perform their duties only if they are called upon to perform them, in accordance with the principle of neutrality. For, if a judge initiates litigation, he becomes both plaintiff and judge, which is inadmissible. It is equally inadmissible for a judge to pursue the examination of litigation if the plaintiff waives his motion. Furthermore, a judge's decision may not include more than what the plaintiff petitioned for. Proceedings concerning civil and criminal litigation differ, since civil litigation is between two parties, the plaintiff and the defendant, whereas criminal litigation takes place between the Parquet and the accused, even if it starts with the same proceedings as those of a civil litigation.

4.1. Civil Litigation Proceedings

Civil litigation proceedings fall into two stages: a first-degree stage, and a challenge stage where the ruling issued by a first-degree court may be challenged.

4.1.1. Proceedings of Litigation in First Degree Courts

An action is instituted, pursuant to Article 63 of the Code of Procedure. The plaintiff or his representative has the initiatory pleading filed with the Court Clerks' Department, in several copies, one for each of the defendants. The initiatory pleading must include all relevant data, such as the name of the plaintiff, his place of residence, the name of the defendant and his place of residence, the subject matter of the action, its causes or circumstances related to the plaintiff's petition as well as evidence in support, specifying the court to hear the action and carrying the signature of a lawyer. The full fees are deposited with the file, along with all relevant documents in support of the plaintiff's petition and an explanatory memorandum. Notification is served and the defendant is required to appear before the court at a particular session. The Clerks' Department turns over the motion to the Bailiffs' Department to notify the defendant within 30 days, pursuant to Article 68.1 of the Code of Procedure.

If the defendant is not notified within three months of the date of presenting the motion to the Clerks' Department, the motion may be considered null and void pursuant to Article 70 of the Code of Procedure. Generally, cases are heard during the session specified in open court to guarantee a good administration of justice. Thus, the general public is allowed to attend court sessions even if they are not party to cases heard. Certain cases, however, are held 'in camera' at the discretion of the judge, to protect public order, morality or family secrets. Litigants present their defense and petitions in the court session and in the presence of one another. Litigants must also be allowed access to each

other's documents. Finally, the judge declares the pleadings closed and reserves the action for judgment.

The judge hands down his decision, which can either be an interlocutory judgment, such as that of assigning an expert or referring the action for further investigation, or a final ruling that puts an end to the dispute. Deliberation among members of the court should precede the court ruling, if more than one judge sits on the bench. In the case of single judge courts no deliberation takes place; however, the judge retires to consult his conscience. Decisions are taken by majority in case of several judges; they are to be read out in open court even if the pleading sessions were held in camera. Rulings should include the factual and legal grounds that justify them and should bear the signature of the court members and the court clerk.

4.1.2. Challenge Proceedings

By going to court to resolve their disputes, people do so out of respect for the law and a wish on their part to obtain justice. However, this wish may not be attained in the first instance for several reasons, such as their inability to present a solid case before the court, or an error of judgment, whether in content or form. Consequently, reconsideration of decisions is admissible through challenges presented within a given period of time. Thus, litigation in two stages is an essential principle in all proceedings. There are two channels for presenting a challenge: an ordinary one, in the form of an opposition or an appeal; and an extraordinary one by resorting to the Court of Cassation or asking for a reconsideration of the case. An ordinary challenge allows for a second hearing of the whole case before a Court of Appeal; whereas an extraordinary challenge is presented to the court only in so far as a defect in the ruling is concerned and the ruling on the challenge only concerns the alleged defect. It is also to be noted that the current Code of Procedure does not allow challenges to judgments handed down in absentia.

4.1.2.1. Appeals

Appeals are the ordinary channel for challenging the rulings of a first-degree court. In general, all court rulings may be challenged by appeal, except for cases that the legislature considered to be of little importance and, hence, stipulated that the ruling of the first degree court would be final.

The procedure for appeal is the same as that for filing a case. A notice of action is filed with the court clerks of the appropriate Court of Appeal, along with the required fees. The notice will contain the same information as required for the initiatory pleading, as well as data concerning the challenged ruling and the grounds for appeal. The appellant need not, however, restrict himself to the original grounds for litigation, he may add new ones before the court of appeal. Such motions are presented within 40 days in the case of ordinary rulings, and within 15 days in the case of rulings on urgent actions, counting from the day the ruling was handed down by the first-degree court. The Court of Appeal will hear the whole case anew.

No new petitions can be submitted to the Court of Appeal that would change the scope of the litigation, expand it as to the persons, subject or grounds involved. Certain petitions

are, however, excepted, such as those related to wages, interest, salaries and other subsidiary items due after the presentation of the conclusion before a court of first degree. This also applies to additional indemnities, petitioning for appeals indemnity if the appeal was malicious, and petition to join the side of one of the litigants. The Court of Appeal rules as to the form of the appeal, in terms of the quality and interest of the litigants and the date for presentation; then a ruling on the subject matter of the challenged ruling is taken either to confirm, to modify or to revoke.

4.1.2.2. Cassation

Cassation offers an extraordinary channel for challenging court rulings, with the aim of achieving the proper enforcement of the law. It is only admissible if certain defects are found in the challenged ruling, placing it in contravention of the law. Consequently, it is not a second hearing of the case, rather it is the first ruling that stands trial. The principle is that such challenges are not allowed except after a final ruling by a Court of Appeal. Exceptions, however, are made, pursuant to Article 249 of the Code of Procedure in the cases of particular rulings issued by a first degree court, be it a summary court or a court of first instance, if such rulings were contrary to another ruling previously issued to the same litigants, and vested with force of res judicata. Other exceptions are also made in the cases of final rulings, which are challenged by the Attorney General in the interest of the law, pursuant to Article 250 of the Code of Procedure. Challenges before the Court of Cassation should be presented within 60 days from the day the original ruling was issued. Challenges made by the Attorney General, however, are exempted from this condition. Motions are filed with the Clerks' Department of the Court of Cassation or the Clerks' Department of the court that issued the challenged ruling. Such motions must be signed by a lawyer authorized to plead before the Court of Cassation. If the motion is presented by the Parquet, it must, at least, bear the signature of a Head of the Parquet. Motions contain all the usual information in addition to the text of the challenged ruling, its date and the grounds for challenging it. Such grounds must be among those stipulated by law. A memorandum with the grounds for the challenge and relevant documents is attached. The file is forwarded to the cassation Parquet who then submits a memorandum containing its views about the grounds for the challenge. The President of the Court of Cassation then selects a counselor-rapporteur to prepare a report on the challenge; this report is presented before the competent circuit – in a counsel room – and the challenge is examined in the absence of the litigants. Formal matters such as the date of the challenge and its grounds in relation to legal requirements are first examined. Failure to comply with formal matters provides grounds for declaring the challenge non-admissible. In case formal elements are met, the date of a cassation session is decided upon and the lawyers of the litigants are notified thereof. The session opens with the reading of the report prepared by the counselor-rapporteur, and a ruling is passed after hearing the pleading. Cassation rulings share their form with other court rulings. They are handed down in the same way, but no challenge whatsoever is admissible. Where the challenge is accepted and the former ruling is revoked, the Court of Cassation refers the former ruling to be tried before another circuit, who will have to follow the Cassation ruling on the legal points. Such

legal points are also mandatory to any other court of law for future disputes involving the same legal principle.

4.2. Proceedings in Criminal Litigation

Criminal litigation proceedings depend on the kind of court before which the action is heard, whether a summary court, a misdemeanor Court of Appeal or a Criminal Court and, finally, the Court of Cassation. General principles for trial before criminal courts, notwithstanding their kind, include holding sessions in public, oral pleading, keeping a record of the trial proceedings, and allowing the accused to refute evidence of accusation before the court. Pursuant to Article 169 of the Constitution, sessions are held in public unless the court decides to convene behind closed doors in the interest of public order and morality. In all cases, decisions are read out in open court. Members of criminal courts depend on the investigations they carry out themselves, on the examination of evidence during the session, and the hearing of the witnesses, reading documents in files being insufficient. An exception is made if the witnesses or the defendants cannot appear before the court; in such cases, a reading out of the relevant testimony is possible. Rulings may be decided without hearing the witnesses if the accused confesses to the crime of which he is accused before the court (Article 271, Code of Criminal Procedure). Rulings may be handed down in absentia if the accused does not appear before the court at the session held on the date specified in the summons. The principle of the confrontation of litigants necessitates the presence of the Parquet; otherwise the composition of the court is considered invalid (Article 269 of the Code of Criminal Procedure). The court session is also held invalid if the court fails to notify the accused of when to attend the session. The accused should be allowed to attend all sessions of the trial unless he behaves in a disorderly manner, in which case the court may bar him from the session and proceed with it, but is required to inform him of whatever took place in his absence (Article 270 of the Code of Criminal Procedure). Finally, all the procedures of court sessions should be put on record (Article 276 of the Code of Criminal Procedure). Minutes of the session are taken and each page carries the signature of the president of the court and the court clerk.

4.2.1. Proceedings before Summary Courts

After the Parquet sets the prosecution procedure of cases of misdemeanors and petty offences in motion, the court takes over and notifies the accused to appear before it in a session held on a particular date. The session opens by calling upon the accused and questioning him as to his name, the accusation is then read out, the Parquet presents its petition, followed by the plaintiff claiming damages if the case be, the court then questions the accused with regard to the accusation. If the accused confesses his guilt, the court may find his confession sufficient and may pass its judgment without hearing the witnesses. If the accused denies the charge, the court hears witnesses of the prosecution followed by witnesses of the defense. Cross-examination of the accused will not take place unless the accused or his lawyer consents to it. The Parquet delivers its opinion and the accused is allowed a final statement. The court then decides to close all pleadings and

issues its judgment (Article 275 of the Code of Criminal Procedure). The order of the foregoing proceedings does not belong to public order. The procedure will therefore not be invalid if the court fails to direct questions to the accused as to his confession of the crime or not. Invalidity is also not considered a point in question if the plaintiff's lawyer presents his pleading after the defendant's lawyer: if the latter does not comment and, consequently, does not have the last word, his silence is considered a tacit waiver of his right (Court of Cassation, 31 December 1951, Digest of Court of Cassation Rulings, Vol. 3, No. 133, p. 3470).

4.2.2. Proceedings before Misdemeanor Courts of Appeal

The same proceedings that take place before summary courts are followed. Furthermore, a report prepared and signed by a member of the misdemeanor appeal circuit of the court is mandatory. This report includes a summary of the facts, circumstances of the case and evidence both for and against the accused (Article 411 of the Code of Criminal Procedure). After reading out the report in a court session, the court hears the appellant, whether it is the Parquet or the accused, and reaches a decision on its own ruling. The court of appeal does not investigate the motions unless this is called for in exceptional cases.

4.2.3. Proceedings before Criminal Courts

Article 381 of the Code of Criminal Procedure stipulates that the Criminal Courts shall follow all the same provisions as apply to felonies and misdemeanors, unless the law stipulates otherwise. The legislature did, however, single out the proceedings before Criminal Courts by setting down special provisions justified by the seriousness of the crime and of the penalty. The criminal case is transferred to the Criminal Court by the Public Attorney. Furthermore, in Article 381 of the Code of Criminal Procedure, the legislature stipulated that the opinion of the Mufti of the Republic be sought before the death sentence can be pronounced. Ten days are allowed for the Mufti to give his opinion, failing which the court may hand down a death sentence. The Mufti's opinion is consultative and not binding on the court. The legislature also made it mandatory for the Criminal Court, in view of the severity of the penalty, to issue any death penalty unanimously and not by majority as is the case for other penalties (Article 381 of the Code of Criminal Procedure).

The legislature also made it mandatory for a lawyer to be present with the accused. If the latter has no lawyer, the legislature made it mandatory for the public attorney, or his substitute, to delegate a lawyer for the defense of the accused. The same applies if the lawyer of the accused fails to appear; the court, then, delegates a lawyer to defend him.

Article 384 of the Code of Criminal Procedure stipulates that if the accused is called upon to stand before the Criminal Court and fails to appear on the day of the hearing after having been duly notified, the court may sentence him 'in absentia'. In such a case the trial takes place pursuant to Article 386 of the Code of Criminal Procedure by reading out the indictment, the Parquet then states its opinion and the witnesses are heard if the court deems it necessary, after which the sentence is handed down. If a conviction is pronounced 'in absentia' and the convicted person subsequently appears or is arrested, the

sentence is no longer valid pursuant to Article 493 of the Code of Criminal Procedure. A retrial is scheduled, unless the sentence has elapsed. If the accused has been found not guilty as charged, the ruling stands even if the accused subsequently appears or is arrested. No challenge before the Court of Cassation of that ruling can, obviously, be filed save by the public prosecution and within the time allowed for a challenge, failing which the ruling becomes final. In the case of a misdemeanor, however, the judgment of the Criminal Court remains valid since it can be opposed just like the rulings handed down 'in absentia' by a misdemeanor court.

4.2.4. Proceedings before the Court of Cassation

The task of the Court of Cassation, as already mentioned in relation to proceedings before civil courts, is only to ensure the proper application of the law in relation to the facts pertaining to the action. Consequently, the Court of Cassation examines the action without carrying out an investigation. It then hands down its judgment after hearing a report prepared by a member of one of its circuits. Where the challenge is submitted for the second time to the Court of Cassation, the latter is transformed into a court of merits governed by the same procedures as such courts.

This brings to an end the first part of this chapter dealing with the organization of the judiciary bodies in Egypt, both civil and criminal. It covered the rules pertaining to the jurisdiction of civil and criminal courts, their composition and the procedure followed therein. We shall now go on to the second part of the chapter, which will deal with the judicial rulings of Egyptian civil and criminal courts and which contains their main judicial principles.

5. Judicial Rulings

Judicial rulings are a source of inspiration to jurists who consider them to be precious material for their commentaries and interpretation. Legal principles based on those rulings are also formulated by jurists in their works and in legal encyclopedias. Legislators also take judicial decisions into consideration so that legislative amendments may remedy the shortcomings in the protection of public interest revealed by the application of the law.

Undoubtedly, judicial rulings lay the foundation for legal principles when interpreting legislation and enforcing it and set down judicial rules. Judicial decisions thus stand out along with legislative texts, filling in the gaps that may have gone unnoticed by the legislature.

There is also no doubt that the rulings of the Court of Cassation occupy the foremost position in the Egyptian legal system in terms of style and of the grounding and substantiation thereof. The court is held in high esteem by all Egyptian courts of law. Those latter are advised by the legislature to follow the rulings of the Court of Cassation regarding all the legal aspects decided by that court in civil matters.

As regards criminal matters, courts are still free not to abide by the opinion of the Court of Cassation, except in two cases: when the challenged ruling is issued on grounds of a legal objection that stops the motion; or when the challenged ruling is issued by the

General Board on Penal Affairs. In cases other than the above two cases, the ruling of the lower court may also be revoked if it does not comply with the legal principle handed down by the Court of Cassation in the point of contention.

This section will be a survey of some of the most important rulings by the Court of Cassation, rulings which have laid the foundation of legal principles through the application of the Penal Code, of the Code of Criminal Procedure and of the Civil Code.

5.1. Major Judicial Principles Established by the Court of Cassation in the Criminal Domain

5.1.1. Rulings in Relation to the Application of the Penal Code

5.1.1.1. The Crime

5.1.1.1.1. Prohibition of the Use of Analogy. The Court of Cassation prohibited the use of analogy in the interpretation of legal provisions which criminalize actions and prescribe penalties, on the grounds of the principle of the legality of crimes and penalties. Consequently, no penalty is administered unless a provision exists which describes the penalized action and specifies the penalty. Also, consequently, extensive interpretation and interpretation by analogy of the provisions of criminal law are prohibited (Court of Cassation, 27 March 1972, Court of Cassation Digest, Vol. 23, No. 107, p. 483).

However, the Court of Cassation allowed the use of analogy in cases other than provisions related to criminalizing actions, namely those provisions that may be favorable to the accused such as grounds for permissiveness, hindrance of liability and the preclusion of punishment (Court of Cassation, 4 December 1967, Court of Cassation Digest, Vol. 18, No. 254, p. 1208). Consequently, with regard to the crimes of fraud and betrayal of trust, the Court of Cassation drew an analogy with the crime of theft in adjudicating preclusion of punishment as established by the legislature in cases where the perpetrator and the victim are related by marital or parental relation, stating: 'The reason for precluding punishment in such cases is the legislature's opinion that such actions between members of one and the same family should be forgiven in order to safeguard the family reputation and maintain a good relation between its members. Fraud and betrayal of trust being similar to the crime of theft, such preclusion of punishment must extend to both' (Court of Cassation, 27 June 1937, Collection of Legal Rules, Part II, No. 36, p. 596).

5.1.1.1.2. Grounds for Permissiveness as in the Case of Legitimate Self-Defense. The Court of Cassation established the principle that legitimate self-defense was not meant to punish the aggressor but to ward off aggression. However, the person resorting to self-defense must have believed that his life, property, or the life or property of others were in jeopardy. Such a right does not apply in the case of a legitimate aggression such as exercising a right established by law within the limits specified by the legislature. An example of such a right is that granted to individuals to arrest *in flagrante delicto* someone accused of a felony or a misdemeanor or in cases where preventive detention is admissible, then turn him over to the nearest investigation officer (Court of Cassation, 19 February 1987, Challenge No. 6161, Year 56, Court of Cassation Digest, Vol. 38, p. 305, rule 44).

5.1.1.1.3. Relation of Causality. To determine a relation of causality between behavior and the criminal outcome thereof, the court considered it to be a material relation set in motion by the perpetrator and linked, from the moral point of view, to what he should have expected as a result of his behavior had it been deliberate. It can also be an act without consideration of the normal consequences thereof and without consideration of the harm it will cause to others (Court of Cassation, 26 November 1973, 24, No. 220, p. 1072). Thus, the Court of Cassation bridged a legislative gap that had been overlooked by the legislature.

5.1.1.1.4. Attempt. The legislature did not set a criterion to distinguish between preparatory, non-punishable acts and between the initiation to the execution of a punishable act which can be considered an attempt to commit a crime and is therefore punishable. The Court of Cassation adopted, in this respect, a subjective approach, stating that it is not necessary for the perpetrator to begin executing part of the material factor of a criminal act for such an act to be considered an attempted crime. If the perpetrator's intent is proven and established, it is sufficient to establish that he initiated an act immediately preceding the material factor of that crime and which would, inevitably, lead to it, to consider such an act to be an attempt (Court of Cassation, 15 April 1970, Court of Cassation Digest, Vol. 21, No. 125, p. 518).

5.1.1.1.5. Perpetrator. The legislature defined the perpetrator of a crime in Article 39 of the Penal Code as: (1) whomsoever commits a crime on his own or with others; and (2) whomsoever participates in executing the crime, if the latter consists of several components.

(1) Principal Participation in the Crime. The Court of Cassation did, however, expand the definition of the perpetrator to include whoever commits an act which played a major role in the crime necessitating his presence on the scene of the crime, even if the said perpetrator did not commit an act considered as an initiation to the execution of the crime. The court states that: 'Since the perpetrators of the crime participated, each in his own right, in one of its component acts, they are considered principal perpetrators. If one of those accused of committing theft occupied the attention of the owners, while the other watched the road and the third sneaked in and committed the actual theft, all of which acts completed the crime, they are all considered principal participators (Court of Cassation, 6 January 1969, Vol. 20, No. 7, p. 29 and 24 March 1969, Vol. 20, No. 84, p. 388).

(2) Moral Perpetrator. The Court of Cassation admitted the concept of a moral perpetrator, as being he who makes use of another person, not liable, in order to commit the crime, using the latter as a tool to execute the components of the crime, i.e. he who executes the crime through another person. With this definition, the court expanded the notion of the principal perpetrator, stating that: 'If a passenger of a public bus drops his wallet, and it is picked up by an undiscerning boy who is then seen by the bus controller who takes it from him with the intent of keeping it for himself, it is as if the latter had picked it up and kept it from its rightful owner with the intention of adding it to his

property by fraud; the boy being an innocent instrument' (Court of Cassation, 6 January 1969, Vol. 20, No. 7, p. 29; 24 March 1969, Vol. 20, No. 84, p. 388).

5.1.1.1.6. Participation in Crimes. In Article 40 of the Penal Code, the legislature specified three forms of complicity in the perpetration of a crime: instigation, agreement and assistance. He did not, however, define the components thereof. The Court of Cassation filled the gap in the text by stating that it is legally established that the act of complicity is not qualified as a crime until the crime or the attempted crime, in which the complicity took place, is actually committed. If the text of the challenged ruling explicitly states that the crime to which an agreement was reached between the first and third defendants and between the latter and the petitioner was not proven to have been committed, the ruling indicting the challenger as an accomplice is contrary to the law (Court of Cassation, 25 April 1961, Court of Cassation Digest, Vol. 12, No. 94, p. 508).

The Court of Cassation also ruled that complicity through agreement takes place if the parties concerned consent to commit the crime. While the intent is an internal matter that may not be perceived by the senses, direct evidence or deduction on the bases of the facts and circumstances of the case may serve as proof of intent (Challenge No. 5863/56, 11 January 1987, Vol. 38, p. 59, Rule 6; Challenge No. 2822/57, 17 December 1987, Court of Cassation Digest, Vol. 38, 202, p. 1103).

5.1.1.1.7. Criminal Liability of Accomplices Notwithstanding Their Absence of Intent to Participate in Said Crime. Article 43 of the Penal Code provides for the criminal liability of accomplices in a crime committed by the perpetrator, notwithstanding the absence of intent on their part to take part in the said crime, if the crime committed was a probable consequence of instigation, agreement or assistance. However, the legislature did not provide a measure of probability. The Court of Cassation filled the gap by providing the following criterion: the crime in question could be expected as an ordinary course of events, i.e. accomplices might or should have anticipated it but did not. An accomplice is legally bound to anticipate all reasonable and probable effects of the crime he agreed to commit (Court of Cassation Digest, 22 December 1969, Vol. 20, Rule 301, p. 1451).

The Court of Cassation also confirmed the validity of Article 43 of the Penal Code in so far as both the perpetrator and the participant's liability in a possible crime is concerned. It adopted the legal view that holds the perpetrator or his accomplice criminally liable, even if the crime committed was not that which they meant to take part in, provided that the actual crime which took place was a probable result of the crime which they had agreed to commit, whether as perpetrators or accomplices (Court of Cassation Digest, 30 January 1961, Vol. 12, No. 25, p. 156).

5.1.1.1.8. Inebriation Precludes Special Intent. The Court of Cassation established the legal principle that even though inebriation does not preclude either criminal liability or criminal intent, it does preclude the special intent of the accused. Thus, an inebriated person who has lost his senses and discretion can have no personal intent to commit murder, regardless of whether he consumed alcohol voluntarily or involuntarily, so long as his senses and discretion were dulled by it. In such a case, the accused may not be penalized

for willful murder, unless he first harbored a criminal intent, then became inebriated to brace himself to commit the crime. The Court of Cassation argued that it is inconceivable for the legislature to base the proof of special intent only on legal considerations, but that the proof of intent should be based on solid facts (Court of Cassation Digest, 13 January 1969, Vol. 20, p. 104, Rule No. 23).

5.1.1.1.9. Criminal Intent

(1) Elements. The legislature failed to provide a definition of criminal intent, which is the moral factor of a crime and which, together with the material factor, or behavior, constitutes a crime. The Court of Cassation defined 'criminal intent' in willful crimes as the will to commit the material act and to cause the consequence of the said act (Court of Cassation Digest, 2 January 1975, Vol. 26, No. 2, p. 5). Such a definition reveals the court's endorsement of the theory of volition that requires the element of willful behavior with knowledge of the consequence, along with knowledge of the factors of the crime, all of which may prove criminal intent. Consequently, the Court of Cassation ruled that criminal intent is established in cases of assault and battery provided the perpetrator committed his act willfully and knowing that his act inflicts harm on the body or health of the victim. The Court of Cassation did not require the ruling to explicitly refer to that element, on the condition that it be understood or deduced from the text of the latter, the positive act of the accused becoming, by necessity, willful (Court of Cassation Digest, 13 February 1950, Vol. 1, No. 107, p. 325 and Court of Cassation, 9 July 1998, Challenge No. 14126, Vol. 68, *Case of Nurse Aida*, unpublished).

(2) The Presumption of Knowledge in Immoral Offences. The Court of Cassation assumes the knowledge of the wife's partner in adultery, as well as the knowledge of the perpetrator of indecent assaults that his victim is under 18, even if he does not resort to violence or threat. Consequently, the burden of proof falls upon the accused, not the Parquet, and the criminal intent of the accused cannot be denied by him on the grounds of ignorance, rather, he has to prove that his ignorance was due to *force majeure* or exceptional circumstances, and that he could, in no way, have had access to such knowledge. The Court of Cassation argues that: 'Whoever commits an indecent act, *per se*, or an act condemned by codes of morality and decent behavior, should resort to all possible means of attaining knowledge of all the circumstances before committing his act. Such a person becomes liable to punishment unless it can be proven that he could not have possibly arrived at the truth'.

5.1.1.1.10. Diverting from the Aim and Mistaken Identity. The Court of Cassation has held that mistakes made in committing the act as to its target or resulting consequences do not preclude criminal intent; the accused remains liable so long as he willfully wanted to kill a person, notwithstanding the identity of the victim. Thus, if the accused had the intent of murdering a particular person but killed another by mistake, he is still held responsible for willful murder. Similarly, if the accused had the intent of shooting a person and failed to kill him because of inaccurate aim, killing another person instead, he is still held responsible

for willful murder, notwithstanding the fact that he murdered someone else; he is liable for his act as if he did murder the person intended (Court of Cassation Digest, 10 May 1943, Vol. 6, No. 183, p. 252).

5.1.1.1.11. Motive is Not an Element of Criminal Intent. The Court of Cassation has held that a motive for committing a crime does not belong to one of its factors. Consequently, if judges do not establish motive in their rulings, such rulings remain valid since motives do not count, even if they are valuable (Court of Cassation Digest, 28 October 1987, Challenge No. 5879, Vol. 54, No. 38, p. 853, Rule No. 153).

5.1.1.1.12. The Non-Presumption of Error in Unintentional Crimes. Contrary to civil law, criminal law does not accept the presumption of error, but requires its existence to be proved and evidence thereof to be established. Consequently, criminal liability rests only with the person who committed the error and whose wrong behavior led to the criminal consequences. The Court of Cassation ruled that: 'For a person to be held criminally liable, it is not enough to prove his ownership of an animal that has caused harm to someone. Such ownership does not constitute grounds for criminal liability, though it may constitute grounds for civil liability, unless the owner of the animal has committed some kind of error in keeping the animal from harming others. In such a case, the kind of error must be proven and imputed to the owner, otherwise the ruling is invalid and should be revoked' (Court of Cassation, 23 April, 1931, Digest of Legal Rules, Vol. 2, No. 248, p. 300, and 27 December 1987, Court of Cassation Digest, Challenge No. 3221, Vol. 55, No. 38, p. 1144, Ruling No. 208).

5.1.1.2. The Punishment

5.1.1.2.1. Death Penalty. The Court of Cassation ruled that even though Article 318 of the Code of Criminal Procedure stipulated that the Mufti be consulted before a sentence of capital punishment can be handed down, the court need not abide by the latter's opinion nor include it in its adjudication. The Court of Cassation argues that the Article in question is meant to inform the judge as to whether or not Islamic Shari'a admits capital punishment in the case in question. The judge need not follow the opinion of the Mufti, since such a consultation does not affect the legal characterization of the act committed (Court of Cassation, 9 January 1939, Digest of Legal Rules, Vol. 4, No. 327, p. 424). The Court of Cassation also ruled that the law does not oblige the judge to include the opinion of the Mufti in his pronounced judgment, but only to consult him before the sentence is passed (Court of Cassation, 26 January 1942, Digest of Legal Rules, Vol. 5, No. 340, p. 607).

5.1.1.2.2. Complementary Punishment. The Court of Cassation is of the opinion that though a judgment ordering the restitution of money embezzled is not meant as a punishment but rather to restore matters the way they were before the crime was committed and to indemnify the victim, such a judgment involves a penal aspect, as only criminal courts, not civil ones, may pass such a judgment; besides, criminal courts pronounce such

judgments regardless of civil claims (Court of Cassation Digest, 10 January 1993, Challenge No. 3972, Vol. 61, judicial year 44, p. 57, Rule No. 4).

5.1.1.2.3. Confiscation. The law did not provide a definition of confiscation as a kind of punishment. It is the Court of Cassation that defined confiscation as a measure that allows the state to possess articles seized forcefully in relation to a crime, and without indemnifying their owner. Such punishment is supplementary and optional in both felonies and misdemeanors, unless specifically stipulated by the law. Such a ruling may be issued only in respect of someone whose conviction has been established and who has been condemned to a principal punishment. Confiscation may be mandatory if dictated by public law and order as a preventive measure. Confiscation also features in some particular provisions as a way of civil indemnification, if the law stipulates turning over confiscated articles to the victim, or to the Treasury, as indemnity for damage caused by the crime (Court of Cassation Digest, 17 May 1966, Vol. 17, No. 115, p. 639). The Court of Cassation made it mandatory for confiscated articles to have been already seized and decided that confiscation of unseized articles is invalid (Court of Cassation, 2 October 1961, Vol. 12, p. 766, Rule No. 147).

5.1.1.2.4. Leniency towards the Accused. The Court of Cassation ruled that extenuating circumstances are left to the total discretion of judges who may enforce Article 17 of the Penal Code in accordance with their convictions and beliefs as to whether such circumstances exist or not. Challenging rulings on the grounds of absence of leniency is inadmissible, since the essence of the court's jurisdiction involves administering penalties on the basis of the accused having been found guilty, regardless of any other considerations. If the court decides to apply leniency towards the accused pursuant to Article 17 of the Penal Code, punishment is only administered on the basis of said Article in lieu of the punishment stipulated by law for the crime committed. Therefore, if, the court rules against an accused in an embezzlement action, and includes in its decision its intention to apply Article 17, yet sentences him to imprisonment pursuant to Article 112 of the Penal Code, the decision is rendered invalid, as enforcing Article 17 should have necessitated reducing the punishment to not less than three months confinement (Court of Cassation Digest, 20 October 1958, Vol. 9, No. 199, p. 813).

5.1.1.2.5. Aggravating Circumstances (Recidivism). The Court of Cassation ruled that recidivism is established if a previous final judgment was passed. It also considered the penalty of police control and confinement as being similar, in so far as both serve as a precedent in establishing recidivism (Court of Cassation Digest, 3 November 1969, Vol. 20, session No. 1198, Ruling No. 238; 29 May 1962, Vol. 13, session No. 13, p. 501, Ruling No. 128).

5.1.1.2.6. Multiple Penalties

(1) Moral Multiplicity of a Crime. Moral multiplicity of crimes indicates the multiplicity of the legal characterizations and qualifications of a single act. Thus an act may serve as a

basis for several crimes that are punishable by a number of penal provisions, each in its own right. In such cases, Article 32 of the Penal Code calls for the infliction of punishment for the most serious of those crimes. The Court of Cassation argues that the perpetrator's intent was directed to committing the most serious crime. Consequently, the accused shall be liable for only one crime: that which carries the most severe punishment. Once such a sentence is pronounced, criminal liability for the act and all its consequences expires. This ruling also holds true if the penalties for all the crimes are the same. Thus, if it is established that the accused fired one single shot with the intent of murdering a particular person, but missed him and shot another who was not killed, and the court convicted him of attempted murder of the person he missed, reserving the Parquet's right to file another independent action for the attempted murder of the person he actually shot, then the court has made a mistake, since the retrial of that person for the same fact is inadmissible (Court of Cassation Digest, 2 May 1966, Vol. 17, No. 98, p. 546).

(2) Material Multiplicity of a Crime. Material multiplicity of a crime presumes the multiplicity of acts committed by the accused, each act constituting a crime in its own right. The Court of Cassation provided a general rule for such multiplicity, ruling that 'Each crime has a specific nature resulting from a different material act, which renders them independent from the others (Court of Cassation Digest, 17 December 1963, Vol. 14, No. 172, p. 940).

In case there is no link between such crimes, separate penalties are applied. However, if there is an indivisible link between them, these are considered committed for a single purpose, and the most severe penalty is imposed. The Court of Cassation provided for a rule, stating that complementary crimes that fall within a single criminal project are to be considered a single crime (Court of Cassation Digest, 27 February 1967, Vol. 18, No. 53, p. 274).

The Court of Cassation rightfully argues that it is mandatory to rule for the complementary punishment stipulated for the lesser crimes. The court states 'although the punishments for the most serious crimes revoke those for the lesser crimes, complementary penalties such as fines, restitution, and confiscation are qualitative penalties related to the nature of the crime. It is mandatory that such penalties be administered together with the most severe penalty (Court of Cassation Digest, 8 January 1952, Vol. 3, No. 153, p. 402; and 12 March 1973, Vol. 24, No. 70, p. 325).

5.1.2. Rulings in Relation to the Application of the Code of Criminal Procedure

5.1.2.1. Principle of Criminal Legality

Both the Penal Code and the Code of Criminal Procedure have a specific characteristic in common, i.e., they are subjected to the principle of criminal legality. In the Penal Code, such a legality is embodied in the stipulation that unless there is a relevant provision in the Penal Code, there shall be neither a crime nor a punishment. Procedural legality means that in the absence of a relevant provision of the Code of Criminal Procedure, there shall be no procedure. Legislation alone is the source of criminal procedure, such as the Constitution and the Code of Criminal Procedure (Law No. 150 of 1950). The

purpose of both implementation regulations and the Code of Criminal Procedure is to guarantee appropriate punishment. The liberty of honest and innocent members of society should not be sacrificed for the sake of indicting an accused. The Constitution spells out the fundamental principles related to the protection of public freedoms. In its rulings, the Court of Cassation has reiterated many a principle enshrined in the Constitution and spelt out by stipulations on procedure. A case in point is a ruling by the Court of Cassation that any warrant to search the home of the accused issued by the Parquet must be explicitly grounded, and the court stated that: 'Whereas the Constitution is the supreme positive law that supercedes all others, lesser legislations have to comply with its provisions. In case of conflict, the provisions of the Constitution must be upheld and all others be disregarded. This applies whether conflict of provisions was prior or subsequent to the coming into force of the Constitution. In view of that and of Article 44 of the Constitution stipulating the sanctity of homes and that they shall not be entered or searched without a grounded judicial warrant pursuant to the law; this provision is applicable per se, no legislature can disregard such a guarantee or promulgate a law which disregards it. Substantive grounds for an entry and search warrant is a sine qua non in keeping with the Constitution; any contrary measure by the Parquet in this regard would be defective' (Court of Cassation Digest, 24 March 1975, No. 200/45, Vol. 26, p. 258; Court of Cassation Digest, 20 November 1985, Vol. 36, p. 1027, Rule No. 188). The Court of Cassation also ruled that Article 49 of the Code of Criminal Procedure was contrary to Article 41 of the Constitution. Article 49 of the Code of Criminal Procedure states that where strong presumptions arise during a search of an accused person's house that he or another person present therein is hiding something on himself/herself, an authorized investigation officer may undertake a personal search of the accused or of another in the absence of *flagrante delicto* and without a judicial search warrant. Yet Article 41 of the Constitution states, inter alia, that except for cases of *flagrante delicto* no person shall be searched without a judicial search warrant (Court of Cassation ruling on Appeal No. 2605/62J, 15 September 1993, Court of Cassation Digest, Vol. 44, p. 703, Rule 110).

5.1.2.2. Interpretation of Procedural Provisions

A fundamental rule for the interpretation of legislation is to establish the intent of the legislature from the wording and purpose of the provisions in question, from the relevant explanatory notes, by analogy, from the general principles of law and from the rules of legal and judicial logic as well as from the rules of equity. Another fundamental rule of interpretation is that specific provisions limit general ones. When interpreting procedural provisions, there is no hard and fast rule as to whether the interpretation should be a broad one or a restrictive one. The interpreter should rather consider that the Code of Criminal Procedure is the general law governing procedure pertaining to all criminal offences, including those governed by specific laws, unless those specific laws provide for a specific procedure, in which case this procedure shall apply and not the rules of the Code of Criminal Procedure. Hence, and in keeping with the established rules of interpretation, one cannot refer to the general law, namely, to the Code of Criminal Procedure if there is a relevant specific law, such as Law No. 48 of 1941 on the Repression of Fraud,

which provides for a special procedure. It is, consequently, inadmissible to claim violation of the provisions of the Code of Criminal Procedure related to seizure and custody with regard to items governed by the Law on Repression of Fraud (High State Security Court ruling on Action No. 2354/1988, *Abdin*, on 8 August 1989 stating that the Code of Criminal Procedure was the general law insofar as offences punishable under Law No. 97 of 1976 on Currency Control were concerned; Court of Cassation, 12 November 1954, Court of Cassation Digest, Vol. 6, p. 59, Rule 22).

If analogy does not apply insofar as the interpretation of incriminating rules is concerned, it may apply when interpreting provisions on procedure. The reason is that rules of incrimination are restricted to specific acts and if analogy were allowed, it would lead to the incrimination of an act for which there is no penal provision and that would be a violation of the principle of legality of crime and punishment. The Code of Criminal Procedure, on the other hand, is meant to ensure proper administration of criminal justice, striking a balance between public interest and the guarantees to which the accused is entitled. In interpreting this law analogy would serve the very purpose thereof. That is why restrictive interpretation does not apply to provisions of the Code of Criminal Procedure. A general rule for the interpretation of law is that exceptions must be confined to specific cases and should not be subjected to a broad interpretation. In compliance with this rule, the Court of Cassation of Egypt ruled on provisions that restrict the powers of the Parquet to proceed with a criminal action. The court held that such a restriction is by way of exception to the general rule of allowing the Parquet the freedom to proceed with the action (Court of Cassation, 15 February 1965, Court of Cassation Digest, Vol. 16, p. 124, Rule 28). The Court, however, admitted analogy with regard to Article 312 of the Penal Code that requires the victim to file a complaint in cases of theft involving ascendants, descendants and spouses. Hence, the court considered the analogy to the crime of betrayal of trust acceptable, the reasons being the same and the analogy being in favor of the accused. French courts ruled similarly by applying the procedural rules pertaining to the first investigation phase to those of the trial. Thus, French criminal courts (Cour d'Assises) are allowed to hear witnesses under the age of 15 without requiring them to take an oath, even though Article 108 of the French Code of Procedure only allows the same in the course of the first investigation and not during the trial.

5.1.2.3. Relationship between the Code of Criminal Procedure and the Code of Civil Procedure

The basic rule here is that the judge in a criminal court has to apply the relevant provisions of the Code of Criminal Procedure. He cannot seek a solution outside the realm of the said Code, except when its provisions fall short of providing any solution to the problem at hand. If both the Code of Criminal Procedure and the Code of Civil Procedure contain provisions pertaining to the same subject matter, the said judge must apply the stipulations of the Code of Criminal Procedure. Thus, courts have ruled that, contrary to Article 175 of the Code of Civil Procedure, the signature of the chief justice of the court circuit who pronounced a sentence is enough, and it is not necessary to have the signatures of all the judges of that circuit on the sentence or the draft thereof, the reason being

that the said Article 175 does not apply to matters governed by the Code of Criminal Procedure. (Court of Cassation ruling on 24 April 1940, Court of Cassation Digest, Vol. 1, p. 250, Rule 171.) Similarly, the Court of Cassation ruled that it is enough for a circuit judge to sign a sentence on behalf of the chief justice of the same circuit if the latter could not do so because of a force majeure (Court of Cassation, 30 January 1967, Court of Cassation Digest, Vol. 18, p. 108, Rule 19).

If, however, the criminal judge is allowed to refer to the rules of civil procedure in the absence of an applicable provision in the Code of Criminal Procedure, the license is conditional. He can only refer to such rules of the Code of Civil Procedure that are of a general character, i.e., applicable to all types of actions. Accordingly, the Court of Cassation ruled that Article 16 of the Code of Civil Procedure which states that if the summons served on a litigant sets a specific number of days for him to appear or to take a certain measure, the day on which such a notice is served shall not be included, that being a general rule applicable to all cases and matters. The essence of that general rule is that the calculation of the time pertaining to a notice for action or procedure given in days should be in terms of days, rather than hours. Consequently, the first day cannot be included in such a calculation and the required action or procedure may be effected on the last day of the notice. Thus a court ruling upholding a search effected on the fourteenth day of a given month, on the basis of a search warrant issued by the Parquet on the eleventh day of the same month wherein it was stated that such a search had to be effected within three days from the date of issue thereof, stands correct (Court of Cassation, 12 January 1948, Court of Cassation Digest, Vol. 7, p. 454, Rule 494). For rules of civil procedure to be applicable they must also not conflict with the principles of the Code of Criminal Procedure. In compliance with that rule, the Court of Cassation upheld the principle provided for in Article 24 of the Code of Civil Procedure that an invalid procedure that includes the elements of another procedure that is valid shall be deemed valid as far as the second procedure is concerned. Consequently, the Court of Cassation ruled that a first investigation report shall be deemed a proper verbal process for the purposes of evidentiary facts, provided the conditions relating to verbal processes have been respected, even if that first investigation report had been considered invalid as such because of its failure to comply with specific requirements, such as not being drafted by the appropriate clerk, or if witnesses thereto have given witness without taking the oath (Court of Cassation ruling of 20 February 1960, Court of Cassation Digest, Vol. 12, p. 233, Rule 40; Court of Cassation ruling of 24 November 1952, Court of Cassation Digest, Vol. 4, p. 146, rule 60).

In case there is a conflict between the Code of Criminal Procedure on the one hand and the Code of Civil Procedure on the other, the criminal courts must refuse to apply the latter. Thus, they have refused to apply a provision in the Code of Civil Procedure stating that a Court of Appeal shall rule on the merits of an action in which a court of first instance did not pass judgment. This refusal is due to the fact that the procedural rule in question deprives the accused of one degree of litigation, a fact that is in contradiction with a fundamental principle set out in the Code of Criminal Procedure, namely, litigation before two degrees of courts on matters of misdemeanor. Consequently, the South

Cairo Court of First Instance (Misdemeanor Appeal Circuit), on an opposition filed therewith, decided to dismiss the same as non-admissible as to form. In its ruling, the court held that it was evident from the review of the file and from the ruling by the court of first instance concerned that the defendant was accused of having fraudulently gained possession of money owned by the bank (the plaintiff). The court of first instance judged the accused not guilty. The ruling was based on the fact that the money in question came into his possession as a result of a settlement between the two litigant parties prior to the issuance by the accused of the cheques in question. As to the challenged ruling, it indicted the accused on the grounds of a fact that was not looked into by the court of first instance concerned, i.e., that the accused fraudulently obtained a receipt of discharge from the said bank. That is why the misdemeanor court of appeal was considered to have exceeded the subject matter of the dispute ruled on by the court of first instance, thus violating a fundamental principle of public order, namely, the right to litigate before two degrees of courts. It was ruled that a court of appeal cannot change the basis of the original action by including new facts that have not been investigated. Such an addition amounts to depriving the accused of one degree of jurisdiction. Consequently, the ruling of the said court of appeal, which was challenged, was considered as having contradicted both fact and law and was, consequently, judged defective (Abdin Misdemeanor Court of Appeal, Misdemeanor 288, 13 January 1988 session; Court of Cassation ruling on Challenge 1544, 60J, 1 April 1997 session, unpublished).

5.1.2.4. Invalidity of the Rules of Criminal Procedure

Once a rule of criminal procedure is violated, a punitive action must follow. The most important punitive action in this respect is, probably, to declare the procedure in question invalid, i.e., the procedure is devoid of any legal effect and considered null and void. The Code of Criminal Procedure has adopted the principle of self-invalidation: Article 231 of the said Code states that failure to comply with the provision of an essential procedure of the Code shall render such a procedure invalid. Yet, the legislature left it to the judiciary to decide on cases where the procedure violated is considered essential and, hence, entailing its invalidation. The Court of Cassation established a criterion for determining whether a procedure is essential or not. It held that an essential procedure is one that aims at protecting public interest or the interest of the accused or of one of the litigants. A procedure merely intended to guide, direct and organize is not deemed to be essential and, consequently, if violated does not entail invalidity. Thus, the Court of Cassation ruled that Article 271 of the Code of Criminal Procedure which stipulated that an accused should be interrogated on the charges against him in the course of the proceedings, before the court of first instance, was an organizational procedure the disregard of which does not entail invalidity (Court of Cassation, 12 October 1982, Court of Cassation Digest, Vol. 33, p. 769, Rule 157). In another ruling, the Court of Cassation held that a delay of eight days in signing a sentence from the day it was handed down, as provided for in Article 312 of the Code of Criminal Procedure, does not render the sentence in question invalid if it is not respected. This ruling by the Court of Cassation was based on the prerogative granted by the law to the judge to extend the period allowed for signature

by 30 days (Court of Cassation, 24 December 1980, Court of Cassation Digest, Vol. 31, p. 1113, Rule 215).

Similarly, the absence of the clerk's signature on the verbal process of the investigation does not render it invalid, since the document acquired its legal validity with the signature of the investigating deputy of the Parquet (Court of Cassation ruling on Appeal No. 21097, 20 November 1996, judicial year 63, unpublished). In another ruling, the Court of Cassation held that procedures provided for in Articles 55, 56 and 57 of the Code of Criminal Procedure concerning custody of items seized was meant to organize work in such a way as to protect the evidence, but the lack of respect thereof would not entail invalidity (Court of Cassation ruling on Appeal No. 3578, 19 February 1995, judicial year 63, unpublished; Court of Cassation, 17 October 1976, Court of Cassation Digest, Vol. 27, p. 738, Rule 168). What the court considered to be an essential procedure was the signature of the person who issued a search warrant, the absence of which entails invalidity. The Code, however, did not specify the form of the signature, so that even if the signature of the person who issued the search warrant is illegible, it does not invalidate the document (Court of Cassation ruling on Appeal No. 13180, 14 May 1995, judicial year 63, unpublished). Yet another example of a basic procedure is the one established by the Court of Cassation stating that the date on the sentence document is an essential date the absence of which must render such a sentence invalid. In fact, the Court of Cassation held that the document of the adjudication is one of the official documents which must carry the date on which the adjudication was handed down. If there is no date, then one of its components as a legal document would be lost since the adjudication must appear in full as it was handed down, with the reasons thereof, and if the document in question is invalid, the sentence itself becomes invalid. Consequently, the Court of Cassation held that a ruling handed down by a court of first instance on a document not bearing the date thereof was invalid, even if the minutes of the relevant session show the date on which said ruling was pronounced. The Court of Cassation argued that even if the minutes were considered complementary to the sentence, insofar as introductory evidences were concerned, it is an established rule that a sentence record must, as such, be complete in terms of its validity and its components, and that the absence of any essential evidence therefrom cannot be compensated by any other extraneous evidence (Court of Cassation ruling on Appeal No. 534, 31 May 1998, p. 56; Court of Cassation ruling of 4 May 1981).

5.1.2.5. Search

5.1.2.5.1. Search of Domiciles. Article 47 of the Code of Criminal Procedure, which entitled investigation officers to search the domicile of an accused caught in *flagrante delicto*, was pronounced unconstitutional. Subsequently, Article 51 of the Code of Criminal Procedure which was applicable in the cases covered by that Article, stipulating that a search of the domicile of the accused has to take place in the presence of the latter or his representative wherever possible, otherwise two witnesses have to be present when the investigation officer entered a domicile to search it, became groundless. As for a search

carried out by competent investigation officers at the request of the authority in charge of the investigation, it is governed by the provisions of Articles 92, 199 and 200 of the same Code, regulating the investigation by a competent inquiry judge and stipulating that a search should be effected in the presence of the accused or of his representative whenever possible.

If it was established in the record of a ruling that the search carried out by the competent investigation officer had taken place at the request of the Parquet, in which case the presence of the accused, of his representative or of two witnesses was not a condition for the validity of the search of the former's domicile; the validity of the procedure is not affected as a result of the absence of the challenger, of his representative or of two witnesses. The challenge in such a case was, consequently, judged irrelevant (Court of Cassation ruling on Appeal No. 19615, 26 September 1994, judicial year 62, unpublished).

5.1.2.5.2. Preventive Search. A search of the accused, under Article 46 of the Code of Criminal Procedure, is part of the investigation aimed at seizing evidence of a crime and the instruments used in committing it and the material results arising from it. As such, it is referred to as a 'judicial search'. A preventive search, on the other hand, is meant to divest the accused of any weapons he may be carrying, as a precautionary measure against the possibility of his using them to escape by attacking those who are legally intercepting him. For a preventive search to be valid, the arrest must be effected in cases allowed for by the law and the preventive search must be confined to the purpose warranted by the law. Consequently, the Court of Cassation ruled that 'If it is established in the record of the court sentence that no warrant was issued for the arrest of the accused and that the two officers concerned were instructed to implement a sentence imposing a fine on the accused pertaining to another case; and if the collection of the fine does not require his arrest, the fact that the accused put his hand in his pocket did not, as such, constitute a cause for concern that he might use a weapon against the two officers'.

In view of the above, and of the fact that while searching for a weapon on the person of the accused, or for other objects that may help him escape in the course of a preventive search, if a warrant for arrest was issued, it is unimaginable that the officer should search for the same in a paper parcel containing five rolls of a total of 12.72 grams of heroin powder, a parcel which could not possibly contain any weapons, it was found that the search, in the manner in which it was effected by the officer, was not called for and had gone beyond its original purpose, the officer having carried out a search unrelated to the search warranted. To claim such an unwarranted search invalid would be legally right. If the challenged ruling has stated otherwise, it would be defective and must be reversed (Court of Cassation ruling on Appeal No. 516, 6 January 1998, judicial year 65, unpublished; Court of Cassation ruling on Appeal No. 21741, 23 October 1994, judicial year 62, unpublished; Court of Cassation ruling on Appeal No. 1110, 19 May 1998, judicial year 68 unpublished).

5.1.2.5.3. Stoppage. Stoppage is a measure taken by an officer of the law in the course of investigating crimes and of apprehending the perpetrators. It may be called for if a

person is seen acting in a suspicious manner, thus justifying the stoppage for inquiry and establishment of identity. Stoppage is provided for in Article 24 of the Code of Criminal Procedure. In that sense, stoppage is an act that falls within the realm of the factual investigation. An investigation officer taking such a measure is only authorized to ask for the suspect's name and destination and to establish his identity; he is not authorized to search or arrest him, nor to forcefully take him to a police station. Nor is he authorized to undertake a preventive or administrative search. If, however, there are legal justifications for the stoppage and if the person so stopped is found to have been in the act of committing an offence, the investigation officer may arrest the accused on the basis of *flagrante delicto*. Consequently, the Court of Cassation ruled that the challenged adjudication had logically deduced that the investigation officer had reason to be suspicious about the behavior of the challengers, because they were moving in a suspicious manner, one of them holding a sack, and that they tried to escape when called upon to stop, dropping the sack; that by so doing it became justified for the investigation officer to stop them for inquiry and then to arrest and search them after they confessed to having committed a theft. Consequently, the court dismissed the challenge in question (Court of Cassation ruling on Challenge No. 15274, 31 March 1998, judicial year 60, unpublished).

5.1.2.5.4. Seriousness of Inquiry as a Prerequisite for a Search Warrant. For a search warrant to be issued, there has to be sufficient evidence to allow a certain person to be charged, whose domicile is to be searched for items related to the crime in question. Sufficient and serious evidence, i.e. seriousness of the inquiry, is left to the discretion of the investigation authority that issued the search warrant, under the control of the competent court. The seriousness of the investigation and evidence, as a prerequisite for a search warrant, is meant to ensure that the search effected or authorized by the Parquet will be useful, and that the accused whose domicile or person is to be searched has either committed the crime in question or is, at least, in possession of items related to the crime and has concealed them on the premises to be searched. It was, consequently, ruled that to assess the seriousness of the investigation and its adequacy for a search warrant to be issued, was a point of substance that has to be decided by the investigating authority, under the control of the competent court. The ruling went on to state that a search of the domicile/person of the accused is warranted if the investigation officer concerned has, through inquiry and factual investigation, established that a particular crime, be it a felony or a misdemeanor, has been committed by that person, and there is sufficient evidence as well as reasonable presumptions and suspicions against the person in question which warrant a search of his domicile/person with a view to establishing his relation in connection with the said crime. The court, in ruling on the challenge filed by two defendants from the Kafr Saad district, held that it was convinced of the seriousness of the investigation establishing that they did traffic in drugs and that they did conceal such drugs in Kafr Saad. Consequently, it is understood that the search warrant in question was issued in connection with a crime that had been committed by the accused and not in connection with a crime yet to be committed or with a potential crime. That is why the court upheld the ruling challenged which stated sufficient reasons to consider correct the

search warrant in connection with an actual crime. The challenge was dismissed (Court of Cassation ruling on Challenge No. 11401, 21 May 1991, judicial year 66, unpublished; Court of Cassation ruling on Challenge No. 5602, 17 March 1988, judicial year 66, unpublished).

It is an established practice for the Parquet to issue a search warrant against a given person, or any other persons who may happen to be with him during the search, on the basis of suspicion that they may have participated in the crime in question. The Court of Cassation, however, held that such a practice by the Parquet was questionable and that it was not possible to endorse the continuation thereof. The court held that an investigating authority must establish, beforehand, the existence of sufficient evidence that a given person is connected to the crime in question. Only then can a search warrant be issued in relation to that person. This is not the case with a search warrant issued by the Parquet against a person who may happen to be with the latter, such a warrant being issued against an unidentified person whose name, age or profession did not appear in the investigation. In a recent unpublished ruling, the court further held that such an investigation failed to specify those against whom the search warrant was issued (Court of Cassation ruling on Challenge No. 1741, 22 March 1995, judicial year 63, unpublished).

5.1.2.5.5. Nature of a Plea of Invalid Search. Jurisprudence and the judiciary have held different opinions as to the nature of nullity arising from the non-application of provisions related to search, and as to whether such an nullity is relative or is a matter of public order. There are those who believe that such a nullity is relative. This is based on the Explanatory Note to the draft Code of Criminal Procedure which states that provisions related to search, arrest, confinement, preventive detention and interrogation have to do with the interests of the parties concerned rather than with public order. This school of thought invokes Article 333 of the Code of Criminal Procedure which states that the right to plead an invalid search shall be deemed as forfeited if the accused had a counsel in whose presence such a search was effected, without his objecting to it. Consequently, provisions governing search procedures must be considered fundamental rules involving parties' interests. Certain court rulings have upheld this opinion, declaring the nullity relative (Court of Cassation, 27 December 1933, Court of Cassation Digest, Vol. 3, p. 263, Rule 1760).

Other court rulings, however, hold that the nullity in this respect is a matter of public order, and thus consider an unauthorized search to be a matter of public order the nullity of which must be upheld, notwithstanding the merits of the case in question (Court of Cassation, 13 March 1934, Court of Cassation Digest, Vol. 3, p. 29, Rule 219; Court of Cassation, 31 December 1934, Court of Cassation Digest, Vol. 3, p. 406). More recent court rulings refuse to declare the nullity as being either relative or a matter of public order, but dismiss such a plea when submitted for the first time to the Court of Cassation. It was thus decided that a plea of nullity of a search warrant is mixed with the facts, and that unless the record of the original ruling challenged has included such a plea, the same cannot be entered for the first time before the Court of Cassation. Such a plea would necessitate an investigation which is not part of the functions of the Court of Cassation

(Court of Cassation, 25 November 1973; Court of Cassation Digest, judicial year 24, p. 1064, Rule 219).

In another decision, the Court of Cassation upheld the ruling of the competent court that declared an arrest and a search illegal and, hence, invalid, thus acquitting the accused. In this respect, the court rejected a plea by the Parquet that the challenged ruling declaring the nullity of the search and the innocence of the accused of the charge of possession of drugs, was a miscarriage of justice because the accused did not plead the nullity of the arrest and search in question. It was rather the competent court that dismissed the arrest and search as being invalid. The Court of Cassation dismissed the challenge filed by the Parquet as unjustified (Court of Cassation, 3 June 1958, Court of Cassation Digest, judicial year 9, p. 609, Rule 1560). In a more recent decision, the Court of Cassation held that the competence of the person who issued a search warrant was a matter of public order (Court of Cassation, 26 March 1984, Court of Cassation Digest, judicial year 35, p. 342, Rule 73).

5.1.2.6. Conclusiveness of a Criminal Judgment

5.1.2.6.1. Criminal Judgment: Definition. A criminal judgment was defined as a decision handed down by a competent judicial authority in a criminal case; the decision is either interlocutory or final. There are several aspects to the conclusiveness of a criminal judgment. If it is recognizing the accused as being guilty or innocent, the criminal case in question is closed once such a decision becomes final or unchallengeable through ordinary or extraordinary procedure. This aspect of conclusiveness has a negative effect, since it prevents the repetition of action against the same accused on the same matter. If such a repetition takes place, it allows for a plea that a final decision has been already taken by a competent court, thus preventing further proceedings. Article 454 of the Code of Criminal Procedure states that once a final court decision has been handed down in a criminal matter declaring an accused person guilty or innocent of the alleged crime, the criminal case in question cannot be reopened unless a legally valid challenge is filed. Article 455 goes on to state that even if new evidence or circumstances come to light, or if there is a change in the legal characterization of the crime in question, this shall not allow for the reopening of the case. The legal principle here is that a person cannot be tried for the same act twice (double jeopardy). Once a case has been filed for action with a specific legal characterization and a ruling has been handed down, the same action cannot be repeated with a new characterization. The argument for considering the case one and the same, thus excluding a reopening thereof, even with a different characterization, is that the grounds for the indictment in both cases are one and the same, i.e. that each case cannot have its own nature nor its own special circumstances which would justify their being different and allow the reason for both to be considered one and the same. In view of the above, the court ruled that: 'the record of the challenged ruling has established that the challenger had been tried in the misdemeanor action No. 80 of 1988 (Heliopolis) for erecting four additional floors without an appropriate permit and without observing the technical specifications required for the safety of the building, those two acts being both connected to the act of building and being components of its legal

characterization, and both being temporary crimes, the building thereof having been constructed by the challenger prior to his selling it. The competent court handed down a final judgment recognizing the accused as innocent of all the charges constituting the grounds for the original accusation. The challenged ruling however reopened proceedings on the same act of construction and found the challenger guilty of the charges of manslaughter, injury and damage through negligence. The said ruling was considered a miscarriage of justice since it implied a double punishment for one and the same act, a matter that is legally invalid even if retrial and subsequent punishment were based on a new characterization of the matter in question. The court invoked Articles 454 and 455 of the Code of Criminal Procedure as grounds for dismissing the ruling challenged as being invalid. The court also invoked Article 39 of Law No. 57 of 1959 as grounds for its decision, that it was invalid to re-examine the charges of manslaughter, injury and damage through negligence in misdemeanor No. 80/1988, Heliopolis' (Court of Cassation ruling on Challenge No. 23634, 2 June 1988 session, 67J, unpublished).

5.1.2.6.2. Conclusiveness of a Criminal Judgment before Civil Courts. A criminal judgment also carries weight in that it is authoritative before civil courts. This is based on Article 456 of the Code of Criminal Procedure stipulating that a judgment handed down by a criminal court exonerating or indicting an accused in a criminal action shall carry the force of res judicata before the civil courts examining the same case in relation to the commission of the crime, to its legal characterization and to its attribution to the perpetrator. If the criminal judgment so issued declared the accused innocent, it shall have the same force regardless of whether it was based on the absence of charges or on the insufficiency of the evidence. However, it shall not carry that force if it was issued on the grounds that the act in question is not punishable by the law. Article 102 of the Law of Evidence No. 25 of 1968, corresponding to Article 406 of the Civil Code, states that except as regards the facts on the grounds of which a criminal judgment was issued, and on which it had to base itself, a civil judge is not bound by the said criminal judgment. The reason here is that a criminal judgment supercedes a civil judgment, the former being issued in the interest of society and involving the lives and honor of individuals. A civil judgment, on the other hand, addresses individual interests most of which are related to financial obligations. Furthermore, such an effect is a guarantee against a potential conflict of judgments. It is not seemly for the criminal decision to be repealed by a civil judge. There is a third aspect of the conclusiveness of a criminal judgment derived from Article 26 of the Code of Criminal Procedure which calls for a civil action to be kept in abeyance until such time as a final judgment is rendered in the related criminal case. The reason being that a civil judge would be bound by the related criminal judgment. In view of the above, the Court of Cassation decided that it appears from the challenge of the ruling that the defendant against whom the challenge was filed was declared innocent of the charge of waste by the criminal judge, on the grounds that there was no contractual relationship between him and the challenging company, and that it was an essential element of the case examined by the Criminal Court. Consequently, the judgment of the latter has the force of res judicata before the civil court in the civil action requesting the breach of

the contract and damages (Court of Cassation ruling on Challenge No. 923, 4 February 1982, 49J, Compendium of Rules established during five decades, Vol. 1, p. 2695).

5.2. Principles Established through Civil Court Rulings

5.2.1. Civil Code

5.2.1.1. Conclusiveness of Private Deeds

It has been decided by the Court of Cassation that, according to Article 14 of the Law of Evidence, a private deed shall be deemed as originating from whoever has put his signature to it, unless he explicitly denies his signature, seal or fingerprint. Accordingly, such a document acquires conclusiveness as to its contents in relation to the person who signed it, unless the latter categorically and firmly denies that the signature on the document is his. In such a case he has no recourse but to challenge the court decision on the ground that his signature was forged. On the other hand, the originator of a private deed may admit that his signature is the one affixed thereon, or the competent court may establish that such a signature was his, on the grounds of evidence submitted by the plaintiff. In the absence of either condition, the defendant may still deny his signature on the document. In this case, the court will decide on such an issue pursuant to Article 30 of the Law of Evidence that allows verification of a document through comparison or testimony by witnesses. The challenger, before the competent court of first instance, had pleaded that he had not affixed his seal on the document submitted as evidence in the action against him by the plaintiff and that the same was a forgery, and had, before the competent court of appeal, repeated the same plea without initiating procedures for an allegation of forgery, i.e., he failed to submit a notice to this effect within the time prescribed by the law as from the date when the competent court of first instance issued its decision.

This denial was explicit and categorical. Since the law has not set out a specific recourse to follow for a person who denies having signed a private deed, it is sufficient for him to deny it explicitly and the private document loses its conclusiveness as evidence. In view of the above, and since the challenged ruling upholding the ruling of the court of first instance did not pronounce itself on the denial by the challenger that the signature on the contract in question was his, nor did it verify its authenticity in accordance with Article 30 of the Law of Evidence, the ruling only stating that the challenger did not claim the signature to be a forgery during the time when the case was being examined by the Court of Appeal, and that by failing to do so he intended to prolong litigation, the Court of Cassation ruled that the challenged ruling was not based on sufficient grounds and on valid factual investigation, besides its error in the application of the law, and that it had to be repealed (Court of Cassation ruling on Appeal No. 1585, 1 March 1988, 62J, unpublished).

5.2.1.2. Referral to a Court of Appeal

The Court of Cassation has repeatedly decided that pursuant to Article 233 of the Code of Commercial and Civil Procedure, an appeal procedure transfers the whole case to the competent Court of Appeal, as far as this was examined by the court of first instance,

even the pleas not insisted on by the defendant. The said court must even examine such matters which might have been decided upon against the defendant in the ruling issued by the competent court of first instance. The competent Court of Appeal must pronounce itself on said matters, unless it has been established that the plaintiff had explicitly or implicitly relinquished any of them. The Court of Cassation held that the purport of Article 117 of the Law of Evidence is that taking a decisive oath is deemed conclusive in the subject matter on which the oath was taken, and is binding on the judge. If the oath implies a recognition of the validity of the claimant's action, the court must rule in favor of the claimant. On the other hand, if the oath implies a denial, the court must consider such a denial as justifying a ruling of dismissal of the action for lack of evidence. Such a decisive oath results in the forfeiture by the person who took the oath of his right to produce any other evidence. The ruling in question by the Court of Cassation went on to state that: 'whereas it was evident from the documents on hand that, after having resorted to an allegation of forgery before the competent court of first instance vis-à-vis the sale contract in question, the challengers took a decisive oath affirming that the said contract, claimed to be entered into by their parents, was a forgery in terms of content and signature, and the court of first instance did not deal with the significance of such an oath and decided to accept the action on the grounds that the sale contract, subject matter of the action by the first defendant, was post-dated. Consequently, the challenge of that judgment raises the issue of the decisive oath to be looked into by the competent Court of Appeal. Since the record of the proceedings fails to show that the challengers have explicitly or implicitly relinquished their right thereto, the said court should have pronounced itself on that point of defense which, if proven valid, would have entirely altered the court's opinion on the action in question. Since the challenged ruling has ignored such an essential point of defense and, hence, ruled on the grounds that the sale contract in question was valid and was not challenged by the parties, the ruling in question by the Court of Appeal was not based on sufficient grounds and constituted an error in the application of the law' (Court of Cassation ruling on Appeal No. 1341, 15 February 1988 session, 62J; Court of Cassation ruling on Appeal No. 4950, 8 March 1988, 66J; both unpublished).

5.2.1.3. Discretionary Power of the Court on an Allegation of Forgery

The Court of Cassation has ruled that the judge of a court of merits may decide on the validity of a document, which is the subject matter of an allegation of forgery, in the light of a comparison made by him, without consulting an expert, the reason being that a competent judge is the supreme expert insofar as the points of facts in the case at hand are concerned. Moreover, Article 58 of the Law of Evidence does not deem it imperative for a judge to consult an expert regarding a document that is the subject matter of an allegation of forgery, unless the competent judge concerned deems it necessary to do so after examining the document or because of the circumstances of the case. The Court of Cassation went on to hold that the competent judge may rule on the validity of such a document. The challenged ruling has established reasonable grounds that refute the pleas of forgery, establishing that the document in question was written by the same hand and that

there was nothing suspicious about the date it carried or the ink used in writing it, and that there was nothing to support a claim of forgery as to the date on the document. The Court of Cassation went on to state that it was left to the discretionary power of the court concerned to rule on the validity or invalidity of a document, in the light of the circumstances of the case, and that since the Court of Cassation cannot look into such an issue, the challenge is deemed invalid (Court of Cassation ruling on Challenge No. 293, 25 March 1988 session, 62J, unpublished).

5.2.1.4. Prescription of Actions for Damages Arising from a Tort

Article 172(1) of the Civil Code states that an action for damages arising from a tort shall be subject to prescription three years from the day the victim comes to be aware of the occurrence of the damage or of the person responsible for it. In any case, such an action becomes prescribable after 15 years from the day the tort took place. The implication of this provision is that the three-year prescription applies to all actions in damages arising from a person's acts, from the act of a stranger or from material objects. Such a prescription is calculated only as from the date the injured person becomes aware of the damage or of the person responsible for it, since the lapse of three years from the date such a definite knowledge is established implies that the victim has forfeited the right to claim the damages imposed by the law on the person responsible, with the ensuing prescription of any action in damages. It cannot be assumed that the victim of the tort has forfeited his right and, hence, to rule in favor of prescription if his knowledge of the tort or of the person responsible for it are based only on suspicion. Consequently, knowledge of the existence of tort does not preclude definite knowledge thereof by the victim, as well as knowledge of the person who committed the tort. Therefore, the Court of Cassation held that pursuant to Article 178 of the Civil Code, the responsibility of a guard responsible for items, is an omissive one that arises from negligence, i.e., the failure of the guard in charge to exercise due diligence to prevent loss of control which, in turn, would cause the tort to take place. Such an error may lead to the criminal liability of the guard once the nature of such negligence and the evidence as to the identity of its perpetrator have been established. However, the assumed liability of the guard for the items he is in charge of is restricted to civil liability, the latter being based on causality rather than on negligence. It is further stipulated in the Article referred to above that evidence can be established that there was an external cause, which would exclude the causality which gave rise to a liability in the example given above. In view of the above reasons, the injured person has to wait until a final criminal judgment is issued; only then and there can he have definite knowledge of the tort as such, and of the person responsible for it. The Court of Cassation went on to hold that since the challenged ruling was based on the above reasons, thus setting the date when the victim of the tort became definitely aware of the tort and of the person responsible for it as being the date on which the final criminal judgment was issued, i.e., 5 September 1985, rather than the date on which the tort in question occurred, and whereas the challenged ruling concluded that the action filed on 17 February 1987 was filed before the right to file it was forfeited, the ruling in question did not violate the law, nor was it a wrong application thereof, and that consequently, the

challenge was unjustified (Court of Cassation ruling on Challenge No. 2729, 11 June 1998, 58J, unpublished).

5.2.1.5. Rulings which can be Subject to Appeal

Article 212 of the Code of Civil Procedure, as amended by Law No. 23 of 1992, stipulates that rulings that fall short of ending the dispute in question shall not be subject to appeal. Exceptions to that rule are provisional judgments, judgments on urgent actions, discontinuing the action, as well as rulings for mandatory execution, rulings of non-jurisdiction and referral to competent courts. In the case of the latter, the court to which a case is referred shall discontinue the action in question until such time as the appeal in question has been decided on.

The above Article implies that where an action involves multiple claims by the parties thereto, and only some of these have been adjudicated, while the rest remain before the said court, such a ruling shall not be subject to appeal until a ruling putting an end to the dispute has been handed down. Exceptions are specified in the Article itself. By so stipulating, the legislature aimed at preventing fragmentation of the same action and its consideration by different courts, since such a fragmentation might delay a final judgment and increase the costs of litigation. Therefore, the Court of Cassation decided that 'whereas the challenger has requested the breach of a sale contract granting the usufruct of premises and the payment by the company appealed against of a sum of L.E. 84,850, to cover the price and expenses incurred in fitting the said premises, plus damages, and whereas the competent court of first instance has accepted the request of the claimant to breach the contract in question, while referring for investigation the claim related to the payment of the sum referred to above, the said ruling breaching the contract cannot be, on its own, subject to appeal since it did not put an end to the dispute as a whole and does not constitute one of the exceptions stipulated in Article 212 of the Code of Civil Procedure. A ruling breaching a contract is not one requiring mandatory execution. Although the Court of Appeal was wrong in admitting the appeal and dismissing the request to breach the contract in question, its ruling, though defective, does not put an end to the dispute as a whole. The dispute pending the final ruling under Article 212 is the original dispute between the parties to the litigation in question, while the dispute filed before the Court of Appeal cannot be reckoned with, in terms of scope, as being the original one. Since the ruling appealed against, which rejected the request for breach of the contract as invalid, had not put an end either to the original dispute as a whole, part of the latter having remained pending before the court of first instance, and since the ruling by the Court of Appeal referred to was not one requiring mandatory execution nor one of the other exceptions stipulated by Article 212 of the Code of Civil Procedure justifying an independent appeal, the Court of Cassation held that the said ruling was not subject to cassation until the dispute, as a whole, has been settled. The error of judgment by the Court of Appeal could not be endorsed by the Court of Cassation who, consequently, dismissed the appeal in question. The issue being related to a matter of public interest, the Court of Cassation could rule ex officio' (Court of Cassation ruling on Appeal No. 1504, 7 May 1998, 64J, unpublished).

5.2.1.6. Decisive Oaths

A decisive oath is taken by one litigant at the request of another, in an appeal to his sense of honor, in case of absence of evidence of the latter's claim. Thus, such an oath lies in the hands of the litigant and not the judge. The latter has to grant the request of the litigant to administer the oath, if the conditions thereof are met, unless he finds that such a request is arbitrary. The decisive oath differs from the supplementary oath, provided for in Article 119 of the Law of Evidence, and requested of either litigant by the judge himself. Such supplementary oaths are not administered if conclusive evidence exists or if no evidence whatsoever is available; they are considered an additional and supplementary piece of evidence and do not transfer the dispute into the domain of the sense of honor of the individual litigants, as is the case with decisive oaths. Consequently, the resolution of such disputes rests within the boundaries of law, and the supplementary oath, unlike the decisive oath, is not considered a binding and decisive argument. A case in point is a challenge directed at a decision based on the refusal of the judge to administer a decisive oath to the appellee concerning her knowledge of her testator's sale of property and collection of the price thereof. The trial court held that allowing an oath would presuppose the occurrence of the sale whose contract was proven to be forged by means of carbon paper. The contract which constituted the basis for the claim was thus revoked, and the trial court saw in the request for a decisive oath a malicious attempt to prolong the litigation. Consequently, the request for a decisive oath was discarded.

The Court of Cassation repealed the decision of the trial court which refused to administer the decisive oath, on the grounds that it contradicted its ruling for the invalidity of the contract, because the circumstances, as such, did not prove malicious intent. The ruling does not apply to the appellee heir's behavior as such; the invalidity of the contract being independent of the validity of the said behavior. Consequently, the Court of Cassation repealed the ruling on the basis of error in the application of the law and lack of valid factual investigation (4 November 1997, Challenge No. 4531, judicial year 61; 19 March 1988, Challenge No. 290, judicial year 52, unpublished).

5.2.1.7. Capacity for Acceptance of Donations

Article 487.1 of the Civil Code stipulates that for a donation to change hands, it must be accepted by the donee or by his representative. The beneficiary should, then, have the capacity to accept the grant. In the case where the donee has no personality, neither natural or legal, the donation cannot take place since there no beneficiary has accepted the offer of the donor. Thus, the Court of Cassation admitted a challenge to the validity of a grant on the basis that the Coptic Association of the Nuns of Jesus and Mary does not possess a legal personality (Articles 52, 53 of the Civil Code), nor was the association officially registered pursuant to Law No. 32 of 1966 governing associations and institutions. The above association was not, consequently, a legal entity and had no capacity for acceptance of grants. Since the court ignored the plea of defense of the challenging party, although it was an essential defense, which would have changed the course of the action, the decision of the lower court was rendered null and void and was repealed by the Court of Cassation (29 April 1998, Challenge No. 1364, 62J, unpublished).

5.2.2. Principles Established by the Tenancy Circuit

5.2.2.1. Legal Extension of a Lease Contract

Article 29, paragraph 1 of Law No. 49 of 1977 concerning the lease of premises and the organization of the relationship between landlord and tenant stipulates that a lease contract shall not be terminated with the death of the tenant or with his departure from the premises if his spouse, children or either of his parents who resided with him up to the time of his death or departure are still remaining on the premises. The first condition for the application of this provision for legal extension is to prove the existence of a lease relationship in favor of the person who resided in the premises, so that the contract may be extended in favor of his relatives who lived with him until the time of his death or departure. If such a relationship did not exist, the extension provision does not apply. Since judgments have to be based on clear-cut reasons, supported by documents and data, the Court of Cassation reversed a ruling, in application of Article 29 of Law No. 49 of 1977, extending a lease contract to a daughter who had lived on certain premises with her mother until the death of the latter, because said ruling failed to prove the existence of a lease relationship in favor of the mother (Challenge No. 3385/59J, examined on 21 January 1998; unpublished).

5.2.2.2. Residence with the Intent of Settlement is a Condition for the Extension of the Lease Contract in Favor of the Tenant's Heirs

Article 29 of Law No. 49 of 1977, concerning the lease of premises and the organization of the relationship between landlord and tenant, mentions the notion of residence with the intent of settlement. It is a kind of residence where the resident makes the premises his home and his usual settlement, even though it may be disrupted by periods of absence for short or long intervals of time, for incidental reasons that do not reveal a wish on his part to terminate his residence. Thus, casual residence, notwithstanding its duration, is not evidence enough. The intent of settlement is a personal matter which can only be stated by the resident himself, and trial courts judge it in accordance with the circumstances of each case. The intent of settlement differs from the purpose of residence which may motivate the tenant to reside on the premises in response to a direct and personal need, such as caring for the original resident whom he is duty-bound to care for. The criterion for judging a residence as settled is proof of residence with the intent of settlement, notwithstanding the purpose. The Court of Cassation reversed a ruling that the daughter of a deceased tenant did not reside with the intent of settlement with her father, who was the original tenant. The challenged ruling was based on denying the settled residence of the daughter before the tenant's death in the disputed premises. The trial court depended on the testimony of witnesses to the effect that the said daughter resided in the disputed premises for the purpose of caring for her ailing father, notwithstanding the testimony of another witness who claimed he saw her daily but did not know whether her residence was settled or not. The Court of Cassation found that her residence on the premises to care for her father did not negate a settled residence, and concluded that the ruling of the trial court should be reversed as being defective in its application of the law and in its factual investigations, going against the facts established by the documents (19 January

1998, Challenge No. 15, 67J, unpublished; 9 February 1988, Challenge No. 7998, 63J, unpublished).

5.2.2.3. Lease of Joint Property from One of its Apparent Owners

Articles 827 and 828 of the Civil Code stipulate that the majority of partners are entitled to decide to lease a joint property, in accordance with their shares. This right may not be claimed by one of the joint partners individually if he does not own more than half the joint property. Therefore, a lease contract entered into by said owner is invalid, unless the other owners, explicitly or implicitly, give their consent, in which case the said owner becomes their representative. A mother of five entered into a contract as the apparent owner of the premises. The said mother leased the premises on 25 July 1984 to the appellant, who used it for five years as a center for his commercial activities. The said mother filed civil action No. 3121/1985 against the appellant to gain access to build the first floor, on the grounds that the property belonged only to her. In spite of the fact that all five children lived on the same street, none objected to the foregoing, signaling by their silence their consent to the position of the mother as apparent owner. The Court of Cassation, therefore, ruled that the contract was valid, notwithstanding the decision of the trial court that had declared it not enforceable towards the children because they had never given their consent. The Court of Cassation found that ruling defective due to an error in the application of the law and a lack of factual investigations (Court of Cassation, 16 February 1998, Challenge No. 1676, 66J).

5.2.3. Decisions Taken in Taxation and Commercial Circuits

5.2.3.1. The Penalty for Discrepancy in Taxpayers' Statements

Article 40 of Law No. 157 of 1981, concerning income taxes, stipulates that if the Taxation Department has evidence of discrepancy between the statements referred to in Articles 35 and 37 of that law, and the actual facts it is, in addition to correcting, modifying or disregarding the statement and assessing the taxpayer's profits by evaluation, entitled to require the taxpayer to pay an additional 5 per cent of the difference between estimates, with a maximum of L.E. 500. Thus, the aforesaid Article entitles the Taxation Department to impose some kind of financial penalty on taxpayers who present inaccurate statements. The Court of Cassation, therefore, reversed a decision issued by a lower court in which Article 40 was not enforced in the case of a taxpayer who presented a statement which did not conform to reality. The Court of Cassation found the decision of the court of first instance defective due to an error in the application of the law and thus reversed it (29 December 1997, Challenge No. 2549, 60J).

5.2.3.2. Insolvency Leading to Bankruptcy

Article 195 of the Code of Commerce defines bankruptcy as the inability of merchants to pay off their debts; consequently this state of bankruptcy should be declared by means of a court decision. The inability of the merchant to pay off his debts reveals a shaky financial status and financial difficulties that harm the credit of the merchant and expose the rights of his creditors to real or highly probable risk. In the case where the merchant's decision not to pay his debts has no legitimate justification, this is considered a presumption not in his favour. However, insolvency may not be interpreted in the light of the

aforesaid definitions if it is justified by a certain reason or is the result of a dispute as to the amount, validity or due date of payment or of the termination of a debt for a valid reason. Trial courts should, hence, give detailed decisions pertaining to the findings of facts concerning cases of insolvency. Consequently, the Court of Cassation will be able to review the legal characterization of such circumstances, as insolvency constitutes one of the conditions legally required for the declaration of bankruptcy. The Court of Cassation, therefore, reversed a decision by a lower court which based itself only on the failure of the defendant to pay off a cheque to declare the merchant enable to pay off his debts due to financial difficulties, without providing the justification for such decision. Consequently, the Court of Cassation was not in a position enabling it to review the characterization of the findings of facts; the decision was judged defective due to an error in the application of the law and shortcomings in the grounding (8 December 1997, Challenge No. 9022, 66J, unpublished).

5.2.3.3. Contracting Agreements Subject to Sales Tax

Article 1 on Public Taxes on Sales (Law No. 11 of 1991) refers to the fact that enforcement of that law depends on the definitions contained therein. Thus 'service' is defined as all services mentioned in Schedule No. 2 of the said law; it is also stipulated in Article 2 that a sales tax is imposed on services set forth in Schedule 2. Article 3 of Law No. 2 of 1991, applicable from 5 March 1992, adds to that list services set forth in Schedule E and refers more generally to 'all services offered to others'. This generalized reference includes therefore all kinds of services offered, without exceptions. Consequently, the Court of Cassation reversed a decision by a lower court which restricted the sales tax in the field of contracting to the materials provided and excluded the contracting services, ruling that a sales tax should be imposed on materials provided and not on contracting services. The Court of Cassation found the decision defective due to an error in the application of the law (27 July 1998, Challenge No. 10670, 66J, unpublished).

5.2.4. Decisions Issued by Personal Status Circuits

5.2.4.1. Resort to Arbitration by the Court in Actions of Divorce for Damage

The Court of Cassation established the principle that courts of merits possess full authority to acquire knowledge of the facts of the case, to evaluate evidence, including testimonies, to give precedence to a testimony over others at its own discretion, provided the significance of the testimonies is not misinterpreted. Courts of merits are, then, regarded as passing judgments based on their convictions and beliefs, without outside influence in relation to substantiated findings of facts. Consequently, they need not respond to each and every statement, request and argument presented by litigants as long as they pass a substantiated judgment that implicitly discredits all these statements, requests and arguments. A case in point is when a Court of Appeal confirmed the lower court's decision to divorce an appellee, based on conclusions reached from the testimonies of the witnesses of the appellee, delivered before both the court of first instance and the Court of Appeal. Such testimonies revealed the responsibility of the appellant for procrastination in the consummation of marriage. In response to the claim that the challenged decision did not refer to the testimonies of the

appellant, the Court of Cassation ruled that such argumentation falls within the competence of courts of merits to evaluate evidence and, hence, may not be brought before the Court of Cassation. As for the appellant's claim that divorce was ruled without assigning arbiters to investigate the reasons behind the discord, the Court of Cassation responded by stating that in actions of divorce for harm, arbitration does not take place unless the wife reiterates her claim after its rejection and failure on her part to provide evidence of damages. As it was evident that the said wife did not present a previous claim, the court did not have to resort to arbitration and the challenge was groundless, leading to its rejection (13 April 1988, Challenge No. 133, 64J).

5.2.4.2. Intervention of the Parquet is Mandatory in Actions for Validity and Enforcement of Wills

It is established that actions filed for validity and enforcement of a will necessitate a decision on the validity of its being issued by the testator, of its required premises and the validity and enforcement conditions as regard the heirs. The intervention of the Parquet is therefore mandatory (Law No. 71 of 1946 concerning testaments). The jurisdiction of courts of first instance extends over such actions, pursuant to Law No. 462 of 1955, which abolished Shari'a and religious courts. Moreover, the intervention of the Parquet is mandatory and belongs to public order pursuant to Article 1 of Law No. 628 of 1955 concerning certain aspects of personal status and *waqf* procedures. The Court of Cassation, therefore, reversed a challenged decision due to the failure of the Parquet to take part in the pronouncement of the said decision (13 April 1998, Challenge No. 6281, 63J, Personal Status, unpublished).

5.2.4.3. Difference Between Divorce for Absence and Divorce for Abandonment

Article 6 of Law Decree No. 25 of 1929 stipulates that the abandonment by a husband of his spouse is a kind of damage that justifies separation. The explanatory notes of that law define it as the absence of the husband from the domicile of the couple while he is living in the same country. His absence for more than a year and his stay in another country, without an acceptable excuse, entitles a wife to petition for divorce for absence (Article 12 of Law No. 25 of 1929). The Court of Cassation, therefore, rejected the challenge of an appellant against a decision that ruled in favor of the divorce of the appellee on the grounds of the appellant's absence for more than five years in an unidentified country, without an acceptable excuse (23 March 1998, Challenge No. 93, 64J, Personal Status, unpublished).

5.2.5. Decisions Issued by Labor Circuits

5.2.5.1. Disciplinary Penalty and the Termination of a Worker's Services are not to be Coupled Together in Cases of Absence from Work

Article 100 of Law No. 48 of 1978 concerning public sector workers stipulates that a worker is deemed to have submitted his resignation in the following cases:

(a) if a worker is absent without permission for more than 15 consecutive days, unless an acceptable excuse is presented within the following 15 days;

(b) if a worker is absent for more than 30 separate days in a year without an excuse that is acceptable to the management.

In both cases, it is mandatory to notify the worker in writing after seven days of absence in the first case, and 15 days in the second. A worker may not be considered as having submitted his resignation in the previous cases if disciplinary action was taken against him in the month following his absence. The foregoing argument is based on the fact that the termination of the services of a worker for his unauthorized absence is not deemed a disciplinary penalty, but is rather based on the supposition that he is submitting his resignation, and it is up to the employer to accept or reject it; consequently, absence is considered as an implicit decision on the part of the worker to leave work. However, unauthorized absence from work constitutes a breach of duty, justifying a disciplinary penalty, pursuant to Article 80 of the above-mentioned law. A case in point is the absence of an appellee for more than 30 separate days over a period that extended from 3 April 1993 to 7 July 1993. The appellant employer exacted a penalty by deducting from his salary the days of absence, then pleaded the presumption of implicit resignation (Article 100, Law No. 48 of 1978). The decision of the lower court pointed out the wrong done by the employer by combining disciplinary action with termination of service. The Court of Cassation, therefore, rejected the appellant's challenge since the decision of the lower court was substantiated and based on the findings of fact.

5.2.5.2. Conditions for Delegating Workers to Other Jobs

Article 55 of the Law concerning public sector workers (Law No. 48 of 1978) entitles the chairman of the board of directors in a given company, or his representative, to delegate workers to perform the duties of another job, on condition that it is dictated by the requirements of the work, that the worker is delegated to an equal or superior position in the same company and that the delegation does not exceed one year which may be renewed for another year, up to a maximum of two years. Where the chairperson does not comply with the aforesaid conditions, and delegates a worker to a job unwarranted by work requirements, with the only intention of causing prejudice to the said worker, the delegation of said worker becomes null and void. The Court of Cassation, therefore, rejected an appellant's challenge against the decision of a lower court which found the appellant's delegation of a worker (the appellee) null and void. The challenged decision was based on the grounds that the ruling of the first degree court set forth the reasons for the nullity of the delegation as being an abuse of power on the part of the employer (the appellant), i.e. delegating the appellee from a higher supervisory job to a lower status job, and extending such delegation for four years; consequently, such delegation was, in effect, a kind of punishment. This ruling was based on the fact that the delegation had been decided after the appellee complained of certain conditions in the company and of the behavior of some of the senior employers. Furthermore, incentives for his former job amounted to 45 per cent, whereas those for the job he was delegated to amounted to 30 per cent. The judgment of the lower court was therefore fully substantiated and fell

within the competence of the trial courts insofar as evaluating the circumstances was concerned. The challenge was consequently rejected by the Court of Cassation.

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A. el-Sawi

11. PROCEDURAL LAW (CIVIL PROCEDURE, CRIMINAL PROCEDURE, ADMINISTRATIVE PROCEDURE)

1. Definition and Classification

The Code of Procedure is the general procedural law.

Any litigation, whatever its type, civil, criminal or administrative, has the same general foundations and constituents, and is governed by the same basic principles, such as the right to defense, the right to claim the incompetence of the judge, to be summoned or notified through legal documents, rules relating to sessions proceedings and the court's legal power as to the correction of judgments and their interpretation.

Since such foundations and principles are included in the Code of Procedure, it is said, rightly, that this code is the general law of litigation.[1]

Therefore, it should be referred to whenever the other procedural laws are ambiguous or lacking.

Article 3 of Law No. 47 of 1972 on the State Council states the following: 'the provisions of the Code of Procedure shall be applied in matters where no specific prescription exists, until a law governing the procedures for the judicial section is issued'.[2]

Penal law jurisprudence[3] also agreed that when the Code of Criminal Procedure is lacking a provision, the Code of Procedure should be referred to in order to remedy this deficiency.

It should be noted that the Code of Procedure cannot be applied to administrative or criminal cases except within the limits of its compatibility with the nature of the administrative and criminal laws.

2. The Development of the Code of Procedure

The first Code of Procedure in Egypt was issued on 16 September 1875, to be used in the Mixed Courts, and it was greatly influenced by French law. Its implementation revealed

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1 Ahmad al-Sayyid al-Sawi. *The Medium of Explaining the Civil and Commercial Code of Procedure* (Dar al-nahda al-'arabiyya, 1984) art. 5, p. 8.

2 Supreme Administrative Court, 5 November 1955, Challenge No. 66/1.

3 Mahmud Mahmud Mustafa. *Explaining the Code of Criminal Procedure* (Cairo, Dar al-nahda al-'arabiyya, 10th edn, 1970) p. 10.

N. Bernard-Maugiron and B. Dupret (eds.), Egypt and Its Laws, 181–196.
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many negative points. Therefore, it was subject to many amendments, such as the amendment of 5 December 1886, which extended the procedures of real-estate seizure, and abolished judicial mortgage, and the amendment by Law No. 33 of 1913, which established the foundations of legal claims evaluation.

After the establishment of the National Courts in 1883, the National Code of Procedure was issued on 13 November 1883. It was similar in many of its provisions to the Mixed Code of Procedure, and was subject to many amendments to adjust its deficiencies.

The Code of Procedure was issued by Law No. 77 of 1949, and entered into force on 15 October 1949. It was very detailed, and gave the judge a major role in running legal proceedings, set up a system of payment of small debts when a written document exists, and allowed final court rulings to be challenged on grounds of defects relating to the ruling itself or to the proceedings that led to that ruling.

This Code was amended more than 15 times, the last of which was Law No. 81 of 1996.

In March 1999, the People's Assembly decided to amend the Code of Procedure in order to simplify the litigation procedures and to modify the allocation of the jurisdiction of the different courts, by raising the jurisdiction in value of the courts of first instance.

3. Foundations and Principles of the Egyptian Judicial System

The Egyptian judicial system is built on basic principles to guarantee the achievement of justice. These principles are:

3.1. Equality before the Judicial System

Article 68 of the Egyptian Constitution issued on 11 September 1971 states that: 'the right to litigation is secured for all'. Moreover, no administrative decision or action shall be immune by law from judicial review.

The principle of equality means no discrimination between citizens and that the right of each citizen to resort to his natural judge be respected.

That principle was also protected by Islamic Shari'a, for Islam does not discriminate between people before the judicial system on basis of religion, color, gender, or language. People are equal before the judge.

Therefore, any system that sets up special courts, be they political or otherwise, is considered as violating the principle of equality before the judge, which is guaranteed by all constitutions of the civilised countries[4] (Supreme Court, 6 November 1971).

3.2. The Gratuitousness of Litigation

Since litigation is considered a right guaranteed for all with no discrimination on grounds of social status or material resources, it should be simplified and made available to all

[4] Ahmad al-Sayyid al-Sawi, note 1, *supra*, at p. 34 ff.

people as a public service. Litigants are not to pay the judges' salaries, otherwise the poor would be deprived of that right. The state pays these salaries out of its treasury.

If the right to litigation entails the payment of fees in respect of procedural matters, and if attendance before the judge entails the payment of attorneys' fees, the Egyptian legislature has directed that provision be made for exemption from such fees for people who cannot afford these fees, in accordance with Articles 23–29 of the Law on civil fees.

Articles 93–98 of the Law on the legal profession No. 17 of 1983, amended by Law No. 227 of 1984, makes provision for people to get the help of an attorney free of charge if they cannot afford legal representation.

3.3. The Independence of the Judicial Power

Article 165 of the Egyptian Constitution states that the judicial power is independent, and entrusted to courts of all types and levels. Judges shall issue their judgments in accordance with the law.

Article 166 of the Constitution states that judges are independent and subject to no other authority but the law. No other authority has the right to interfere with legal cases, or matters of justice.

Article 120 of the Penal Code punishes by imprisonment for a period that shall not exceed six months, or a fine that shall not exceed 50 pounds, any civil employee, regardless of his status or post, who acted as a mediator before a judge, or a court, in the interest of one of the litigants, or caused any mischief through order, request, petition, or recommendation.

Article 123 punishes by imprisonment and removal any civil employee who uses the power entrusted to him to stop the execution of a judgment or order issued by a court or by any competent authority, or deliberately refrains from the execution of a judgment or order after eight days of his notification of execution through a bailiff.

3.4. Two Degrees of Jurisdiction

Due to considerations of justice, the Egyptian legislature adopted the system of litigation on two stages before both civil and administrative jurisdiction.

To achieve this, the courts within each judicial body are divided into two stages, each of which represents a degree of litigation, with a supreme court on the top, to guarantee sound application and construction of law by the courts of the two degrees. The two supreme courts are the Court of Cassation for the ordinary judiciary, and the Supreme Administrative Court for the administrative judiciary.

3.5. The Plurality of Judges and the Single Judge

Although the single judge system has the advantage of quick settlement of cases, the supporters of the trial by a plurality of judges have objected to the single judge system because a single judge is more prone to error, more apt to be influenced by public opinion

and he may also be subject to other pressures. When a plurality of judges issue a verdict, these problems cease to exist, the disadvantages of plurality are that each judge tends to depend upon his colleagues, and it also leads to slower legal proceedings.

Because of the advantages and imperfections of the two systems, the Egyptian legislature has used the single judge system in forming lower courts, such as the summary courts, the courts of execution, courts of expeditious litigation and misdemeanor courts. The plurality of judges is the dominant system in the formation of higher courts, such as the circuits of the Court of Cassation which comprise five counselors, the circuits of the Courts of Appeal which consist of three counselors and the circuits of the courts of first instance which are made up of three judges. The Criminal Court comprises three counselors and the Court of Administrative Justice consists of circuits, each made up of three counselors.

3.6. Publicity

The publicity of the litigation is considered an important principle of contemporary judicial systems.

It means that the investigation of the case and the pleadings are made in public sessions open to everybody and that the judge should give the grounds underlying his judgment, and pronounce it in a public session. It must be permitted to publish the debates, the pleadings and the judgment in newspapers, and any person who wishes to have an original copy of the judgment shall get it, regardless of whether he has an interest in the case.

However, in consideration of public order, morality and the sanctity of the family, legal proceedings may be administered within confidential sessions, provided that the judgment is always pronounced in a public session.

This was emphasized by Article 169 of the Egyptian Constitution, which states that: 'Court sessions shall be public, unless a court decides to hold them *in camera* for considerations of public order or morality. In all cases, the judgment shall be pronounced in a public session'.

4. Jurisdiction of Courts

4.1. Definition and Types of Jurisdiction

Jurisdiction is the power allocated by the law to a court to settle a certain dispute. The rules of jurisdiction aim at identifying the share of each body of the judicial system, and the share of each level of courts within each judicial body, and the share of each court of the same level, as to the conflicts it is entitled to settle.

Because of the difference in the nature of conflicts, the legislature has divided the judicial system into two major bodies: the ordinary courts (which consists of civil and criminal courts) and the administrative courts or the State Council. The legislature, then, has set out what kind of conflicts each body can settle. Civil courts, for instance, have jurisdiction to

settle civil and commercial conflicts, as well as personal status issues, while the administrative judiciary has jurisdiction to settle administrative conflicts.

The legislature has divided each judicial body into levels of courts on the basis of the type of litigation, or its value, and has set the share of each of the levels. Within the ordinary judiciary, for instance, courts are divided into levels of summary courts and courts of first instance, and therefore, it is said that this case is within the jurisdiction of the court of summary justice, while that one is within the jurisdiction of the court of first instance. This type of jurisdiction is known as the jurisdiction in kind, or in value.

Since courts of the same level are widespread all over the country to facilitate people's retrieval of their rights through litigation, the legislature has designated a regional area of allocation for each court. Each court is assigned to settle the disputes that happen within the range of its jurisdiction area. It is said, for instance, that a case is within the jurisdiction of El-Giza summary court, or of Alexandria court of first instance. Such jurisdiction is known as territorial jurisdiction, or jurisdiction in accordance with the court premises.

As mentioned above, jurisdiction is divided into four types:

1. Jurisdiction according to the judicial body.
2. Jurisdiction in kind: it sets the jurisdiction of each level of courts within the same judicial body, on the basis of the kind of litigation.
3. Jurisdiction in value: it sets the jurisdiction of each court on the basis of the financial value of the case.
4. Territorial jurisdiction: it sets the regional or geographical jurisdiction of each court of the same level.

Rules of jurisdiction combine to identify the specific court, out of all courts, which is allocated the jurisdiction of a certain case.

In the following, we will survey the rules of each type of jurisdiction.

4.2. Matters Which are Outside the Jurisdiction of the Judiciary

The judicial system in Egypt has become, after the termination of the courts of Shari'a and religious councils by Law No. 462 of 1955, and the reallocation of the jurisdiction of these courts to national courts, divided into two judicial bodies: the ordinary judiciary and the administrative judiciary, or the State Council.

The legislature has fixed the jurisdiction of each judicial body and has excluded from their jurisdiction the ruling on acts of sovereignty. Article 17 of the Judicial Authority Law[5] states that: 'Courts are not to rule directly or indirectly on acts of sovereignty', and Article 11 of the law regarding the State Council[6] states that: 'The State Council's courts have no jurisdiction over claims related to acts of sovereignty'.

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5 Law Decree No. 46 of 1972, amended by Law No. 35 of 1984.

6 Law Decree No. 47 of 1972.

Acts of sovereignty are those acts handled by the executive authority as a government authority, and not an administrative authority,[7] as the conclusion of treaties, declaration of war, declaration of the imposition of martial law, deportation of foreigners, calling the People's Assembly to convene, closing the parliamentary session, granting amnesty, and granting the right of political asylum to some individuals.[8]

Acts of sovereignty are outside the jurisdiction of the judiciary as such, and courts shall not rule in matters connected to any of them. This should not prevent them, however, from investigating whether the matter submitted to them shall be considered as an act of sovereignty or not.

In application thereof, the Court of Cassation has ruled that the courts are competent to define the legal characterization of the acts adopted by the public authorities. They can determine whether an act should be considered an act of sovereignty and therefore outside their jurisdiction, or if it is an act of administration, which lies within their jurisdiction. The ruling of the courts is subject to the review of the Court of Cassation.[9]

4.3. Distribution of Jurisdiction between the Two Judicial Bodies

The ordinary judiciary is the body allocated general jurisdiction over conflicts and crimes. The administrative judiciary is a body which jurisdiction is limited to administrative matters.

Article 15 of the Judicial Authority Law states that 'except for the administrative disputes allocated to the State Council, the courts rule in all disputes and crimes, unless otherwise stated by a specific text'.

Therefore, the ordinary judiciary enjoys general jurisdiction, since its authority covers all cases except those that the legislature has included within the jurisdiction of the administrative judiciary or has established outside the jurisdiction of the ordinary judiciary through a special legal text.[10]

As to the administrative judiciary, it has jurisdiction over administrative matters only.

Therefore, it is common to say that the ordinary judiciary enjoys a general jurisdiction, while the administrative judiciary has limited jurisdiction only.

Such a say does not imply that the administrative judiciary is limited in its authority concerning administrative issues and conflicts. It is indisputable that the administrative

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7 Court of Administrative Justice, 26 June 1951.

8 Court of Administrative Justice, 3 March 1987.

9 Court of Cassation, 23 November 1944, Challenge No. 10/13 and Court of Cassation, 25 April 1978, Challenges No. 545 and No. 550/44.

10 For example, the legislature has removed some types of litigation from the jurisdiction of the courts and entrusted them to committees, such as the agricultural disputes committees and committees on the determination of new buildings' rents. The Court of Cassation decided that restricting the general jurisdiction of the ordinary judiciary should be considered an exception and therefore should not be expansively construed (Court of Cassation, Civil, 21 May 1975).

judiciary has general jurisdiction as to these issues (Article 10 of the Law regarding the State Council). It is meant to say that comparing the ordinary judiciary to the administrative judiciary shows that the field of the former is more comprehensive and general, since civil courts have jurisdiction in all civil, commercial, and personal status cases, and criminal courts have jurisdiction in all criminal matters. At the same time, the jurisdiction of the administrative judiciary is confined to administrative issues only.

The body competent to rule on a case is determined at the time of the creation of the right subject to litigation.[11]

4.4. Disputes Over the Distribution of Jurisdiction between Judicial Bodies

In spite of the determination of the jurisdiction of each court, two judicial entities may want to rule on one and the same case, or no judicial body may declare itself competent. This is due to the extreme specificity of the distribution of jurisdiction in some cases and the attempt of each judicial entity to extend its jurisdiction.

The legislature has allocated to the Supreme Constitutional Court the task of ruling on conflicts of jurisdiction (Article 25 of the Law on the Supreme Constitutional Court).

4.5. Jurisdiction of Civil Courts

4.5.1. How Distribution of Jurisdiction within Civil Courts is Determined

Jurisdiction is allocated to courts in Egypt on the basis of the value of the case and not its kind. The value of the case determines the court competent to rule on it.

Nevertheless, as an exception to the principle, the Egyptian legislature makes use of the jurisdiction in kind in some special cases as, for example, the courts of expeditious jurisdiction that rule on expeditious cases and the courts of execution that rule on execution disputes.

The courts also have jurisdiction in certain types of cases regardless of their value, and whatever their degree and level.

4.5.2. Classification of the Civil Courts

The civil courts are divided into different levels, topped by the Court of Cassation:

Court of Cassation;
Courts of Appeal;
courts of first instance;
summary courts.

[11] Court of Cassation, Civil, 28 November 1988, Challenge No. 2258/52 and Court of Cassation, Civil, 10 December 1985, Challenge No. 166/49.

The principle is that litigation be submitted to two degrees of civil courts, courts of first degree and courts of second degree.

Courts of first degree comprise:
summary courts; and
courts of first instance.
Courts of second degree comprise:
Courts of Appeal; and
Appeal courts of first instance.

4.5.3. Jurisdiction of Civil Courts

4.5.3.1. The Court of Cassation[12]

The Court of Cassation is at the top of the ordinary judiciary (civil and criminal courts). It comprises two divisions, each consisting of 11 counselors. One of these panels is for criminal issues and the other one is for civil, commercial, personal status cases and others. Each division comprises circuits, and each circuit consists of five counselors.

If one of the circuits decides to reverse a legal principle on which previous rulings were issued, the case is to be transferred to the competent Board to amend this principle by a vote of a majority of, at least, seven members.

If one of the circuits decides to reverse a legal principle decided by rulings issued by another circuit, the challenge must be transferred to a joint session of both boards made of 22 counselors and a ruling is issued by a majority of 14 members. The court monitors the application of the law by all the courts whatever their degree and the uniformity of their interpretation of the legal provisions.

The Court of Cassation rules only in challenges of rulings issued by Courts of Appeal, if one of the grounds for cassation, as stated by the law, applies.

However, challenges before the Court of Cassation of final rulings will be deemed admissible, even if they were issued by a summary court, if the ruling contradicts another one which has the force of res judicata.

The Attorney General has the right to challenge before the Court of Cassation any final ruling, in the interest of the law, even if it was issued by a summary court, if the parties do not have the right to challenge that ruling or if they have given that right up (Article 250 of the Code of Procedure).

In addition to the original jurisdiction of the Court of Cassation, which is to monitor the sound application of the law by the courts and its correct application and interpretation, the legislature has entrusted it with the ruling on the merits of certain types of cases.

This is the case as to the court's jurisdiction in considering a challenge of a counselor of the Court of Cassation (Article 453/4 of the Code of Procedure), in settling requests submitted by judges for abrogation of administrative decisions connected to matters concerning

[12] The draft new Code of Procedure, which has not been issued yet, intends to determine the jurisdiction of the Court of Cassation by imposing a minimum value on the cases that it may hear. No challenge would be deemed admissible unless the value of the action exceeds 50,000 pounds.

them and examining requests for compensation for such decisions (Article 83 of the Judicial Authority Law).

4.5.3.2. Courts of Appeal

Courts of Appeal are courts that examine a conflict for the second time. They comprise the following:

(1) Courts of Appeal *stricto sensu*: Each of its circuits comprises three counselors. They rule on appeals against rulings issued in the first degree from courts of first instance. They are courts of second degree that deliberate a case for the second time.

In addition to this jurisdiction, the legislature has entrusted them with the judgment of certain cases that have not been previously submitted to the courts of first degree, because those Courts of Appeal are considered to be more capable of ruling on such cases in light of their experience.

Of such cases, it has jurisdiction in claims for damages against a judge or a prosecution official affiliated to the Court of Appeal (Article 495 of the Code of Procedure), or in case of requests for compensation for an appeal submitted to harm the defendant (Article 235/4 of the Code of Procedure).

(2) Courts of First Instance: Courts of first instance may sit as an appeal body against rulings issued by the summary courts and the courts of expeditious litigation (Article 47/2 of the Code of Procedure).

The court of first instance has two jurisdiction domains, one as a court of first degree and one as a court of second degree deliberating the dispute for the second time.

In both cases, the court panel always comprises three members (Article 9/4 of the Judicial Authority Law), but the work is distributed within the court between circuits of first instance and circuits of appeal.

4.5.3.3. Courts of First Instance

Any court of first instance comprises a sufficient number of judges who sit in circuits formed by three judges. The court is chaired by one of the counselors of the Court of Appeal in whose jurisdiction area lies the court of first instance.

The premises of each court of first instance is located in the capital of the governorate. Cairo, because of its large population, has two courts of first instance, one for the north of Cairo, and the other one for the south.

Courts of first instance are assigned civil and commercial cases, the disputed value of which exceeds 10,000 Egyptian pounds.

The court of first instance has jurisdiction over any provisional or expeditious petition, as well as incidental pleas related to original cases brought before it, even if the value of such pleas is less than 10,000 pounds.

The court of first instance also has jurisdiction in cases that do not lie originally within its jurisdiction but are related to an incidental plea under its jurisdiction. In such a case, its ruling is final, and not subject to appeal (Article 47/1 of the Code of Procedure).

Beside this jurisdiction based on the case value, the court of first instance has jurisdiction over certain cases, regardless of their value, because the legislature has assessed them as very important.

Examples of such cases include the declaration of bankruptcy (Article 42/3 of the Code of Procedure), and the declaration of insolvency (Article 250 of the Civil Code), and the withdrawal of a publication from circulation (Article 49 of Law No. 254 of 1954 on Authors' Rights).

4.5.3.4. Summary Courts

The summary courts consist of one judge and are allocated jurisdiction in all commercial and civil cases in which the disputed value is less than 10,000 pounds. Their rulings are not subject to appeal if the disputed value of the case is less than 5,000 pounds (Article 43 of the Code of Procedure).

In addition to this jurisdiction, the legislature has entrusted these courts with the duty of giving judgment on certain types of cases, regardless of their value, because of the insignificance of the legal problems initiating from them. Examples include limits setting, distances measurement and division of public assets.

4.6. The Judicial Section of the State Council

4.6.1. Organization and Composition

The judicial section of the State Council consists of:

- the Supreme Administrative Court;
- the Court of Administrative Justice;
- the administrative courts;
- the disciplinary courts;
- the State Commissioners' Body.

The Supreme Administrative Court is located in Cairo and headed by the president of the State Council. It issues its decisions through circuits, each comprising five counselors. It contains a circuit or more to prepare the examination of the challenges, made of three counselors (Article 4 of the Law regarding the State Council).

The Court of Administrative Justice is based in Cairo and is chaired by a vice-president of the State Council. Its decisions are issued by circuits of three counselors. The jurisdiction of each circuit is set by a decision of the president of the State Council.

The president of the State Council may establish circuits of the Court of Administrative Justice in other governorates. If the jurisdiction of the circuit extends to more than one governorate, he may convene the sessions of the court in the capital of any of these governorates.

The administrative courts are located in Cairo and Alexandria. A vice-president is appointed to each of them, who assists the president of the State Council in the organization and monitoring of its work (Article 5 of the Law regarding the State Council).

The president of the State Council may establish other administrative courts in other governorates. Administrative courts hand down their rulings in circuits presided by an assistant counselor and composed of two assistant counselors at least. The jurisdiction of each court is determined by a decision issued by the president of the State Council. If the jurisdiction of the circuit extends to more than one governorate, the president of the State Council may convene the sessions of the court in the capital of any of these governorates.

The State Commissioners' Body is headed by one of the State Council's vice president and is formed of a sufficient number of counselors, assistant counselors, deputies, and junior civil servants (Article 6 of the Law regarding the State Council).

The state commissioners at the Supreme Administrative Court and the Court of Administrative Justice are to be of, at least, the level of assistant counselor.

Disciplinary courts consist of the following:

- disciplinary courts for the highest administrative level and the equivalent;
- disciplinary courts for first, second and third levels of civil servants and the equivalent.

These courts are to have a State Council vice-president to help the State Council president in handling the disciplinary affairs (Article 7 of the Law regarding the State Council).

The disciplinary courts for the highest administrative level are located in Cairo and Alexandria. They consist of one circuit or more, made up of three counselors. Disciplinary courts for first, second and third levels of civil servants are located in Cairo and Alexandria, and represented by circuits, each of which is chaired by an assistant counselor assisted by, at least, two deputies. A decision of the president of the State Council determines the composition of the court (Article 8 of the Law regarding the State Council).

Disciplinary courts can be established in other governorates by a decision of the State Council's president. The decision should define their number, location and areas of jurisdiction, after having taken the opinion of the administrative parquet.

If the jurisdiction of the disciplinary court extends to more than one governorate, the president of the State Council may convene the sessions of the court in the capital of any of these governorates.

Members of the administrative prosecution lodge claims before the disciplinary courts.

4.6.2. Areas of Jurisdiction

The State Council courts enjoy exclusive jurisdiction in the following matters (Article 10 of the State Council Law):

1. Actions related to the election of local bodies.
2. Disputes regarding salaries, remunerations and pensions due to civil servants or to their heirs.
3. Actions against final administrative decisions regarding appointment, promotions and increments of civil servants.
4. Actions related to administrative decisions of retirement, provisional release from duty or dismissal of civil servants without due disciplinary action.
5. Actions by individuals or bodies against final administrative decisions.

6. Actions against final decisions by administrative bodies in disputes about taxes and charges duly processed in accordance with the law regulating the review of such cases by the State Council.
7. Nationality claims.
8. Actions against final decisions issued by administrative bodies with judiciary jurisdiction, except for decisions issued by reconciliation and arbitration bodies in labor disputes, if the challenge is based on lack of jurisdiction, on a formal defect, a violation of laws or regulations or on a mistake in their application or interpretation.
9. Requests by civil servants to abrogate final decisions passed by disciplinary authorities.
10. Compensation actions against decisions referred to in the above paragraphs, be it on the main issue or on related matters.
11. Disputes related to the implementation of contracts for concession, public works, supplies or any other administrative contracts.
12. Disciplinary claims prescribed in that law.
13. Actions against penalties imposed on public sector employees according to the law.
14. Other administrative disputes.

Final administrative decisions may be appealed on grounds of lack of jurisdiction, of defect in form, of infringement of a law or regulation, of error in the application or interpretation of them or on grounds of abuse of power.

The refusal of the administrative authorities to take a decision which they had to issue in accordance with a law or a regulation, or their abstention, is considered to be an administrative decision.

The following actions are not to be accepted (Article 12 of the State Council Law):

Actions where the plaintiff has no personal vested interest.

Appeals made directly against final administrative decisions stipulated in items 3, 4 and 9 of Article 10, without having previously presented a complaint to the administrative authority which issued the decision or to its superior authority, and without abiding by the time for deciding on the complaint. The procedure for the presentation of a complaint and for the ruling on it are determined by a decision of the president of the State Council.

4.6.2.1. Jurisdiction of the Court of Administrative Justice

The Court of Administrative Justice has jurisdiction over the matters stated in Article 10, except those which fall within the jurisdiction of administrative and disciplinary courts. It is also competent to review decisions of administrative courts, submitted by a concerned party or by the head of the State Commissioners' Body within 60 days from the pronouncement of the decision (Article 13).

4.6.2.2. Jurisdiction of the Administrative Courts

Administrative courts have competent jurisdiction to adjudicate in the following matters (Article 14):

1. Actions by civil servants of the second and third level, and equivalent levels, to abrogate decisions as prescribed under paragraphs 3 and 4 of Article 10 of the State

Council Law. The court is likewise competent to review claims for indemnity resulting from the above mentioned decisions.
2. Disputes related to salaries, pensions and remunerations of servants of the said two levels (and others of an equal level) and their heirs.
3. Disputes related to administrative contracts mentioned in paragraph 11 of Article 10 of the Law, provided the amount disputed does not exceed 500 pounds.

4.6.2.3. Jurisdiction of the Disciplinary Courts

Disciplinary courts are competent to review disciplinary actions in financial and managerial offenses committed by (Article 15):

1. Civil servants employed in the administrative organs of the state, of local government units, of public institutions, and companies for which the government guarantees a minimum of profits;
2. Board members of labor unions duly established in accordance with the labor law, and board members duly elected in accordance with the provisions of Law No. 141 of 1963.
3. Agents in private organizations and associations designated by a presidential decree, who earn salaries of more than 15 pounds a month.

These courts also have a jurisdiction to rule on disputes mentioned in items 9 and 13 of Article 10.

The president of the court rules on petitions pertaining to the suspension from work, or the extension of suspension, of people referred to in the previous provision, as well as on the payment of their salaries during the time of suspension, within the limits set by law (Article 16).

The professional level of the worker at the time of litigation defines the competent disciplinary court. If several workers are referred to court, the case will be examined by the court competent to rule in the case of the highest level of them (Article 17).

Nevertheless, the disciplinary court for workers of the first, second, and third levels has jurisdiction to try all workers of associations, companies and private organizations set out in Article 15.

Workers charged with offenses will be judged by the court in whose jurisdiction the offenses were committed. If any difficulty arises concerning the identification of the court, the president of the State Council identifies it through a decision (Article 18).

Disciplinary courts are to execute the penalties stated in the laws concerning offenses committed by the defendants (Article 19).

However, as to workers in associations and private organizations identified by a decision of the President of the Republic, as well as workers in companies for whom the government guarantees a minimum of profits, penalties apply as follows:

1. Warning.
2. Deduction of salary for a period of a maximum of two months.
3. Reduction of salary.
4. Degrading the position.

5. Discharging the worker from his post and preserving his rights to pension and final compensation, or reducing the pension and final compensation by 25 per cent as a maximum.

Disciplinary cases cannot be brought against retired workers, except in the two following cases (Article 20):

1. If investigation or trial has started before the retirement.
2. If the offense for which the worker is tried is a financial offense resulting in the loss of a financial right of the state or of any public legal persons, or affiliated units, within five years of retirement, even if no investigation was started earlier.

Disciplinary penalties that can be imposed by disciplinary courts after the worker's retirement, are:

1. A fine that is not less than five pounds, and does not exceed the total monthly payment received by the worker during the month when the offense was committed.
2. Suspension of pension for a period that does not exceed three months.
3. Reducing the pension by a maximum rate of a quarter.

In all cases, the disciplinary court can, at any stage of the investigation or the proceedings, stop the payment of part of the pension or final compensation, within the limit of one-fourth, till the end of the trial.

The amount stated above will be deducted from the pension in the limit of a quarter as a maximum by month, from the compensation, or from the savings of the workers (if any), or through administrative seizure.

The sentences of the disciplinary court are final and can only be contested before the Supreme Administrative Court upon the conditions defined by the law (Article 22).

The concerned minister, the Head of the Central Accounting Authority and the Head of the Administrative Prosecution will each be considered to be interested parties in order to raise such a challenge.

Where a worker is discharged from his post, the Head of the State Commissioners' Body shall, upon a request submitted by the discharged worker, submit a claim.

4.6.2.4. Jurisdiction of the Supreme Administrative Court

Judgments passed by the Court of Administrative Justice and by the disciplinary courts can be brought before the Supreme Administrative Court in the following cases (Article 23):

1. If the decision contested is built on a breach of the law, or on an erroneous implementation or interpretation of the law.
2. If the judgment is invalid or if the invalidity of a procedural measure bears on the judgment.
3. If the decision is at variance with a precedent judgment having the force of res judicata, whether or not that precedent is mentioned in the plea.

Interested parties and the head of the State Commissioners' Body have the right to contest such decisions within 60 days from their issue, in deference to cases where the law makes the contestation imperative.

Appeals to decisions of the Court of Administrative Justice on contestations against decisions of administrative courts may be referred to the Supreme Administrative Court by the Head of the State Commissioners' Body, who shall file the challenge within 60 days from the issue of the decision, and in two cases only: (1) if the decision issued is at variance with the unbroken line of precedents of the Supreme Administrative Court; and (2) if ruling on the decision appealed requires the adoption of a legal principle which that court has never adopted before (Article 23 of the law).

4.7. Jurisdiction of Criminal Courts

4.7.1. Jurisdiction of Criminal Courts in Criminal Matters

(1) Summary courts have jurisdiction over all acts recognized by the law as being petty offence or misdemeanor, except for misdemeanors committed through the press or other means of publication against parties other than individuals (Article 215 of the Code of Criminal Procedure).

(2) Criminal Courts have jurisdiction over felonies and misdemeanors committed through the press or other means of publications against parties other than individuals, as well as other crimes as defined by law (Article 216).

Jurisdiction is determined by the place where the crime was committed, by the place of residence of the accused, or the place where he was arrested (Article 217).

In cases of attempted crime, jurisdiction is decided pursuant to Article 218 of the Code of Criminal Procedure, in relation to each and every location where an attempt was made.

In cases of continuous crimes, the scene of the crime is any place where continuity takes place and in cases of habitual crime, any place where any of the actions contributing to the element of habit takes place.

If a crime is committed outside Egypt and the accused has no place of residence in Egypt, nor is arrested therein, proceedings are instituted before the Cairo Criminal Court if it is a felony, or before the Abdin summary court if it is a misdemeanor (Article 219).

4.7.2. Jurisdiction of Criminal Courts Concerning Civil Matters Which are Crucial to the Determination of a Criminal Case

A civil case for compensation for damage resulting from a crime, whatever its value, can be brought before the criminal court, to be deliberated with the criminal case (Article 220).

The criminal court can rule on all issues relating to the criminal case brought before it, unless otherwise stated by law (Article 220).

If the judgment on the criminal case depends upon a ruling in a personal status issue, the criminal court may decide to suspend the examination of the case and set for the suspect, civil rights plaintiff, or accused, depending on the case, a deadline for submitting a request to the competent authority.

The suspension of the case does not stop the implementation of necessary or urgent procedures or investigations (Article 223).

If the deadline referred to in the above mentioned paragraph ends and no request has been submitted to the competent authority, the court can rule out the suspension of the case, and issue a ruling therein (Article 224).

The court can decide to set another deadline, if it is of opinion that this is justified.

In non-criminal cases on which they may have to rule, criminal courts follow the proof methods stated by the law applicable to such matters (Article 225).

4.7.3. Conflict of Jurisdiction

If a criminal case is raised before two investigation or jurisdiction bodies affiliated to one court of first instance, and if both rule that the case lies within their jurisdiction, or does not lie within their jurisdiction, a request for the determination of the competent authority is to be submitted to the appeal misdemeanors circuit, affiliated to the court of first instance (Article 266).

If two rulings of jurisdiction or lack of jurisdiction are issued from two bodies affiliated to two courts of first instance, or from two courts of first instance, or from two criminal courts, or from an ordinary court and a Court of Appeal, a request shall be submitted to the Court of Cassation asking for the determination of the competent court (Article 227).

The Court of Cassation or the court of first instance decides which court or body shall resume the examination of the case (Article 230).

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A. el-Sawi

12. LAW PROFESSIONALS

The term 'law professionals' can refer to two categories: the judges; and the public prosecution members. Both work for the judiciary and both are almost equally subject to most of the provisions of the Judicial Authority Law. Judges are selected from among the public prosecution members and some of them may return to leading positions in the public prosecution.

1. JUDGES

The term 'judges' refers to those working for the judiciary regardless of their grades.

1.1. Selection

The system applied in Egypt provides that judges are appointed by the executive authority according to general conditions stipulated in Article 38 of the Judicial Authority Law.

The judge shall be Egyptian. As far as women are concerned, the jurisconsults disagree as to whether they may or may not work as judges. Since it is not strictly permitted, it is left to the secular legislature to determine the judicial positions accessible to women.

A judge of the court of first instance shall not be less than 30 years old, one of the court of appeal shall not be less than 38 years old, whereas a judge of the Court of Cassation should not be less than 43 years old, so that all of them have enough experience to rule on whatever conflicts arise.

The judge should have got a B.A. in law or any equivalent foreign degree. Moreover, he should have commendable behavior and enjoy a good reputation.

According to Article 44 of the Judicial Authority Law, the judges are appointed by decree of the President of the Republic, with the approval of the Supreme Judiciary Council.

1.2. Duties

Articles 72–77 of the Judicial Authority Law highlight the duties of the judge. He cannot work in trade or any other field that may affect his dignity as a judge. Moreover, to guarantee an impartial judgment, judges are prohibited from working in politics. Their

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residence should be near to their work to keep the regularity of work. They shall also respect the confidentiality of the deliberations.

1.3. Guarantees

The greatest guarantees for judges are those bestowed upon them by themselves. Searching for men who will deserve such honor is therefore far more important than searching for the privileges they should enjoy. The independence of the judiciary is based on the judge's self-discipline, which is not something that can be forced by texts and regulations. Laws can only enhance such self-discipline.

Following are the most important guarantees normally given by law to judges:

1. Judges must be irrevocable, meaning they may not be dismissed, suspended or sent to retirement before the legal age. Moreover, they may not be transferred to a non-judicial function except in the cases and under the conditions stipulated by law. The current age of retirement is 65.
2. There should be special rules concerning transfer, delegation, promotion and salary of judges to secure their independence and protect them from threat and pressure.
3. Judges should have access to any information put in their files and should be able to challenge decisions affecting them.
4. The Supreme Judiciary Council shall be entrusted with all the judges' affairs. This Council is made up of the President of the Court of Cassation (Chairman), the President of the Cairo Court of Appeal, the Attorney General and the two oldest presidents of the other Courts of Appeal.
5. In order to avoid any manipulation, the Judicial Authority Law entrusted a disciplinary council with the disciplinary sanctions against judges, whatever their grades. Its chairman is the President of the Court of Cassation and its members are the three oldest presidents of the Courts of Appeal as well as the three oldest councilors of the Court of Cassation.

Furthermore, the law gives judges, subject to disciplinary court, the following guarantees:

- the disciplinary lawsuit is filed by the Attorney General following a request of the Minister of Justice on his own initiative or based on a proposal of the president of the court to which the judge belongs (Article 99/1[1]).

  The request should be based on a criminal or administrative investigation mandated by the Minister of Justice (Article 99/2).
- since the disciplinary council is only authorized to blame or remove the judge (Article 108), the disciplinary lawsuit expires when the judge resigns or retires (Article 104/1).

[1] If the Attorney General does not take legal action within 30 days from the date of the request, the disciplinary council may file the suit by itself, by a grounded decision (Article 99/3).

- the sessions of the disciplinary court shall be held in camera (Article 106/1) and the sentence shall be spelled out in a closed session (Article 107) in order to protect the dignity and prestige of the judiciary.
- where a sentence of blame is issued against a judge, the decision of the Minister of Justice is not published in the official gazette, to protect the dignity and prestige of the judge (Article 110/2).

6. The Judicial Authority Law bestows the following guarantees upon judges where they are being investigated or exposed to criminal courts:

- the Supreme Judiciary Council[2] determines the court which will be competent to rule on felonies and misdemeanors committed by judges, even if not related to their duties. This is an exception to the rules of attribution of courts' jurisdiction (Article 95).
- except in cases of *flagrante delicto*, a judge may not be arrested or held in preventive detention without the authorization of the Supreme Judiciary Council (Article 96/1).[3] In cases of *flagrante delicto*, when the judge is arrested and held in preventive detention, the General Attorney shall refer the whole matter to the Supreme Judiciary Council within 24 hours. The Council shall decide whether to keep the judge in detention or to release him on or without bail. The judge has the right to ask for his defense to be heard before the Supreme Judiciary Council (Article 96/2).[4]

  If the Supreme Judiciary Council decides to keep the judge in custody, it determines the length of his detention (Article 96/3).[5]
- except in cases of *flagrante delicto*, no investigation shall be conducted and no lawsuit filled against a judge for felony or misdemeanor without the authorization of the Supreme Judiciary Council at the request of the Attorney General (Article 96/4).[6]

1.4. Incompetence, Challenge, Removal and Claims for Damages against Judges

1.4.1. Incompetence

In order to guaranty the impartiality of the judge before the parties and the people and to protect him against any temptations, the legislature has stipulated certain cases, in the Code of Procedure, where a judge is incompetent to consider a lawsuit even if no party challenged him (Article 146 of the Code of Procedure).

In those cases, any measure taken by the judge in a lawsuit and any judgment given shall be deemed void even if issued by the Court of Cassation itself (Article 147/2 of the Code of Procedure).

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2 Law No. 35 of 1984, art. 3/2, amending Law No. 46 of 1972 on the Judicial Authority.
3 As amended by art. 3/2 of Law No. 35 of 1984.
4 *Ibid.*
5 *Ibid.*
6 *Ibid.*

The most important cases of incompetence of a judge are the following:

1. If the judge is next of kin or relative by marriage, up to the fourth degree, to one of the conflicting parties (Article 146/1 of the Code of Procedure).
2. If the judge or his wife is engaged in a pending litigation with one of the parties or his wife (Article 146/2).
3. If the judge is the proxy of one of the conflicting parties in his private business or his possible heir, or if he is relative by marriage or next of kin up to the fourth degree to the proxy of one of the conflicting parties (Article 146/3).
4. If the judge advised one of the conflicting parties about the lawsuit or pleaded in it or wrote about it, even before working as a judge, or if he took part into it as judge, expert, arbitrator or witness (Article 147/5).
5. If the judge submitted a request for indemnity or a complaint to the competent authority against one of the party who asked for his recusal (Article 165).
6. If a claim for damages was filed against the judge and ruled admissible, he shall be deemed incompetent from this date to consider the lawsuit for which he has been sued (Article 498).
7. If the judge is a relative by marriage or next of kin up to the fourth degree to the attorney or to the representative or lawyer of one of the conflicting parties (Article 75 of the Judicial Authority Law).

1.4.2. Challenge

The legislature made a distinction between the grounds of incompetence and those of challenge, since the former aim to avoid any temptation while the grounds of the latter have less influence on the judge's impartiality.

Once his incompetence is proven, the judge is legally discharged from consideration of the lawsuit. His work and his ruling become void, even if none of the conflicting parties raised his incompetence. On the other hand, a judge cannot be challenged unless one of the parties challenged him. So, if no party did, his ruling remains valid (Court of Cassation, 24 April 1941, Civil, Challenge No. 8/11).

The grounds for challenge are stipulated in Article 148 of the Code of Procedure. They are, as a whole, less influential on the judge's impartiality than those which deem him incompetent. This is the case, for instance, if one of the conflicting parties works as a servant of the judge, or used to share his food, or if the judge has any kind of enmity or intimacy with any of the two parties or if he or his wife is engaged in a litigation similar to that under consideration.

If a request for challenge is filed, the examination of the case is suspended until a decision is taken (Article 162). Any measure taken during the suspension or any ruling delivered will be deemed void.

1.4.3. Removal

According to Article 149 of the Code of Procedure, any judge who is in a position of being challenged shall inform the court he belongs to and ask to be discharged from the examination of the case.

In any case other than those of challenge, if the judge feels embarrassed to hear a case for any reason, he may ask to be discharged by the investigation chamber or by the president of the court to which he belongs (Article 150). The removal of the judge, whether obligatory or discretionary, is left to his conscience. If he is not discharged or has not been challenged by one of the conflicting parties, his rulings shall be deemed valid.

1.4.4. Claim for Damages against Judges

Claims for damages are considered as actions for indemnity, although they entail the nullity of the acts or rulings passed by the judge. According to Article 494 of the Code of Procedure, a claim for damages can be introduced if the judge has cheated or defrauded during the investigation or the trial, has conspired in bad faith, was partial to one party or tried to achieve a personal interest. This is also the case if the judge made a gross professional error or refused to rule on a request or case submitted to him, the so-called denial of justice.

2. Members of the Public Prosecution

2.1. Legal Status

Members of the public prosecution are civil servants. They belong to the executive power and represent it in court. They protect the general interest and public order and ensure that the law is enforced properly.

Although members of the public prosecution are law professionals, they are not judges and although they belong to the executive power, they are not just administrative employees. They enjoy a special legal status.

Members of the public prosecution (except the assistants), like judges, cannot be dismissed.

Members of the public prosecution are independent from the judiciary. Heads of courts have no right to give them orders or criticisms.

Members of the public prosecution are ranked by grades, up to the Minister of Justice (Article 26 of the Judicial Authority Law).

The public prosecution is considered an integral unit. Any of its members represents it and each member's work complements the work of the others.

2.2. Competencies

To enable the public prosecution to perform its role – to protect the general interest and ensure that law is enforced properly – the legislature has given it several competencies. Some of them are judicial: for example, only the public prosecution has the right to file a penal case and to follow it up, unless the law provides otherwise (Article 21 of the Judicial Authority Law). It also has the right to file civil case or to intervene in the procedure. Other competencies are not judicial, such as supervising the prisons (Article 27).

2.3. Disciplinary Sanctions

Disciplinary sanctions against members of the public prosecution are regulated according to Articles 125 to 128 of the Judicial Authority Law as follows:

Public prosecution members are subordinated to their chiefs and to the Attorney General and all of them are subordinated to the Minister of Justice. The Minister has the right to monitor and supervise the public prosecution and the Attorney General has the right to monitor and supervise all the members of the public prosecution (Article 125).

Public attorneys have the right to monitor and supervise the members of the public prosecution attached to their courts.[7]

The Minister of Justice and the General Attorney may give a warning to members of the public prosecution who slightly fall short in performing their duties, after hearing them. This warning shall be oral or written.

A member of the public prosecutor may object to the written warning directed to him within a week starting from the day of its notification. His objection shall be received by the committee stipulated in paragraph two of Article 6 of Law No. 82 of 1969 on the Supreme Council of Judicial Bodies.

This committee may decide to investigate the facts which gave rise to the warning or to mandate one of its members to undertake the investigation, after hearing the public prosecution member. It shall approve or cancel the warning and transmit its decision to the Minister of Justice. The member who gave the warning is not allowed to be among the members of the committee and shall be replaced by seniority.

If the infringement is repeated or continued after the final approval of the warning, a disciplinary case may be filed against the member.

The disciplinary case shall be examined by the disciplinary council referred to in Article 98 of the Judicial Authority Law (Article 127).

The disciplinary sanctions that can be passed against members of the prosecution are the same penalties as those passed against judges (Article 128).

3. Judge Auxiliaries

The term 'judge auxiliaries' refers to attorneys, experts, secretaries, clerks, bailiffs and translators.

3.1. Attorneys

The profession of attorney is organized by the Law on the Bar No. 17 of 1983 as amended by Law No. 227 of 1984. To be registered as lawyer, one must have a B.A. in law from an Egyptian university or an equivalent degree from a foreign university. Moreover, one must have Egyptian nationality and enjoy a good reputation (Article 13).

Hereunder are the most important duties and privileges of attorneys as well as their disciplinary responsibilities.

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[7] As amended by Law No. 35 of 1984.

3.1.1. Duties

The duties of the attorney are touched upon by Articles 62–76 of the Law on the Bar.

These duties are general directives regarding the attorney's commitments toward himself, the court, his clients and colleagues, which call for him to act with honor and dignity. These legal stipulations should be considered as no more than a minimum basis.

1. As far as commitments toward himself are concerned, his personal and professional conduct should be based on the respect of honor, righteousness and probity (Article 62). He should also avoid anything that may mar his reputation or disgrace him. In the exercise of his profession he shall not make use of means of propaganda, incitement, mediation, influence or relationship, real or alleged (Article 71).

An attorney should also seek comprehensive general knowledge. Those who focus only on laws and regulations cannot be considered cultured lawyers because they are supposed to meet the need of whoever consults them.

An attorney should first of all be well versed in Shari'a, in which the explanation of everything can be found regarding the instructions directed from the Creator to His creatures. He should also be well aware of many branches of knowledge and science such as philosophy, history, economy, psychology, sociology and natural science.

Moreover, he should be aware of the fact that a deep knowledge of language and literature provides him with the ability to express himself accurately, understand correctly, conclude and interpret logically.

2. The attorney should address the court with respect and behave in a spirit of cooperation towards members of the judicial bodies, since he is considered an auxiliary of the judiciary in seeking to attain justice (Article 67). He shall not falsify or forge evidence for the sake of his client. Otherwise, he will be responsible for misleading justice.

He should assist the court in the settlement of the disputes in order to reach a quick and fair decision and to maintain social peace. He shall not seek ways to delay the judgment or he will be responsible for obstructing the justice.

3. The attorney should exert all possible efforts in order to protect his client's interests. Accordingly, he shall not withdraw from his defense at an unsuitable time (Article 92).

He should keep secret whatever information his client tells him as long as his client does not require such information to be revealed as a means of defense (Article 79).

He shall not provide his client's opponent with help or even counsel in the same dispute or in any litigation related to it, since an attorney must not represent contradicting interests (Article 80).

Although an attorney is obliged to protect his client's interests, he shall, however, not follow his false claims and reprehensible behavior, or encourage him to cause harm to the opponent. Such acts would not be in conformity with the responsibility of the attorney and the honor of his profession. This would also contradict what Allah says: 'Oh, God for all such blessings, you have bestowed upon me, I will not support criminals' and 'Those you have defended in lifetime, who is going to defend them before God on the doomsday and who is going to take their side'.

An attorney should listen to the voice of his conscience and refuse to defend whatever he feels to be untrue or finds to be falsified. He should be aware of the fact that as a lawyer

and counselor of his client, he should give him advice not to go on with claims that have no basis and must recommend compromise in what he deems right.

4. An attorney should follow etiquette and ethics in his relations with his colleagues. He may not sue one of his colleagues or agree to be a proxy in a suit or complaint passed against a colleague without getting permission of the bar branch to which his colleague belongs, except in urgent actions. If no decision is given within 15 days, he is free to take whatever measure he wants (Article 68).

3.1.2. Privileges

The Bar law also sets out privileges for attorneys before the courts, the executive power and the public in general. Such privileges are meant to help them defend people's rights and freedoms.

3.1.2.1. Before the Courts

Courts or any other bodies before which an attorney may stand should treat him with the respect due to his profession (Article 49 of the Bar Law). If a lawyer acts before the courts in a way that deserves a disciplinary or criminal sanction, the judge shall send a memorandum explaining what happened and refer it to the Bar. The Bar shall then inform the competent Bar section (Article 49). The judge shall not arrest the attorney or put him in preventive detention. No criminal lawsuit shall be filed against him without the authorization of the General Attorney or one of the senior public attorneys. No member of the body where the incident took place shall participate in the consideration of the disciplinary or criminal lawsuit (Article 50).

Courts and other relating bodies shall allow attorneys to have access to all judicial documents and any information related to the case he is following up. The court shall also keep minutes of its sessions (Article 52).

3.1.2.2. Before the Executive Authority

The attorney is not liable for whatever he says in his oral pleading or writes in his memorandum in the exercise of his client's right to defense (Article 47). Police stations and other governmental bodies before which the attorney practices his profession shall facilitate the performing of his duties. They shall also allow him to attend investigations involving his client, unless there is a legal justification not to do so (Article 53).

The Law also prohibits interrogating the lawyer or inspecting his office without informing a member of the public prosecution, who shall then notify the Bar or the relevant Bar section in due time before starting the investigations. Where the investigation is about a felony or a misdemeanor related to the lawyer's work, the head of the Bar or of the Bar section has the right to attend the interrogation or to mandate another lawyer in order to supervise the investigations and provide legal assistance.

3.1.2.3. In Relation to People in General

The Bar Law provides for penalties against whoever assaults a lawyer or humiliates him by words, gesture or threat during or because of the exercise of his profession. Those

penalties are the same ones as those stipulated against those who offend court members (Article 54).

In order to guarantee the continuity of the attorney's activities, the Bar Law stipulates that neither his office nor whatever he needs to exercise his profession shall be confiscated (Article 55). There is no doubt that the task of a lawyer will be easier and he will feel more safeguarded if both authority and individuals feel more respect for law. Without this legal and social support, legal stipulations do not have much effectiveness and meaning.

3.1.3. Discipline

Article 98 and the following Articles of the Bar Law organize the disciplinary sanctions of the attorneys.

Any attorney who violates the provisions of the Bar Law or of the internal regulations of the Bar, or contravenes the duties of his profession, or acts in a way that affects the honor of his task or behaves in an indecent way, shall be subject to one of the following sanctions: warning, blame, prevention from legal practice or definitive removal of his name from the roll.

Prevention from legal practice shall not exceed three years and the removal of the name of the attorney from the roll shall not affect his rights to a pension (Article 98).

The attorney's retirement or prevention from legal practice does not prevent him from a disciplinary trial for the acts committed while he was practicing, during the three years following his retirement or the decision of prevention (Article 101).

The disciplinary suit shall be filed by the public prosecution on its own initiative or following a request of the Bar council, of the President of the Court of Cassation, Supreme Administrative Court, Court of Appeal, Court of Administrative Justice, court of first instance or administrative court (Article 102).

The lawyer shall be notified by a registered letter with acknowledgment of receipt and invited to attend the disciplinary council, at least 15 days before the session (Article 108).

Seven days at least before the session, the attorney shall inform the chairman of the disciplinary council of the name of the Bar member who will represent him. Otherwise, the Bar council shall choose a member itself.

The sessions of the disciplinary council shall always be secret and the decision issued after hearing the charges of the accusation and the defense or the attorney (Article 111). The decision of the disciplinary council shall be grounded and pronounced in camera (Article 112).

The disciplinary decisions shall be handed over to the concerned parties and to the public prosecution by a verbal process. The attorney shall receive a copy of the decision against a receipt (Article 113).

The public prosecution and the convicted attorney have the right to challenge the decision issued by the disciplinary council within 15 days starting from the date when the decision has been issued (public prosecution) or from the date of receipt of the copy of the decision (attorney) (Article 116).

The challenge shall be examined by a council consisting of four counselors of the Court of Cassation appointed every year by its general assembly, the Head of the Bar or

his deputy and two members of the Bar council of whom the lawyer may choose one (Article 116). Its decision shall be definitive (Article 116).

4. Experts

4.1. Appointment

The judge may face some scientific and technical problems that require a special study. Therefore, the legislature allowed the court to obtain, on its own initiative or following a request of a party, one or three experts to help it solve those questions (Article 135).

Though calling on an expert is optional (except in cases stipulated by law), the court shall not decide alone on the technical questions. The experts shall be chosen upon the agreement of the disputing parties. In case of disagreement, the court shall make the choice itself (Article 136).

The decision appointing the expert shall include a detailed and accurate description of his mission, the measures he may take, the deadline for submitting his report, the date of the next court session and the amount of expenses covered (Article 135). The clerks department of the court shall invite the expert to examine the file of the case and give him a copy of the judgment appointing him (Article 137).

4.2. Dismissal and Challenge

The expert has the right to ask to be discharged from his duties within five days after receiving a copy of the decision appointing him, with the judge's approval.

According to Article 141, the disputing parties have the right to ask for the expert to be dismissed if he is a relative or next of kin up to the fourth degree of one of the parties, or one of his heirs or possible heirs, proxies or administrators. This is also the case if the expert or his wife is engaged in a pending litigation with one of the parties or his wife, or if the expert, his wife or one of his relatives, or his proxy, guardian or administrator has a personal interest in the case. This right also applies if the expert worked for one of the disputing parties or used to share his food or to live with one of them, or even if he accepted a present from him, or where there is enmity or intimacy between them which may influence the expert in the performance of his work.

The request of challenge shall be presented within three days from the decision appointing the expert (Article 143). A quick decision shall be taken and not be open to challenge (Article 145).

4.3. Mission

The expert starts his mission within 15 days after being informed by the clerks department or within three days only in case of emergency. He shall invite the disputing parties to attend the first meeting by a registered letter seven days before the meeting, or by a cable 24 hours beforehand in case of emergency. In cases of extreme emergency, his mission may

start immediately. If the disputing parties have not been invited, the expert work shall be void (Article 146).

The expert shall listen to the claims of the disputing parties and of whoever he finds it necessary to hear and shall write a detailed verbal process (Articles 148 and 149). In order to facilitate his mission, the legislature stated that no organ, whatever body it belongs to, shall refuse without legal reasons to provide the expert with documents or information he may need (Article 148).

4.4. Report

At the end of his mission, the expert shall submit a report with his views to the clerks' department of the court which appointed him (Article 150).

He shall inform the disputing parties of this report within 24 hour by registered letter (Article 151/2).

If the expert is not able to submit his report on the fixed term, he shall inform the clerks' department in advance and explain the reason for his delay. If the court accepts the reasons, the expert shall be given extra time. If not, he may be condemned to pay a fine or may be replaced by another expert. In this last case he shall return the amount of his expenses. This decision shall not be appealed against (Article 152).

4.5. Discussion

The legislature authorized the court to hear the expert if a vague point in his report needs clarification or where one of the disputing parties asks for his presence to discuss a point with him (Article 153).

The court may return the report to the expert to correct any contradiction or mistake or may decide to refer it either to one or three other experts (Article 154).

The court assessment of the expert's work is part of its discretionary power. It is the higher expert and has the right not to take into consideration the expert's report (Article 156). In that case, the court shall however give the reasons for its rebuttal of the expert's report in the judgment.

5. Clerks

The Judicial Authority Law organized the nomination and tasks of clerks as follows:

Whoever wants to be assigned as a clerk must meet all the general conditions to be a government employee, except for the examination. The candidate shall have at least a general secondary school certificate or an equal certificate (Article 137 of the Judicial Authority Law).

A committee consisting of the president of the court or his deputy – chosen every year by the general assembly – and by a senior clerk or his deputy shall be set up at the Court of Cassation and at each Court of Appeal. This committee shall discuss all affairs related to its clerks such as assignment, transfer, promotion and allowances (Article 138).

A similar committee shall be set up by the public prosecution to discuss the affairs related to its own clerks. It shall consist of the senior public attorney, the director of the prosecution administration and the general secretary of the prosecution. Another committee shall be set up in the Ministry of Justice to deal with the affairs concerning the clerks of courts of first instance. This shall consist of the under secretary of state, the general director of the courts administration and the general director of the administrative affairs administration.

The assignment of the clerks, as well as their transfer from one court to another, their promotion and granting of allowances shall be decided by the Minister of Justice, on the basis of the information submitted by these committees.

6. Bailiffs

Bailiffs are responsible for announcing and implementing the documents relating to the case. The bailiff shall fulfill the same conditions as those required from a clerk. He shall first be appointed under probation for one to two years (Article 148).

An implementation bailiff shall have worked as bailiff for at least two years.

7. Translators

Every court shall have the necessary number of translators (Article 156).

The person assigned as translator must meet the same conditions as those required from a clerk and shall pass a written and oral examination in Arabic and one foreign language (Article 157).

8. Duties of Court Employees

Clerks, bailiffs and translators shall swear in an open session before the court to which they belong to perform their work in conscience and justice (Article 158).

Court employees shall receive and keep the legal documents which are under their responsibility and collect the due fees and fines. They shall also implement the law regarding stamps and taxes as well as whatever instructions directed to them (Article 159).

They shall not accept papers or documents unless put in a docket, including a list of its contents. The docket shall come with a copy conforming to the original, which is reviewed and signed by the clerk. It shall then be returned to the person who submitted it (Article 159). Clerks of courts and prosecutions shall attend the sessions and write and sign minutes of the proceedings.

I. A. Ibrahim

13. PRIVATE INTERNATIONAL LAW

1. Definition and Classification

1.1. Definition

It was not easy for private international law jurists in Egypt to agree on a single definition for this law, although most were inclined to define it by reference to the subjects it comprises, such as the view[1] that it is: 'that branch of internal law that indicates the solutions that must be followed in matters of conflict of laws and jurisdictions, and determines the nationality of individuals pertaining to the state and the status of foreigners therein', or the view[2] that it is 'a part of the law of each nation, being that part which governs relations between individuals in such nation, that is, individual relations, not international relations, and which determines relations in which there is a foreign element'.

Or the view[3] that it is 'a branch of legal research which studies the legal organization of private relations having a foreign element, whether from the viewpoint of positive law or of comparative jurisprudence'.

Or the view[4] that it is 'the law of private international life'. We prefer to define it as 'the law that regulates relations of an international character'.

1.2. Classification

Despite the wide differences[5] among jurists in different countries of the world over determining the subjects of private international law, no such divergence exists in Egypt,where the broadest determination of these subjects is adopted and includes: nationality, domicile and status of foreigners; conflict of laws and of international jurisdiction and the international effects of judgment.

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1 Hamid Zaki, *Egyptian Private International Law* (1st edn, 1936, Nuri Publishers, Cairo) pp. 46 and 47. This definition is close to the one formulated by 'Izz al-Din 'Abd Allah, *Private International Law* (Part I, 9th edn, 1986, The Egyptian General Book Organization) pp. 108 and 109, as well as that of Fu'ad 'Abd al-Mun'im Riyad, *Al-Wasit on Private International Law*.

2 'Abd al-Hamid Abu Hayf, *Private International Law in Europe and Egypt* (al-I'timad, 1924) p. 17.

3 Ahmad Muslim, *Comparative Private International Law* (Dar al-nahda al-'arabiyya, 1966) p. 5.

4 Hisham Sadiq, *Nationality and Domicile* (Dar al-ma'arif, Alexandria) p. 6.

5 Ibrahim Ahmad Ibrahim, 'The Scope of Private International Law', *Review of Legal and Economic Sciences* (No. 1 and No. 2, January and July 1983) p. 54.

N. Bernard-Maugiron and B. Dupret (eds.), Egypt and Its Laws, 209–220.
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2. The History of Private International Law

With the expansion of trade beyond the borders of any one state, whether the parties engaging in such trade are states, natural persons or juristic persons, it became necessary to lay down rules to regulate relations that included a foreign element. These rules did not emerge all at once, but came into being gradually, helping develop these relations in the present era, especially with the contemporary evolution in means of communication between people in different countries.

The legislature in Egypt did not isolate private international law in an independent codification, but intervened to organize it in separate texts, incorporating some of its subjects, like nationality and the status of foreigners, into existing legislation, while addressing it with special provisions in the Civil Code in respect of conflict of laws and in the Code of Procedure in respect of international jurisdiction and the execution of foreign judgments.

Laws concerning Egyptian nationality date back to the time of Egypt's independence. The Ottoman Nationality Law applied in Egypt from 19 January 1869 until 4 November 1914, as Egypt seceded from Turkey on 5 November 1914 and its independence was declared in the Proclamation of 28 February 1922.

Article 2 of the Egyptian Constitution of 1923 provides that 'Egyptian nationality is determined by law'. On 31 May 1926, the first decree concerning Egyptian nationality was published, to be followed by successive nationality laws in 1929, 1950, 1956, and 1958 until the current Nationality Law No. 26 was promulgated in 1975.

3. General Principles and Jurisdiction

3.1. General Principles

Private international law is distinct from all the other branches of law in that it derives its sources from both internal law and international law.

Thus it draws on Egyptian legislative texts, which include an independent law on nationality, namely, Law No. 26 of 1975. Egypt also has a law on the status of foreigners, as after the capitulatory system was cancelled by the Montreux Treaty of 1937, the Egyptian legislature issued Law No. 49 of 1940 concerning Passports and Residence of Foreigners, then Law No. 74 of 1952 concerning Residence of Foreigners, then the current Law No. 89 of 1960 concerning Entry and Residence of Foreigners in the Territories of the United Arab Republic and Their Departure Therefrom, to which many amendments have been introduced since its enactment. As to the rules of jurisdiction as well as of the international effects of judgments, these are drawn from the provisions set forth in the Code of Procedure.

The rules of conflict of laws are derived from the relevant provisions of the Civil Code of 1948.

International conventions are also deemed to be a source of private international law in Egypt. Indeed, the legislature gave their provisions precedence over those of national legislations in case of conflict of laws, in the Civil Code (Article 23), the Code of Procedure (Article 301) and the Nationality Law (Article 26).

Private international law also draws on the rules of custom, whether the provisions of internal usage or international custom.

The Egyptian legislature endows private international law with a unique source distinct from the other branches of law, ruling in Article 24 of the Civil Code that: 'The principles of private international law apply in the case of a conflict of laws for which no provision is made in the preceding Articles'.

The Egyptian legislature preferred to refer in this domain to the principles of private international law because – as he expressed in the *travaux préparatoires* of the Civil Code, Part I, p. 308 – 'they possess the attributes of precision and clarity which render them more favorable than the principles of natural law due to their specialized concern with a specific aspect of law'.

3.2. Jurisdiction

The consensus among Egyptian jurists is that the rules of international jurisdiction are linked to public order. The international jurisdiction of Egyptian courts is subject to a number of statutory limitations. The general rule on which the legislature bases the general competence of Egyptian courts is that the defendant must have a domicile or habitual residence in Egypt or enjoy Egyptian nationality, while barring property actions involving immovables situated abroad. The legislature regards the plaintiff in all personal status actions as the weaker party in need of protection, such as the wife seeking a divorce or claiming alimony or the child or minor in need of child support payments, guardianship, wardship or kinship.

The legislature also relied on objective limitations, endowing the Egyptian courts with competence in cases involving assets located in Egypt or an obligation arising in, performed in or meant to operate in Egypt, or bankruptcies declared therein.

The jurisdiction of Egyptian courts was also based on the proper administration of justice and the realization of considerations of expediency when the legislature empowered them to order provisional or conservatory measures enforceable in Egypt and vested them with jurisdiction over preliminary issues and cases related to cases falling within the scope of their jurisdiction, as well as over claims instituted against several defendants when one of them is domiciled or resident in Egypt.

The legislature enables the litigants to amend the rules of international jurisdiction, provided such amendment is in favor of national jurisdiction.

It also allows them to divest Egyptian courts of jurisdiction in favor of arbitration, whether internal or international, and requires the courts to rule a case non-admissible if its parties agree to resolve their dispute through arbitration (pursuant to Egyptian Arbitration Law No. 27 of 1994).

4. Rules Applied in Legislation

4.1. Nationality

The Egyptian legislature structures original nationality on the basis of *jus sanguinis* as the rule, and of *jus soli* as the exception. Thus being born of an Egyptian father is considered

sufficient for the establishment of nationality at birth. However, in case of unknown paternity or if the father's nationality is unknown or he is stateless, the legislature states that the acquisition of original nationality is determined on being born in Egypt to an Egyptian mother. Egyptian nationality applies to those born in Egypt unless proved otherwise.

There are six cases in which nationality may be acquired subsequent to the date of birth, as follows:

1. The case of being born abroad of an Egyptian mother and an unknown or stateless father, while having one's habitual residence in Egypt and applying for naturalization within one year of attaining majority. In such case, nationality is established by operation of law contrary to the other cases of naturalization which require a decree from the Minister of Interior.
2. The case of second-generation birth in Egypt, of a father also born in Egypt but belonging to the majority of inhabitants in an Arab or Islamic country, and applying for naturalization within one year of attaining majority. This is effected by a decree of the Minister of Interior.
3. The case of being of Egyptian origin, born in Egypt and having an habitual residence therein, on attaining majority.
4. The case of being born in Egypt, having an habitual residence therein, being familiar with the Arabic language and being of good conduct and sound mind.
5. Naturalization by long-term residence in Egypt for a period of ten years, subject to the normal conditions of naturalization, and by short-term residence for a period of five years for those of Egyptian origin.
6. Exceptional naturalization by presidential decree for those who provide great services to Egypt or for the heads of Egyptian religious denominations.

The legislature provides for the acquisition of nationality by a foreign woman married to an Egyptian who remains married to him for a period of two years from the date of the application, if the Minister of Interior does not object within such period. In this case, nationality is established by operation of law.

With regard to loss of nationality, apart from cases of withdrawal or lapse, the legislature allows an Egyptian to lose his nationality in order to acquire a foreign nationality after obtaining the permission of the Minister of Interior. However, the said Minister can allow an Egyptian to retain his Egyptian nationality despite acquiring a foreign nationality.

4.2. Personal Status: Marriage, Divorce, Filiation and Inheritance

The Egyptian legislature adopted the widest possible determination of personal status affairs – in Article 13 of the repealed 1949 Code of Judicial Organization – so as to include all matters of status, capacity and family organization, such as betrothal, marriage, divorce, kinship, guardianship, wardship, inheritance, wills and other dispositions extending beyond death.

The legislature subjects all personal status matters to the Nationality Law. In respect of natural persons, he subjects them to the law of the country to which such natural

persons belong by reason of their nationality (Article 11 of the Civil Code). However, in respect of juristic persons, he subjects these matters as a general rule to the law of the state in the territory of which such juristic persons have established their actual principal seat of management. He cites by way of exception the case of a juristic person carrying on its principal activities in Egypt, in which case Egyptian law will be applied. The legal capacity of persons is also governed by the law of their nationality as a general rule, the exception being that if, in a transaction of a pecuniary nature concluded and having effect in Egypt, one of the contracting parties is a foreigner without legal capacity, and such lack of capacity is due to a reason that cannot be easily detected by the other party, the legal capacity of such foreigner shall be subject to Egyptian law.

The legislature submits the objective conditions of marriage to the national law of the spouses (Article 12 of the Civil Code) and the effects of marriage to the law of the country to which the husband belongs at the time of the conclusion of the marriage (Article 13 of the Civil Code). As to divorce and repudiation of marriage, they are governed by the law of the country to which the husband belongs at the time of the divorce or of the institution of legal proceedings, while the marriage relationship itself is governed by Egyptian law if one of the spouses is Egyptian (Article 14 of the Civil Code). Filiation is subject to the law of the nationality of the parent who is claiming the establishment of the filiation (Article 905 of the Code of Procedure).

The legislature submits inheritance and wills to the national law of the legator or of the testator prevailing at the time of his death (Article 17 of the Civil Code). In respect of inheritance, this law applies in respect of matters related to the declaration of inheritance, of the shares in the estate and their ranking, the elements of the inheritance, its conditions, the means of transmitting the estate and the reasons therefore, and the provisions governing the appointment of the administrator of the inheritance.

The *lex situs* in which the legator's estate is located applies to the financial aspects of the inheritance. Here the legislature differentiates between the substance of a will, which is governed by the national law of the testator at the time of his death, and the form of a will, which is governed by the national law of the testator at the time the will is made or by the law of the country in which the will is made.

4.3. Property

The legislature subjects tangible property to the *lex situs*, without differentiating in this respect between movables and immovables. While this rule does not cause any problems when it comes to immovable property, the place of movables can change if they are displaced from one place to another. The legislature overcomes this problem by requiring the application of the law of the place where the movable was situated at the time of the occurrence of the event which resulted in the acquisition or loss of possession, ownership or other real rights (Article 18 of the Civil Code).

With regard to intangible property, the legislature enacted statutes for the protection of all its elements; moreover, Egypt has adhered to international conventions regulating the protection of property worldwide.

In respect of trademarks, Law No. 57 of 1939 was issued, while Law No. 132 of 1949 was issued in respect of patents and industrial drawings and designs. With regard to copyright (including computer programs since the law was amended in 1992), Law No. 354 of 1954 was issued and its provisions apply to protect nationals and foreigners whose works were first produced in Egypt. As to foreigners whose works were published abroad, such works do not enjoy protection except on condition of reciprocity.

All international conventions related to intellectual property apply in Egypt, notably the Paris Convention for the Protection of Industrial Property of 1883 as amended in Stockholm in 1969, the Berne Convention for the Protection of Literary and Artistic Works of 1886 as amended in Paris in 1971, and the 1994 World Trade Organization agreement on trade-related aspects of intellectual property.

4.4. Obligations

It is necessary to determine the law applicable to contractual obligations and that which governs non-contractual obligations.

In respect of contractual obligations, these are governed – pursuant to Article 19 of the Civil Code – by the law of the country in which the domicile is located when such domicile is common to the contracting parties and, in the absence of a domicile in a common country, by the law of the place where the contract was concluded. These provisions are applicable unless the parties agree otherwise or circumstances indicate that it is intended to apply another law. Thus the Egyptian legislature joins Egypt to the list of countries which make the intention of the parties the decisive factor in determining the law applicable to contracts of an international character.

However, the legislature excepts contracts related to immovables from the law of the intention of the contracting parties, subjecting them instead – pursuant to paragraph 2 of Article 19 of the Civil Code – to the law of the place where the immovable is situated, without derogation to the requirement that the capacity to contract is always subject to the national law and the form of contracts to the law of the place where they were concluded.

The optional nature of this rule also has to be taken into consideration, in the sense that the contracting parties are free to choose another law to govern the form of the contract, which they can decide to subject to the law governing the substantive provisions of the contract or to the law of the domicile of the contracting parties or to their common national law.

In respect of non-contractual obligations, these are governed – pursuant to Article 21 of the Civil Code – by the law of the state in the territory of which the act that gave rise to the obligation took place, provided that if the obligation arises from a tort, this provision shall not apply to an act which occurred abroad and which, although considered unlawful under the law of the state in which it occurred, is considered lawful in Egypt.

4.5. Enforcement of Foreign Judgments

In Egyptian law, foreign judgments are enforceable pursuant to mandatory statutory provisions. Moreover, Egypt has adhered to a number of multilateral and bilateral international agreements in this regard.

The legislature has laid down the conditions for the enforcement of foreign judgments in Articles 296 and 297 of the Code of Procedure. Pursuant to the said Articles, enforcement may not be ordered unless the following has first been ascertained:

First: That Egyptian courts are without jurisdiction in respect of the dispute on which the judgment or order requiring to be enforced in Egypt was issued.

Second: That the foreign court which issued the judgment to be enforced enjoys jurisdiction pursuant to the rules of international jurisdiction as determined in its law.

Third: That the parties to the case in which the judgment was issued were properly summoned and validly represented.

Fourth: That the judgment or order has acquired the force of *res judicata* pursuant to the law of the court which issued it.

Fifth: That the judgment or order is not in contradiction with a judgment or order previously issued by an Egyptian court.

Sixth: That the judgment or order is not contrary to public order or to morality in Egypt.

These conditions fall within the scope of the system of formal review or control of a foreign judgment prior to its enforcement. The legislature added to these conditions the condition of reciprocity, ruling – in Article 296 of the Code of Procedure – that judgments and orders issued in a foreign country can be enforced under the same conditions prescribed in such country for the enforcement of Egyptian judgments and orders therein.

Egypt also adhered to the Arab League Convention for the Enforcement of Judgments signed in 1952, which entered into force as of 28 July 1954.

Moreover, Egypt concluded several bilateral agreements in this regard with many countries.

5. Rules Established by the Judiciary

5.1. Nationality

In view of the fact that the legislature determined only the nationality of joint stock companies, and did not address the issue of nationality in respect of other types of companies, Egyptian judges often found themselves reviewing cases in which it was necessary to determine the nationality of such companies.

The Egyptian Court of Cassation ruled (in a judgment issued on 31 January 1946, Digest of Rules, civil circuit, Part I, p. 690) that a limited partnership (*société en commandite*) was to be considered of Egyptian nationality because it had been incorporated in Egypt and had carried out its activities therein, and because only one of its three partners was a foreigner.

As regards naturalization, the principle established by the Egyptian judiciary is that it is considered a gift from the state and that, accordingly, a decision refusing to grant nationality to a foreigner who has applied for naturalization may not be challenged by invoking the satisfaction by such foreigner of all the conditions required by law (judgment rendered by the Supreme Administrative Court on 13 April 1969, Digest of Judgments, Year 14, p. 591).

Another principle established by the Egyptian judiciary is that decisions of the executive power relating to nationality, like other administrative decisions, are not absolute but are subject to judicial control. That is why decisions issued on matters of nationality must be grounded in order to facilitate the judiciary in the performance of its supervisory function and enable it to annul such decisions in case of error in the application or interpretation of the law or in case of abuse of power (judgments issued by the Court of Administrative Justice on 12 June 1967 in Cases No. 1104 and No. 1111 of judicial year 19, Digest of Legal Principles Established by the Supreme Administrative Court, 1972, judicial year 16, p. 262).

It is also established by the judiciary that an individual may not invoke the existence of an acquired right or of a legal status as towards the state in respect of acquiring the nationality of such state in a specific manner or of continuing to retain such nationality if the legislature amended same with new legislation (Challenge No. 1217 for judicial year 7, session of 29 February 1964, *Modern Administrative Encyclopaedia*, Vol. 13, first printing, al-Dar al-'arabiyya li'l-mawsu'at, p. 51).

5.2. Personal Status: Marriage, Divorce, Filiation and Inheritance

An established principle for the judiciary in Egypt is that personal status matters are subject to national law. The principle was codified by the legislature in the rules of referment.

In respect of matters related to the objective conditions for marriage, the Court of Cassation ruled that both the law of the husband and the law of the wife must be applied, and that a judgment which fails to take either into account would be defective, entailing its reversal at cassation (Session of 1 April 1954, Digest of Judgments of the Court of Cassation, Civil Circuit, judicial year 5, p. 747).

The Egyptian judiciary considers a marriage between a Muslim woman and a non-Muslim man as null and void, while a wife's conversion to Islam after marrying a non-Muslim is deemed grounds for demanding a divorce (Cairo Court of First Instance judgment issued on 6 October 1953 in Case No. 20/1953).

The Court of Cassation has ruled that the law permitting marriage between a man and the daughter of his mother's sister is not deemed to be contrary to public order (judgment issued on 12 April 1972, Digest of Judgments, Civil Circuit, judicial year 23, p. 698), and has also ruled that the evidencing of a marriage is subject to the law governing its form (judgment issued on 1 March 1978 in Challenge No. 27 for judicial year 45, *ibid.*, judicial year 29, p. 651).

The said court ruled that disputes related to the financial arrangements between the two spouses are matters of personal status (judgment issued on 26 June 1963, *ibid.*, judicial year 14, p. 913).

It also ruled that an Israelite husband may divorce his wife if he discovers she was not a virgin (when he married her), in accordance with Article 152 of the Book of Religious Precepts for Israelites (judgment issued on 27 June 1957, *ibid.*, judicial year 8, p. 653).

The court further ruled that the procedures of divorce and separation are subject to the *lex fori* (judgment issued on 30 June 1953, *ibid.*, judicial year 4, p. 1263).

The Court of Cassation subjected inheritance to the law of the legator at the time of his death; however, the dowry, pursuant to the Greek Civil Code, remains the property of the wife and on the death of the husband must be restored to her (judgment issued on 24 November 1971, *ibid.*, judicial year 22, p. 922). The court decided that the provisions related to the winding up of estates are not deemed personal status matters but are related to property and, as such, are subject to the *lex situs* (judgment issued on 16 May 1963, *ibid.*, judicial year 14, p. 677).

The court ruled that the state treasury, though entitled to the inheritances for which there is no beneficiary, is not considered an heir in the eyes of the legislature (judgment issued on 26 May 1932, Digest of Legal Rules Established by the Court of Cassation in Twenty-Five Years, p. 1007).

The court also ruled that a foreign law is not deemed to be contrary to public order in Egypt merely because it differs with the provisions of Islamic Shari'a in determining the property that may be bequeathed as long as such bequest is made to a non-Muslim (judgment issued on 26 July 1967, Digest of Cassation Judgments, judicial year 18, p. 1492).

5.3. Property

The Court of Cassation concluded that the rule of subjecting immovables to the *lex situs* pursuant to Article 18 of the Civil Code applies only in respect of the provisions related to its possession and to real rights that may be acquired, to the nature of such real rights and their scope, the ways they can be acquired and extinguished and such other provisions as relate to the regime of property in the State, but not in respect of personal status matters related to the rights of the heirs in the inheritance (judgment issued on 26 July 1967, *ibid.*, judicial year 18, p. 1493).

The Court of Cassation further ruled that, in addition to the jurisdiction of the law of the place in which the property is situated in determining the conditions of setting up real rights and determining the effects arising therefrom, the right must also exist in another law over and above the *lex situs*. Thus a legal mortgage in favor of a married woman over part of the marital property can only be established if it is prescribed in the national law of the husband, on the grounds that such law governs the effects of marriage, as well as in the law of the place where the property is situated (judgment issued on 17 May 1973, *ibid.*, judicial year 24, p. 772). In respect of intangible property, the Court of Cassation ruled that the description of copyright as a property right is excessive (judgment issued on 26 October 1961, *ibid.*, judicial year 12, Vol. 3). Before the promulgation of the Copyright Law of 1954, the judiciary ruled that the non-enactment of legislation in Egypt determining the conditions to protect and guarantee authors' rights did not mean that such

rights were to be trampled but that they were to be governed by the principles of natural law and the rules of equity (judgment issued by the Alexandria Mixed Court of Appeal on 1 March 1905, The Egyptian Legislature and Judiciary Gazette, Year 17, p. 140, and judgment issued by the same court on 16 May 1906, judicial year 18, p. 266). The judiciary also ruled that copyright obtained pursuant to the laws of a foreign state may not be infringed (judgment issued by the Alexandria Mixed Court of Appeal on 8 May 1889, *ibid.*, Year 1, pp. 110 and 111). The Court of Cassation also ruled to protect authors' rights despite the non-enactment of a copyright law until 1954, on the grounds that the legislature had upheld such rights in both the Civil Code and the Penal Code (judgment issued on 26 October 1961, Digest of the Judgments of the Court of Cassation, judicial year 12, No. 93, p. 602).

5.4. Obligations

In the absence of an agreement between the contracting parties over the designation of the law applicable to the contract, the judge shall have the discretionary power to ascertain the tacit intention of the parties from the circumstances, by virtue of the authority vested in him to interpret contracts. The Egyptian Court of Cassation has ruled that the judge is not subject to its control on this matter because it falls within the purview of the judicial power to take cognizance of the facts of a case, which is the exclusive prerogative of the judge reviewing the merits of a case, as long as such facts are reasonable, supported by documents and sufficient for a final determination of the matter in controversy (judgment issued on 13 June 1974, *ibid.*, judicial year 25, p. 1045).

The Court of Cassation ruled that contracts concluded between employers and their workers or employees are subject to the law in force in the place where the seat of management of the employer's business is located. The same applies in respect of actions for damages in cases of unfair termination of indefinite duration employment contracts (judgment issued on 5 April 1967, *ibid.*, judicial year 18, p. 798). The court also ruled that since contracts of sale under the Egyptian Civil Code are consensual, the mandate to sell is in its turn consensual and does not require a special form to be concluded. In its external form it is subject to the law of the place where it was concluded (judgment issued on 17 May 1973, *ibid.*, judicial year 24, p. 773).

The same judgment subjected the form necessary to evidence disposition to the law governing the form of the contract, which is the law of the place in which it is concluded.

Also in the same judgment, the Court of Cassation ruled that the scope of the law governing the form of a contract applies only to its external elements and that the form that is deemed an essential aspect for the constitution of a disposition, contrary to that required to evidence it, is subject to the law governing the substance.

It ruled further that the recognition of juristic persons and the decision to hold them civilly accountable for such illegal acts as are imputed to them are deemed to be general principles on which Egypt's social and economic system is based and, accordingly, they are matters of public order lying outside the scope of jurisdiction of a foreign law which

does not allow juristic persons to be called to account for wrongful acts (judgment issued on 25 June 1964, *ibid.*, judicial year 15, p. 868).

5.5. Order to Enforce (exequatur)

A condition for the enforcement of a foreign judgment in Egypt is that the Egyptian courts lack jurisdiction over the dispute on which such judgment was issued. However, when a judgment ordering the enforcement of a foreign judgment was challenged on the grounds that as the defendants in the case were resident in Egypt, this gave the courts of Egypt jurisdiction to determine cases instituted against them, the Egyptian Court of Cassation dismissed the challenge on the grounds that the foreign court which had issued the judgment was also competent and, accordingly, was one of the two tribunals vested with jurisdiction over the dispute joined between the parties. And, whereas the case had actually been instituted before it, and whereas it had passed the judgment in respect of which a writ of execution was now required, therefore considerations of courtesy, requirements of civility and respect for international transactions entailed considering the judgment to have been handed down by a foreign court within the limits of its jurisdiction. Thus the court ordered the enforcement of the foreign judgment despite the fact that it was issued in a dispute that also came under the jurisdiction of the Egyptian courts (*ibid.*, judicial year 15, Vol. 2, 1964, p. 909).

The Court of Cassation ruled that Egyptian courts cannot be prevented from reviewing a dispute by reason of a previous agreement between its parties to submit it to arbitration except if enforcement of the arbitral award is possible so that the parties are not deprived of the right to resort to the proper tribunal to recover their rights (unpublished judgment issued on 5 March 1979 on Challenge No. 583 for judicial year 46).

The same court ruled that defendants may be notified by means of publication, inasmuch as the proper notification of the parties must be ascertained in the foreign judgment before ordering its enforcement with the writ of execution, as long as the law of the country in which such judgment was rendered provides for the validity of notification in this manner, pursuant to Article 22 of the Civil Code which subjects procedures to the law of the country in which proceedings are taken (Digest of Cassation Judgments, judicial year 15, Vol. 2, p. 909).

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14. ADMINISTRATIVE LAW

1. Definition and Classification

1.1. Definition

Administrative law can be defined as that branch of internal public law which governs the public administration in the performance of its administrative activities; as such, it is the organizational and functional law of the public administration, and comprises the following:

1.1.1. Organization of Public Administration

Administrative law includes the body of rules relating to the organization of administrative agencies and their classification into central and decentralized regional agencies, such as governorates, towns and villages, and other administrative and professional organs such as public authorities, universities and syndicates. The said rules also provide for the means of establishing, abolishing and managing such agencies, determining their powers and their relations among themselves and between them and the other authorities and organs of the state.

1.1.2. Administrative Activities

A main area of concern for the provisions and rules of administrative law is administrative activities, inasmuch as the activities of the administration aim at achieving public order in its three aspects, namely, public safety, public health and public peace, known as the activity of administrative police. The activities of the administration are also aimed at satisfying the public requirements of individuals by presenting a group of services carried out by various public utilities, such as providing drinking water, electricity, health and education services, etc.

Accordingly, the rules of administrative law include everything connected with the legal system of public utilities, their establishment, divisions, operation and management, as well as the rules governing the aims of and the methods used by the administration in the performance of its activity of police, the constraints imposed thereon, etc.

1.1.3. Administrative Acts

The administration's performance of its activities entails resorting to many legal acts and dispositions which can be divided into legal acts and material acts. The legal acts are divided into unilateral acts, which are administrative decisions, and bilateral acts, which are divided in their turn into civil contracts and administrative contracts.

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The rules of administrative law comprise the organization of these acts and dispositions, as well as the description of the legal system for administrative decisions and administrative contracts, their elements and the means of repealing or terminating them.

1.1.4. Resources of Public Administration
As the administration can only exercise its various functions through civil servants in charge of conducting its business, and funds that enable it to realize its set goals, the rules of administrative law comprise the legal system that governs these civil servants, their powers, duties, employment rights, etc., as well as the legal system of public funds.

1.1.5. Administrative Liability
Finally, the rules of administrative law regulate the guarantees prescribed for individuals as towards the administration in those cases where a mistake committed by the administration in the exercise of its functions causes harm to individuals, defining the types and elements of administrative liability and the conditions for its existence.

1.2. Classification

- Administrative activities (administrative police – public utilities);
- administrative acts (administrative decisions – administrative contracts);
- administrative liability;
- civil servants;
- public funds.

2. Historical Background of Administrative Law

A characteristic of administrative law is its relatively recent birth, which dates back only to the last century. Its inception is linked to France's history and the political and social conditions surrounding the outbreak of the French Revolution, which led to the promulgation of a law on 16–24 August 1790 divesting judicial tribunals of jurisdiction over administrative disputes. Not long after, Napoleon Bonaparte established the Conseil d'Etat pursuant to the Constitution of Year 8 of the Revolution to look into administrative disputes and prepare draft judgments to be approved by the head of state. This stage is known as the stage of retained justice ('justice retenue'), in as much as the jurisdiction of the Conseil d'Etat was subject to the approval of the administrative authority and the head of state. This state of affairs continued to hold until the promulgation of the Law of 24 May 1872, by virtue of which the Conseil d'Etat came to enjoy complete judicial authority, its rulings no longer requiring ratification by the administrative authority. Over the years, France's Conseil d'Etat succeeded in laying down the foundations and rules of administrative law, allowing it to play a creative role in devising the solutions and setting the principles and theories that make up administrative law. Because of the distinctive nature of the administration's activity, which differs from private activity, and in light of the scarcity of texts governing this activity, administrative law is a judge-made law.

In Egypt, administrative law was unknown until the establishment of the Mixed Courts in 1875 and the National Courts in 1883. Pursuant to the regulations organizing the Mixed Courts, the legislature adopted the system of a single judicial system and vested the ordinary courts with competence to review administrative disputes in addition to the jurisdiction they enjoyed over disputes between individuals. However, their power was limited to awarding damages, and did not extend to canceling administrative decisions that are contrary to law. The same situation was repeated in the regulations organizing the National Courts. It can thus be said that subjecting administrative disputes to ordinary jurisdiction was one of the reasons that led to the failure of Egyptian administrative law to keep up with the French model. The absence of an administrative judiciary specializing in the adjudication of administrative disputes was another reason, as this is a prerequisite for the establishment of the rules of administrative law (although one school of thought in jurisprudence considers that administrative law did in fact exist during that period and before the establishment of the State Council).

In 1946, Law No. 112 was enacted. This law established the State Council as a court of administrative jurisdiction competent to adjudicate certain administrative disputes. The scope of its jurisdiction was gradually widened with the enactment of consecutive State Council Laws No. 9 of 1949, No. 165 of 1955, and finally, the current Law No. 47 of 1972, which invested the State Council with jurisdiction over all administrative disputes. From the start, the Egyptian administrative judiciary displayed a sound grasp of administrative problems and of the requirements of the administration, devising suitable solutions and laying down principles designed to strike a balance between the interests of the administration and the freedoms and rights of individuals, which strengthened the rules and provisions of Egyptian administrative law.

3. General Principles and Competent Jurisdiction

3.1. Principles of Administrative Law

The provisions and rules of administrative law are characterized by specific features that distinguish it from other branches of law, and its theories are based on specific foundations that dominate all its orientations.

3.1.1. Specific Features of Administrative Law

3.1.1.1. The Non-Codification of all the Rules of Administrative Law

There is no single code containing all the rules of administrative law, as is the case with the Civil Code or the Penal Code. This is due to the fact that most of these rules are a product of judicial endeavor.

3.1.1.2. Essentially a Judge-Made Law

Notwithstanding the existence of legislative texts, which are deemed a source of administrative law, a large proportion of its rules derive from precedent. When an administrative judge does not find a text on which to rely in resolving a dispute put before him, he is

forced to devise the legal rule that must be followed, especially as he is not bound to apply the rules of the Civil Code in view of the difference between the nature of administrative disputes and the nature of civil disputes. From the set of solutions and theories devised by administrative judges in this respect were born such rules and theories of administrative law as the theory of the administrative decision, the theory of the civil servant, the theory of administrative liability, the theory of administrative contracts, etc.

3.1.1.3. A Flexible and Evolving Law

The rules of administrative law came into being gradually in order to create balance and parity between the interests they govern, which are constantly evolving in line with the evolution of social, economic and political conditions. The rate at which these conditions changed was accelerated by wars and the enormous scientific and technological progress realized by humankind in the modern age, as well as by the State's relinquishment of the notion of the guardian state and its adoption of the principle of intervention in all spheres.

3.1.1.4. Characterized by Autonomy and Self-Sufficiency

In ruling on the merits of a dispute submitted to his determination and seeking the appropriate solution to be applied to the facts of such dispute, the administrative judge enjoys wide latitude. He is not bound to apply the provisions and rules of the Civil Code, but can do so if he finds them compatible with the problems of public law. For the rules of private law were laid down to govern private law relations and are not mandatorily applicable to public law relations, save when this is statutorily required. In the absence of such statutory requirement, the administrative judge is not bound to apply civil rules textually, but has the freedom and independence to devise the appropriate solutions (Challenge No. 157 for judicial year 1, session of 2 June 1956).

3.1.2. Foundations of Administrative Law

Jurists and judges spared no effort in their search for the basic principles and criterion of administrative law, in recognition of the importance the determination of these elements would have in designating the judicial authority competent to review a dispute within the framework of a dual judicial system which admits the existence of administrative courts side by side with ordinary courts, as well as in determining the law applicable to a dispute.

Jurists differed over the determination of the principles and criterion of administrative law. Some adopted the criterion of public utility, which is the activity performed by the administration to satisfy the public needs of individuals. For their part, administrative judges adopted the public utility theory as the criterion to determine their jurisdiction. One of the most famous rulings of the French Conseil d'Etat in this connection is the *Blanco* ruling of 1873.

Other jurists believed the criterion should be public authority, in the sense that if in the performance of its functions the administration exercises the prerogatives of a public authority, its acts would be subject to the provisions of administrative law, while conversely, if it strips itself of the mantle of public authority and deals with individuals according to the same conditions they apply in their dealings amongst themselves, its acts would not be subject to the provisions and rules of administrative law.

However, both criteria came in for a great deal of criticism, leading some to resort to a dual criterion combining the public authority and public utility criteria.

3.2. Competent Jurisdiction

The judicial systems adopted by states are divided into two types: the single judicial system in the United Kingdom and other Anglo-Saxon states; and the dual judicial system in France and a number of other states such as Belgium and Egypt.

Under the single judicial system, there is only one type of court, the ordinary court, which adjudicates on all disputes, whether between individuals or between individuals and the administration, and applies one law, namely, the rules of private law. As to the dual system, this is characterized by the existence of a separate judiciary to determine administrative disputes, while subjecting such disputes to specific rules differing from those to which private disputes are subject. Egypt applied the single judicial system until 1946, when it adopted the dual system pursuant to State Council Law No. 112 of 1946 which established the Court of Administrative Justice and vested it with the competence to adjudicate certain administrative disputes as defined under its provisions. The State Council's scope of jurisdiction over administrative disputes was extended by Law No. 9 of 1949 and Law No. 165 of 1955, which also completed the judicial organization of State Council's courts and established the Supreme Administrative Court. With the enactment of Law No. 47 of 1972, the State Council became competent to review all administrative disputes.

Pursuant to Article 10 of State Council Law No. 47 of 1972, the State Council courts, sitting as administrative judge, are competent to review the disputes expressly designated by the legislature in 13 Articles, which include disputes of employees and individuals, administrative contracts and all administrative disputes. This entails determining the legal nature of administrative disputes in accordance with their legal characterization as per the rulings of the State Council.

We shall address this issue in detail in the section related to the administrative judiciary.

4. Rules of Administrative Law: Applicable Texts

4.1. Administrative Organization

The Constitution issued in 1971 deals with administrative organization by distributing power between central authorities (the government) and decentralized authorities (regional units). The central authority is composed of the President of the Republic, the Prime Minister and the Ministers. Articles 141 to 146 of the Constitution determine the powers of the President, while Article 137 stipulates that: 'The President of the Republic shall assume executive power and exercise it in the manner stipulated in the Constitution'.

Article 153 of the Constitution stipulates that the Government is the supreme executive and administrative organ of the State. It shall consist of the Prime Minister, his deputies, the Ministers and their deputies. The Prime Minister shall supervise the work of the

Government. Article 156 lists eight functions for the Cabinet, including issuing administrative and executive decisions in accordance with the laws and decrees and supervising their implementation; supervising the implementation of laws; maintaining State security; and protecting the rights of the citizens and the interests of the State. As to the Minister, he is the supreme administrative chief of his ministry, who undertakes to lay down the ministry's policy within the framework of the general policy of the State and shall undertake its implementation (Article 157 of the Constitution).

Among the legislative texts related to the organization of the central administration is Law No. 73 issued on 22 March 1989, which provides for the composition of the presidency and includes the division of the departments and offices under the authority of the President's chef de cabinet and their respective functions.

The organization of the decentralized administration is divided into regional or local authorities and decentralized public utility authorities. With regard to the former, Articles 161, 162 and 163 of the Constitution lay down the rules for the organization of the local administration. Article 161 provides that: 'The Arab Republic of Egypt shall be divided into administrative units, enjoying juristic personality, among which shall be governorates, towns and villages'. Article 162 provides for the composition of local people's councils through direct elections, while Article 163 refers the manner of their composition, their powers, financial resources and everything related to their legal system to a subsequent law.

Pursuant to this last Article, Local Administration Law No. 43 of 1979 was enacted. The said law defines the types of local administration units, the powers and resources of the local councils and the manner of their composition and control over the local units.

In regard to the organization of the central administration of public utilities, Article 146 of the Constitution rules that: 'The President of the Republic shall issue the necessary decrees for the establishment and organization of public utilities'. These include public authorities and public organizations. The former are organized by Law No. 61 of 1963 concerning public authorities, the latter by Law No. 97 of 1983.

4.2. Administrative Activity

4.2.1. Administrative Police

By administrative police is meant the set of procedures and rules imposed by the competent administrative body to regulate the activities of individuals with a view to maintaining public order as represented in public safety, public health, public peace and public morals.

The Constitution determines the body competent to maintain public order at the central level, ruling in Article 145 that: 'The President of the Republic shall issue police regulations'.

Article 184 of the Constitution provides that: 'The Police Authority is a civil disciplinary body. Its Supreme Chief is the President of the Republic. The Police Authority shall perform its duty in the service of the people, ensure peace and security for the citizens, maintain order, public safety and morals, and undertake to perform the duties imposed on it by rules and regulations in the manner prescribed by law'.

Police Authority Law No. 109 of 1971 stipulates in Article 3 that: 'The Police Authority is charged with the preservation of public order and morality, with protecting lives and property and, in particular, with the prevention and investigation of crimes and it shall also ensure peace and tranquillity for the citizens in all spheres and shall carry out the duties imposed by laws and regulations'.

Article 2 of Local Administration Law No. 43 of 1979 provides that local government units are responsible for protecting the security of national utilities, while Article 26 of the same law provides that: 'The Governor is deemed to be the representative of the President of the Republic in the Governorate and shall undertake to supervise the implementation of the general policy of the State. He shall also be responsible for ensuring food security. The Governor is responsible for security, morality and public values in the Governorate. He shall be assisted in this by the Chief of Security within the framework of the policy applied by the Minister of Interior. The Chief of Security shall be held to discuss the plans relating to maintaining security in the Governorate with the Governor and to obtain his approval thereon. The Chief of Security shall be held to notify the Governor immediately an accident of particular importance occurs, provided the necessary measures to confront it are agreed upon between them'.

At the local level, the same Law No. 43 of 1979 provides in its Article 12 that the People's Council of the Governorate shall be responsible for many matters, including issuing recommendations on the proposals and plans related to maintaining local order and security.

It is clear from the foregoing that responsibility for maintaining public order rests with the central authorities represented in the President of the Republic, the Minister of Interior, the Police Authority and the Governor, in his capacity as the representative of the President, in agreement with the Chief of Security, who reports to the Minister of Interior, which latter is a central authority. As to the powers of the local people's councils in this respect, they are merely advisory.

With regard to other procedures related to preserving public health and peace, they are divided among many ministries and local government units in as much as they involve maintaining the cleanliness of streets, combating insects and animals harmful to health, preventing the spread of epidemics, etc. These activities are organized by a great many laws and regulations that lie outside the scope of this paper.

4.2.2. Public Utilities

We have previously mentioned that public utility is the activity performed by the administration to satisfy the public needs of individuals.

The constitutions which preceded the 1971 Constitution empowered the king or president, according to the system of government prevailing at the time, to issue the decrees necessary to regulate public utilities and to supervise their operation. Under these constitutions, regulating public utilities was a broad notion that included their establishment and organizational structure. In practice, the laws enacted during the period prior to the 1971 Constitution empowered the president to establish, abolish and organize public utilities by means of presidential decrees. Among these laws was Public Organizations Law

No. 32 of 1957 as amended by Law No. 60 of 1961 and Law No. 61 of 1963. Then came the 1971 Constitution, Article 146 of which stipulates that: 'The President of the Republic shall issue the necessary decrees for the establishment and organization of public utilities and public interests'.

This power was thus prescribed for the President by a clear text that leaves no room for doubt or dispute. Article 1 of Public Organizations Law No. 61 of 1963 rules that the President may issue a decree establishing a public organization to administer a utility providing a public service or interest, and that such public organization shall have a juristic personality. Article 17 of the same Law rules that public organizations shall be merged or abolished by presidential decree.

As to the powers of the Prime Minister in this respect, they are limited to directing, coordinating and following up the work of public organizations pursuant to Article 156 of the Constitution.

With regard to local utilities, Article 2 of Local Administration Law No. 43 of 1979 as amended by Law No. 50 of 1986 stipulates that local government units shall undertake to establish and administer all the public utilities lying within their respective circumscription in accordance with the general policy and general plan of the State.

The said units shall also undertake to carry out, each within the scope of its competence, all the tasks entrusted to ministries by virtue of the laws and regulations in force, with the exception of national utilities or those of a special nature as designated by a presidential decree. The executive regulations shall determine the utilities to be established by the governorates and administered by other local units.

Governorates shall exercise all the powers related to public utilities lying outside the scope of competence of the other local units. It is thus clear from the provisions of the Local Administration Law and its executive regulations that the legislature empowered local units to establish many utilities, while requiring a presidential decree for the establishment of national utilities or utilities having a special nature.

4.3. Administrative Acts

4.3.1. Unilateral Legal Acts

In the exercise of its activity, the administration resorts to administrative decisions which take the form of unilateral legal dispositions. Although the main source of the rules relating to administrative decisions derives from the precedents laid down by the administrative judiciary, which established a complete and comprehensive theory for administrative decisions, legislative texts often touch on administrative decisions from an organizational perspective, i.e., they determine the authority competent to issue such decisions and the rank of the decision issued by reference to the ranking of administrative decisions in the legal hierarchy of decisions, according to the status and rank of the administrative authority concerned. These texts also occasionally address the types of administrative decisions without going into their legal nature, their distinctive criterion, nullity, etc., all matters left to the judgments of the administrative judiciary.

The Constitution defines the types of administrative decisions in terms of the authority competent to issue them as follows:

4.3.1.1. Decisions of the Central Authorities

(a) Presidential decrees. Pursuant to the provisions of the Constitution, the President of the Republic is empowered to issue individual decisions, that is, decisions relating to a single, specific case. These include the decisions appointing the Prime Minister, his deputies, the Ministers and their deputies and the decisions relieving them of their posts (Article 141) or the decisions appointing and dismissing civil and military officials (Article 143). The President is also competent to issue organizational or regulatory regulations which, by nature, include general abstract rules, such as the regulations necessary for the execution of laws (Article 144), police regulations (Article 145) and the decisions necessary for the establishment and organization of public utilities (Article 146).

Presidential decrees are considered the most important and highest-ranking administrative decisions, in as much as the President is the supreme head of the executive department.

(b) Decrees of the Cabinet. Pursuant to Article 156 of the Constitution, the Cabinet is empowered to perform many functions, including the right to issue administrative and executive decrees in accordance with laws and decrees as well as to supervise their implementation. Cabinet decrees rank below presidential decrees.

(c) Decrees of the Prime Minister. These decisions rank second in the hierarchy of executive decisions and are mentioned in numerous legislative provisions. Among the decisions which the Prime Minister is empowered to issue are decisions granting benefit for professional circumstances and risks and housing allowances (Article 42 of Law No. 47 of 1978 concerning State Civil Servants), determining official holidays and feasts (Article 63 of the same Law), determining the conditions for granting additional pay for those working abroad (Article 44), appointing functionaries to leading civil posts (Law No. 5 of 1991 and its executive regulations), establishing administrative districts, towns and municipalities (Article 1 of Local Administration Law No. 43 of 1979) and authorizing the travel of employees for medical treatment abroad (Presidential Decree No. 2103 of 1966).

(d) Ministerial decisions. The Minister is the highest administrative officer in his ministry who is charged with laying down its policy within the framework of the general policy of the state and with implementing such policy (Article 157 of the Constitution). In that capacity, he is vested with the power to issue individual or organizational administrative decisions. The organizational decisions he is competent to issue include, without limitation, decisions approving the organizational structure of the ministry (Article 8 of the State Civil Servants Law No. 47 of 1978), decisions laying down the performance appraisal system that must be achieved and the procedures to be followed in preparing and approving performance reports (Article 28 of the same law), decisions laying down the material and moral incentives system (Article 70), and decisions laying down the health and social care system for employees (Article 53). In regard to individual decisions, he is empowered to issue decisions appointing functionaries to other than senior posts (Article 16), granting regular pay rises to

ministry employees (Article 37), delegating employees to perform the functions of another post (Article 56), imposing disciplinary measures (Article 80), and suspending an employee from work in the interests of a pending investigation (Article 83). Ministerial decisions rank fourth in the hierarchy of administrative decrees issued by the central authority.

4.3.1.2. Decisions of Decentralized Authorities

These are decisions issued by decentralized regional or public utility authorities.

Local Administration Law No. 43 of 1979 regulates the decisions issued by local authorities, whether organizational or individual. These decisions include: decisions empowering the competent governor to establish villages (Article 1 of the said law); decisions of the local people's council of the governorate to dispose without valuable compensation of one of the governorate's fixed or movable assets (Article 14); the governor's power to issue the necessary decisions to safeguard the public and private property of the State and to remove any trespass occurring thereon by administrative means (Article 26); the right to issue administrative decisions in respect of all public utilities coming under the jurisdiction of local government units within the scope of all executive powers prescribed for Ministers pursuant to laws and regulations (Article 27).

As to decisions issued by local public utility authorities, these are regulated by the Public Organizations Law No. 61 of 1963.

4.3.2. Bilateral Legal Acts

The administration enters into contract with itself or with individuals and private corporations and organizations in the aim of administering the public utilities it supervises or operates. Its dispositions in this respect are deemed to be bilateral legal acts. The contracts concluded by the administration are divided into civil contracts and administrative contracts.

Civil contracts are subject to the provisions of the Civil Code and the rules of private law, while administrative contracts are subject to the rules of administrative law as formulated by the administrative judiciary, whether as regards the criterion which distinguishes it from civil contracts, its nature, constitution, execution, etc.

Despite the creative role played by the administrative judiciary in the theory of administrative contracts, there is no denying the existence of some special legislative rules governing and organizing these contracts, whether as to their constitution, execution, effects or termination. Among these legislative rules is the rule laid down in Article 121 of the Constitution, which provides that the executive power shall not contract a loan or bind itself to a project entailing the disbursement of funds from the state treasury at a subsequent period, except with the approval of the People's Assembly; and the rule laid down in Article 123 of the Constitution, which provides that: 'The rules and procedures for granting concessions relating to the exploitation of the resources of natural wealth and of public utilities shall be determined by law'.

Some legislative rules are also applicable to administrative contracts, like those laid down in Law No. 129 of 1947 regulating the obligations of public utilities, i.e., concession contracts, which determine the foundations on which these contracts are based in

terms of their constitution, execution, term and termination, as amended by Laws No. 61 of 1958 and No. 152 of 1960.

There is also Auctions and Tenders Law No. 9 of 1983, which has been replaced by Law No. 89 of 1998. This addresses the rules related to purchasing movables, concluding contracts with contractors, receiving services, purchasing real property, selling and renting real property or movables, and projects and licenses to use or exploit real property. The executive regulations of this latter law, issued by the Finance Minister's Decree No. 1367 of 1998, which prescribe the rules to be followed in the practical performance of the provisions of the said law, are a complementary part thereof.

It should also be pointed out that the application of the provisions of the Civil Code to administrative contracts is not totally excluded. Indeed, administrative judges will resort to the Civil Code when it fits the nature of an administrative dispute and does not contradict administrative problems. Thus they apply the Civil Code provisions relating to force majeure and unforeseen circumstances to administrative contracts.

4.4. Administrative Liability

Judicial decisions are considered to be the primary source of the rules and provisions of administrative liability and it is they which established an independent theory for administrative liability distinct from its counterpart in the domain of private law. Nevertheless, there are legislative texts which contain certain provisions governing administrative liability and, moreover, administrative judges resort to the general rules of civil liability as laid down in the Civil Code if such rules are compatible with the nature of the administrative dispute before them.

Among the legislative texts prescribing administrative liability is Article 57 of the Constitution which requires the State to award fair compensation to any person subjected to an assault on his individual freedom or on any other public rights and liberties guaranteed by the Constitution and by law.

Then there are the general rules of liability laid down in the Civil Code which are applied by administrative judges to administrative liability, including the provisions of Article 163 which stipulate that every fault which causes injury to another imposes an obligation to make reparation upon the person by whom it is committed. According to this text, three conditions are necessary for compensation to be awarded: one, a fault must have been committed by the administrative authority or one of its subsidiaries; two, injury must have been caused to someone; three, a causal relation must exist between the fault and the injury in the sense that the injury was the result of the fault.

In this connection, Article 165 of the Civil Code provides that a person is not liable to make reparation if he proves that the injury resulted from a cause beyond his control, such as unforeseen circumstances, force majeure, the fault of the victim or the fault of a third party.

Thus administrative judges use the doctrine of unforeseen circumstances and force majeure to avoid applying the rules of administrative liability.

Article 167 of the Civil Code stipulates that: 'A civil servant is not responsible for an act by which he causes injury to another person if he acted in pursuance of an order received from a superior, which order he had to obey or thought he had to obey …'.

The administrative judiciary often adopt from the rules of private law those relating to the assessment of damages when the elements of administrative liability are complete, as provided for in Articles 221.1 and 222 of the Civil Code.

In addition to the foregoing, there are some cases in which the administration is exempted from liability pursuant to a statutory provision, such as Article 12.1 of State Council Law No. 47 of 1972, which stipulates that: 'The following claims shall not be admitted: claims related to acts of sovereignty (…)'. Accordingly, acts of sovereignty performed by the administration cannot be used as evidence in establishing the administration's liability for such acts.

It should also be noted that Article 78 of the State Civil Servants Law provides in its last paragraph that: 'A civil servant shall not be accountable except for his personal mistakes.' This is a reiteration of the precedent established by the administrative judiciary which distinguishes in administrative liability between a personal mistake, for which a public employee is accountable to make reparation from his personal funds, and a mistake on the part of a public utility (faute de service), for which the administrative authority is accountable to make reparation from its funds in the manner hereinafter indicated.

4.5. Public Office

Any attempt to address the legislative provisions dealing with public office entails first a reading of the Constitution and the principles it lays down in respect of public office as follows:

1. Article 14 of the Constitution provides the following general understanding of public office: 'Public office is a right for all citizens and an obligation for those who perform them in the service of the people'.
2. The principle of equal opportunities for all citizens, which applies also to the domain of public office in all spheres, is consecrated in Article 8 of the Constitution, which provides that: 'The State shall guarantee equality of opportunity for all citizens'.
3. Article 14 provides guarantees for public employees, including a guarantee from the State to protect them in the performance of their duties in safeguarding the interests of the people, and prohibits their dismissal by other than disciplinary means except in the cases determined by law, while Articles 68 and 69 guarantee the right to defense and the right to litigation as general rights for all citizens.

After the Constitution, Law No. 47 of 1978 is considered the principal legislative text governing the organization of the public office. However, some factions in this category are governed by specific regimes, like judges and public prosecutors (Law No. 46 of 1972), university faculty members (Law No. 49 of 1972) and members of the Police Authority (Law No. 109 of 1971).

Notwithstanding the existence of special laws for some functionaries, the State Civil Servants Law is the applicable law to cases where the special laws are silent.

It is clear from a reading of the State Civil Servants Law No. 47 of 1978 that it set out to tackle the contradictions which arose from previous employment laws and to put a final end to the policy of pricing academic degrees, which determines the wage for educational qualification but not for the post that corresponds to it. The new legislation, according to its explanatory note, is based on the following:

1. It bases its provisions on objective foundations by giving priority to the post itself as a set of duties and obligations for the performance of which certain conditions must be present in its occupant that are commensurate with its nature and importance and that allow the realization of the object for which it was created.
2. It gives priority to the theoretical or acquired experience necessary to perform the duties of the post and takes this into account in the wages collected by the functionary, in as much as they are an objective consideration for the responsibilities with which he is entrusted.
3. The precedence given to the objective basis of the post also applies to all aspects of civil service. Thus promotion must be to a higher post, not to a higher financial level for which no corresponding post exists, while the transfer or delegation of a functionary is made by reference to the objective aspect, that is, the post rather than the degree.
4. This objective aspect also affects the disciplining of functionaries, in the sense that charges of dereliction of duty must be related to the duties as laid down in the job description.

The executive regulations of the said law were issued by the decree of the Committee for Civil Service Affairs No. 2 of 1978, and are considered as complementary to the State Civil Servants Law.

4.6. Property of the State

State property and funds are divided into two kinds: private state property (private domain), which is subject to the same provisions governing the property of private individuals and entities; and public state property (public domain), which is subject to special rules.

Article 29 of the Constitution provides that there are three types of property: public; cooperative; and private, while Article 33 provides that public ownership is inviolable and that its protection and consolidation is the duty of every citizen in accordance with the law.

The Civil Code also addresses public property in Articles 87 and 88 as follows:

Article 87:

(1) Immovable and movable property owned by the State or other public juristic persons and allocated in fact or by virtue of a law or a decree for purposes of public utility, are considered as part of the public domain.

(2) Such immovable and movable property is not alienable, is not liable to seizure nor to acquisition by prescription.

Article 88:

Properties forming part of the public domain lose this status with the cessation of their allocation for public utility purposes. This cessation takes place by virtue of a law, or a decree, or a decision of the competent Minister, or in fact, or if the object of public utility for which they were allocated comes to an end.

Other statutory provisions relating to public state property are included in a number of special laws, such as Irrigation and Drainage Law No. 12 of 1984, which defines public property that is related to irrigation and drainage as the course of the Nile, its embankments, irrigation canals, main waterways, drainage ditches and establishments concerned with balancing irrigation and drainage water as well as land expropriated for public utility for purposes of irrigation or drainage or the land owned by the State which is allocated to such purposes (Article 27 of the Law).

It is clear from the legislative texts referred to, above, that for property to qualify as public property it must satisfy a number of conditions as follows:

(1) It must be owned by the State or by another public juristic person such as a governorate, a town, a village or a public institution of an administrative nature like a university.
(2) It must be allocated to the public use by a law, decree (presidential decree) or a decision of the competent Minister, or such allocation must have occurred from the practical point of view in fact, such as when people use a given path over a period of time.

The establishment of the public status of public property gives rise to a number of effects:

(1) No legal disposition may be made in respect of such property, whether by sale, lease or by any of the other means of disposition provided for within the scope of private law, unless such property is divested of its public status and becomes private property. Article 88 of the Civil Code defines the ways in which public property is transformed into private property as: the cessation of its allocation by virtue of a law or a decree, or in fact, or if the object for which it was allocated comes to an end.
(2) The property may not be seized or acquired by prescription, pursuant to Article 87 of the Civil Code, because its amenability to seizure or acquisition by prescription would inevitably lead to the non-realization of its object, which is to serve the public good.
(3) It may not be trespassed against, which is a logical result of the ban on its alienation or acquisition by prescription. Here the legislature intervened to protect public property both from the administrative and the criminal point of view.

From the administrative point of view, the governor or the competent Minister is entitled to intervene by issuing a decree to remove the trespass on public property, while from the criminal point of view the legislature prescribes penalties in the Penal Code for embezzlement of public funds and trespass on public property (Articles 112 to 119 bis),

as well as for damaging buildings, antiquities and other public property (Articles 162 and 163), while other laws prescribe penalties in this respect, such as Irrigation and Drainage Law No. 12 of 1984 (Articles 89–96) and Law No. 140 of 1956 concerning Occupying Public Roads (Article 14).

As to private state property, this is the property that is not deemed to be public property in the legal sense referred to above. It is accordingly subject to the provisions and rules of private law. Its legal status is expressly defined by law, such as Desert Lands Law No. 143 of 1981, which considers desert lands as private state property. The law also intervenes to protect this property, such as Article 970 of the Civil Code, which prohibits trespass on private state property and empowers the competent Minister to remove any trespass that does occur.

5. Applicable Texts: Judicial Rulings

5.1. Organization of Public Administration

The legislature endeavored to establish the rules governing the organization of administrative authorities and to divide them into central authorities which represent the state as a public juristic person, and decentralized authorities, whether they are local public persons or public utilities.

The Supreme Administrative Court confirmed the public administrative nature of some juristic persons, on the occasion of a motion denying such capacity to local councils in the following ruling: 'With reference to Part V of the Constitution and to Law No. 52 of 1975 establishing the dispositions related to the system of local government, it is clear that local councils are a branch of the executive power, vested with a number of administrative responsibilities related to local public utilities. Each council is placed under the supervision and control of a superior council. As such, these councils are mere administrative agencies or authorities, in charge of an administrative task, within the framework of decentralized administration, the latter being a method of administrative organization whereby part of the administrative functions of the executive power are entrusted to a regional authority who will act under the supervision of the executive power. Any orders issued by these decentralized agencies have to be considered as administrative decisions, subject to the control of administrative courts, exactly like decisions issued by the central administration. The fact that local councils are elected does not make of them other than administrative bodies and a branch of the executive power' (Challenge No. 670/22, session of 30 April 1977).

Many juristic persons have been established. The law has vested their responsible authorities with powers and rights derived essentially from public law, and of the kind given to public administrative authorities. Consequently, their administrative decisions can be appealed before the State Council (Court of Administrative Justice, Ruling No. 848/4, session of 26 February 1952).

Recently, the trend is to have major professions organized by the professionals themselves, by establishing trade unions and professional associations to organize the activities of different professions, such as doctors, lawyers, engineers, etc.

Such juristic persons have the power to issue binding instructions, either individual or in the form of a body of regulations. They also enjoy the power of direct enforcement and of issuing disciplinary decisions against the members who violate the by-laws or decisions of the association. Such juristic persons have therefore been likened to ordinary administrative authorities. The Court of Administrative Justice decided that, from the point of view of jurisprudence, such professional associations, including that of engineers, are to be legally classified as public law persons, even though they may not be public institutions or administrative departments who are autonomous juristic persons. They are established by law, decree or any other statutory instrument, their objects and aims serve the public interest and they have a disciplinary authority over their members. The latter alone can exercise their profession. As such, their decisions are considered administrative decisions which can be appealed and abrogated by administrative courts (Ruling No. 504/3, session of 26 December 1950).

The court applied the above rules to the Medical Association and considered it a public law person (Ruling of 29 January 1957, Digest of Rulings in 15 years, p. 2282).

The Federation of Chambers of Commerce was also considered to be a public utility, representing a profession. Its decisions are to be considered administrative decisions, notwithstanding the fact that it is not governed by the rules governing civil service but by private law (Ruling No. 745, session of 29 September 1964, Digest of Principles in 15 years, p. 106).

5.2. Administrative Activity

5.2.1. Public Utility

The Court of Administrative Justice has defined a public utility as being an institution established by the state, or whose management is supervised by the state. It is an institution that works regularly and continuously to provide a public good, not in the aim of realizing profits but as a contribution by the public administration to maintain order, ensure comfort and welfare and provide means of livelihood.

Public good is a condition for its existence and its aim; it is geared towards a given purpose, without seeking profit. It is, however, possible in some cases to allow individuals to shoulder part of the charges borne by the state treasury in return for benefiting from the services rendered by the public utility. This definition should not be taken at face value. Not every project providing a public service is, necessarily, a public utility; to become so, its management and organization must be undertaken by the public authority (Court of Administrative Justice, Ruling No. 282/7, session of 18 January 1954).

Moreover, public utilities are governed by a special legal system which differs from the legal system governing private projects. To ascertain the establishment of a public utility, it is necessary to refer to the relevant legislative provisions, if any, or to the nature of the public utility's activities or the intention of the public authority which is alone entitled to establish or abolish a public utility, according to circumstances or in view of certain requirements. The intention of the public authority in establishing the public utility is to be deduced from the

circumstances and legal provisions of the establishment of the project, from the structure of its administration, from its subjection to steady control, from the fact that the project has been granted some of the prerogatives of public authority or from such other signs that confirm the administration's intention to make such activity a public utility (Court of Administrative Justice, Ruling No. 348/9, session of 2 June 1957).

Thus the Administrative Court of Justice considered a cinema to be a public utility, since public recreation and culture provided by theaters and cinemas serve the public good, notwithstanding the fact that they are lucrative (Ruling No. 1184/14, session of 25 June 1961).

It also considered that the Ministry of Supply's enactment of the legal provisions necessary to impose its close supervision over the supply of provisions and its control over their distribution on the market is tantamount to the establishment of a new public utility, that of supply (Ruling No. 1474/10, session of 4 January 1959, Year 13).

In the same vein, the Administrative Court of Justice considered the Delta Railways utility, previously administered under a concession then directly by the state, to be a public utility and its employees to be public employees (Ruling No. 1164/9, session of 9 February 1969).

As for the organizational rules pertaining to the management of public utilities, the government recognized the right of the administration to establish, amend and cancel such rules at any time and at its own discretion, to ensure the proper operation of the utility. Its decisions in this respect are final, provided they do not involve any abuse of power (Court of Administrative Justice, Ruling No. 918/5, session of 15 February 1954, Year 8).

5.2.2. Administrative Police

A careful reading of the rulings of the Egyptian State Council courts reveals that the latter have extended their control over procedures of administrative police, both from the procedural aspect and insofar as the reason or method of procedure is concerned.

For administrative police to be exercised, there must be a factual and legal situation constituting the element of cause for the administration's intervention, and the government's action must be necessary to face the situation. The administrative intervention is then subject to judicial control, and may be found legitimate or not, depending on the presence or absence of the aforementioned conditions (Challenge No. 9582, session of 14 April 1965). Thus the Supreme Administrative Court ruled that the order issued by a military court for the arrest of a citizen did not include the causes and facts justifying such a procedure, nor was there any irrefutable evidence that the cause in question posed a threat to public order and security. The fact that he had been previously arrested for communist activities did not justify his present arrest. The order to arrest him was null (Challenge No. 1776/32, session of 23 December 1989).

The court further ruled that for a person's name to be registered as a threat to public security, he must have been found guilty of a crime defined as such by the legislature. The fact that his properties have been placed under custody is no reason, per se, to include him in such a list (Challenge No. 9970/5, session of 12 December 1981, Year 27).

In this same context, the Administrative Court ruled that even though the Minister of Interior may prohibit the renewal of the plaintiff's passport, yet he can only do so if there are important reasons, which can be proved. Since no irrefutable evidence of the administration's allegations that the plaintiff is in contact with drug smugglers abroad exists, the decision to prevent him from travelling is defective (Ruling No. 7778/46, session of 26 January 1993).

As for control over the method of intervention, the Supreme Administrative Court ruled that it is not sufficient for the administration to have a correct cause for intervention, it must also select a method concomitant with the cause and with the material circumstances that led the administration to resort to police methods. For the administrative decision to be legal, the administration's intervention must be necessary to ward off a serious threat to order and security, and such intervention must be the only means of averting such threat. The matter is subject to the control of administrative courts (Supreme Administrative Court, 13 April 1957, Year 2).

This was further confirmed by Law No. 109 of 1971 concerning the Police Authority. Article 152 of this Law stipulates that no weapons shall be used, unless it is the only possible way when executing an order to arrest or when escorting convicts. Control over the purpose of administrative police makes such a situation exceptional. The power of administrative police may not be exercised except for purposes related to public order with its three components: public safety, public health and public peace, as well as public morality. If the administration had any other purpose for its intervention, its decision is defective. That is why the Court of Administrative Justice recognized as legal a decision by the administration not to execute a court order to raze 250 houses in a village inhabited by approximately 2,000 persons. By so doing, the administration preserved public safety which would have been threatened had such an order been executed, even if the principle is that the administration is bound to respect court orders (Court of Administrative Justice, Ruling No. 1817/8, session of 15 March 1984).

5.3. Administrative Acts

5.3.1. Unilateral Administrative Acts (Administrative Decisions)

Administrative decisions are a manifestation of the prerogative of direct execution vested in the administration to issue unilateral decisions vis-à-vis individuals, decisions which are to be executed without their prior consent. In view of their gravity and importance, administrative court rulings made it a point to establish the rules of the legal system concerning this type of legal disposition. So much so that a whole theory concerning administrative decisions evolved, one that defines their characteristic aspects, the manner in which they are issued, their creation and their termination, etc. This is not, however, the place to cover all the aspects of that theory, we shall only deal with the most important rules established by the administrative judiciary.

An administrative decision was defined by the administrative judiciary as an expression of the administration's authority, pursuant to the relevant laws and regulations, to

induce a particular legal effect, provided it is legally feasible and possible, with a view to serving the public interest (Court of Administrative Justice, Ruling No. 38/1, session of 7 January 1948; Challenge before the Supreme Administrative Court, No. 930/11, session of 24 February 1968).

In keeping with the above definition, the administrative decision must contain certain elements, in the absence of all or part of which the decision is considered to be marred by a defect which causes its nullity.

5.3.1.1. The Element of Cause

This has been defined by the Court of Administrative Justice as a factual or legal situation that leads an administrative body to intervene with the purpose of causing a legal effect (Ruling No. 58/4, session of 12 July 1958).

An example of such a factual situation would be the breach by an employee of the duties of his post and his commission of a punishable offense. Such a situation constitutes grounds for the administration to issue a decision to discipline him. An example of a legal situation would be an employee tendering his resignation, which would justify a decision by the administration to end his service. An administrative decision is assumed to be based on correct causes, unless proven otherwise (Challenge No. 1768/2, session of 14 December 1957). Consequently, the administration is not required to reveal the reasons which led it to issue the decision, unless compelled to do so by law.

5.3.1.2. The Element of Form

For the administration to manifest its will, which is binding on individuals, it must do so in a given manner or form that makes it easy for individuals to be informed. The manifestation may be explicit in reflecting the administration's purpose. It may also be implicit, the silence of the administration for a given period of time being legally interpreted as a positive administrative decision (Article 10 of State Council Law No. 47 of 1972).

In principle, the administration is free to manifest its intent in any form that would guarantee the individual's awareness of such an intent, unless the law stipulates the need to follow a certain form, such as providing a ground for the administrative decision or the need to consult a technical committee.

5.3.1.3. The Element of Competence

The legislature specified the rules of competence designating the persons and authorities entitled to issue administrative decisions. Court rulings have established the need for the source issuing the decision to observe the jurisdictional limits laid down by the legislature, whether as regards the subject matter or duration of competence, ruling that the non-observance of such limits renders a decision null.

5.3.1.4. The Element of Object

It has been defined by the Court of Administrative Justice as being the legal position that the decision-making authority intends to cause or its immediate legal effect; such an effect

being to create a new legal situation or to amend or cancel an existing legal situation (Ruling No. 262/6, session of 10 March 1954).

5.3.1.5. The Element of Intent

The general rule is that, in issuing the administrative decision, the administration intends to achieve a given purpose, namely public interest. The legislature may not be satisfied with the concept of public interest and may, within that overall intent, specify other objectives, the latter being known as the rule of specifying objectives or targets. The objectives may also be designated or defined by the very nature of the competence itself, such as the power of administrative police which may not be exercised except to achieve a purpose related to public order with its three elements of public health, public peace and public safety. If the administration aims at achieving other objects incompatible with public interest or with the other designated objectives, its decision is defective for being marred by the defect of abuse of power.

Among the important rules established by administrative judges in respect of administrative decisions is that such decisions are not retroactive, i.e. they apply only as of the date of their promulgation and have no effect on any prior actions in accordance with the principle of acquired rights, unless the administrative decisions are issued in implementation of laws having a retroactive effect (Ruling No. 3616/9, session of 19 January 1956).

With regard to the withdrawal or revocation of administrative decisions, the rulings of administrative courts have established that the administration cannot withdraw or revoke a correct decision that has given rise to acquired rights for individuals. However, decisions regarding the dismissal of employees are excepted in application of the rules of abstract justice.

As to illegal decisions which give rise to acquired rights for individuals, they can only be withdrawn or revoked within a specific period (60 days). If the period has elapsed, the illegal decision can neither be withdrawn nor revoked, and any decision to the contrary is faulty and null.

However, administrative courts have exempted from illegal decisions the decisions which are null and void for grave incompetence or for blatant violation of the law, all of which may be withdrawn or revoked by the administration at any time without being bound by the period of prescription for challenges.

5.3.2. Administrative Contracts

According to the definition established by jurisprudence and by the courts, an administrative contract is a contract signed by a public law person for the purpose of operating or organizing a public utility, wherein the administration appears to apply the provisions of public law in that the contract contains exceptional conditions which are not familiar in private law; or a contract that allows the party contracting with the administration to directly participate in operating the public utility (Challenge to the Supreme Administrative Court No. 576/11, session of 30 December 1967).

Even though the presence of the administration as a party to the administrative contract is a necessary condition, yet the Supreme Administrative Court considered that the

choice by the administration of public law as a vehicle is the determining condition which differentiates administrative from other contracts. Among such conditions is that which entitles the administration to amend the obligations of the other party or to unilaterally terminate the contract without the other party's consent, or the administration's right to impose sanctions on the other party and to make purchases at his expense if he fails to execute the contract (Challenge No. 3128/35, session of 24 January 1995).

The Supreme Administrative Court explained the implications of the contract related to participation in the operation of the public utility as being a case where the rules of executing the contract must comply with the rules governing the management of public utilities, among these being the need for the public utility to function regularly and systematically and the possibility of change at any time. Such rules justify the wide powers given to the administration with regard to supervising the execution of administrative contracts, its power to amend the obligations of the other contracting party without his prior consent and its right to impose sanctions to force him to execute the contract without resorting to the courts and without the contracting party being entitled to invoke the rule that the contract makes the law of the parties. As to the rights of the other party, the rules governing the operation of a public utility make it incumbent on the administration to stand by the other party in case of losses he might incur so that he may not find himself in a position where he cannot fulfill his obligations, thus impeding the operation of the public utility. Moreover, the court has recognized the other party's right to compensation where the financial balance of the administrative contract is disrupted (Challenge No. 1520/2, session of 20 April 1957).

In order to protect the rights of the party contracting with the administration, the court has concluded that the latter's right to amend the contract is not absolute but subject to certain constraints: it must be exercised within the legally prescribed limits and must not upset the financial balance or economics of the contract (Challenge No. 845/19, session of 29 November 1998). Consequently, the administration's power to amend is only applicable to the conditions related to the operation of the public utility and does not extend to the conditions related to the determination of valuable consideration (Challenge No. 2519/24, session of 31 August 1993).

The Supreme Administrative Court recognized the administrative authority's power to abrogate administrative contracts unilaterally, if it considers that to be in the public interest, while limiting the other party's rights to the right to compensation, if justified (Challenges No. 1553 and No. 1541/27, session of 7 November 1987). The administrative authority is also entitled to impose fines for delay without a court ruling and without the need to prove injury (Challenge No. 2161, session of 26 September 1990), provided it can prove that the other party is in breach of contract (Challenges No. 843, 922/26, session of 20 November 1989).

Moreover, the administration is entitled to undertake directly, or by contracting with others, the performance of the contract at the expense and under the responsibility of the defaulting party, so that the defaulting party would bear the price differences, in order to ensure the regular and systematic functioning of the public utility (Challenge No. 5843/26, session of 20 November 1982).

5.4. Administrative Liability

In view of the differences between public law and private law relations, the Egyptian State Council's courts tend not to be bound by the rules governing omissive responsibility in the Civil Code, adopting rather the rules established by the French Conseil d'Etat to differentiate between a fault on the part of a public utility (faute de service) for which the administration is liable to make reparation and a personal fault (faute personnelle) for which the employee is accountable to make reparation from his own funds. They have also recognized another type of liability based on risk, which arises when the two elements of injury and the relation of causality are present but not the element of fault. Nevertheless, the administrative courts resort to the rules of the Civil Code when they are compatible with the nature of the administrative dispute, particularly as regards injury and the causal relation between fault and injury.

As far as the element of fault in administrative liability is concerned, the Supreme Administrative Court considers that the criterion which differentiates between personal fault and a fault on the part of the public utility is that for a fault to be considered personal it must result from a harmful action of a personal nature, one that reveals human frailty, foolishness and rashness. If the harmful action is not of a personal nature, but emanates from an employee who is liable to right and wrong, the fault is considered to be a 'faute de service'. The criterion is therefore dependant on the intention of the employee in undertaking the duties of his post: if his intent is malicious, vexatious or the furtherance of his own interest, the fault is personal and he shall assume the consequences. The determining element for differentiating between the two types of fault is thus the intent of the employee. If his intention in issuing the administrative decision was to further public interest, or if he acted to achieve one of the objectives entrusted to the administration, his fault is included among the inseparable functions of the job and is considered a fault on the part of the public utility. On the other hand, if it transpires that the employee was not seeking to serve the public interest, that he was motivated by personal factors or if the error was grave enough to be considered a crime punishable under the Penal Code, then in such circumstances it is a personal fault for which the employee who committed it is liable for damages from his personal funds (Challenge No. 928, session of 6 June 1992).

On the basis of the above criterion, the court considered a fault to be personal and held the employee personally liable when it involved gross negligence, represented in the recording by the employee of false information in the pay slip and his retention of the files of those who had made reservations (Challenge No. 542/16, session of 10 March 1973).

Yet another case in point is one where the defendant violated the orders of the marine command and of traffic rules; he was found guilty of gross negligence (Challenge No. 1448/78, session of 14 November 1967).

Conversely, the court considered the issuance of a decision by the administration terminating the defendant's service without justifiable reason to be a 'faute de service' (Challenge No. 143/24, session of 13 June 1981).

In respect of 'faute de service', the administrative judiciary does not recognize the liability of the administration in all the cases where such fault has been established. It

differentiates, in this respect, between formal and substantive defects in the administrative decision which constitutes the element of fault. Thus defects of non-competence or of form in the administrative decision which entail its cancellation, are not grounds for compensation unless the defect affects the subject matter of the decision. So if a decision is correct in substance and based on justifiable grounds, despite its violation of the rules of competence or of form, the source of the decision is not accountable to make reparation since the same decision in substance would have been taken had the rules of form and competence been respected (Challenge No. 1006/10, session of 22 March 1975).

5.5. Public Office

Both the Court of Administrative Justice, followed by the Supreme Administrative Court, settled the dispute over the nature of the relationship linking the employee to the administration, and whether it is an institutional or a contractual relationship. The State Council rulings characterize it as an institutional relationship 'because the purpose of the public office, which is closely connected to public interest, entails that it be not a contractual relationship which may allow the post to be an object of exploitation or bargaining, a situation which would seriously prejudice public interest' (Court of Administrative Justice ruling on 30 January 1995 and Challenge No. 955/11, session of 4 December 1966). Accordingly, the status of the public employee is a public legal status '... because when the employee performs the functions of his office he is working for the public good and serving public interest, and it was up to the legislature to organize such a relationship on the basis of rules and organizational regulations that would order it and govern it ...' (Challenge No. 1123/6, session of 8 April 1964).

This gives rise to the following results:

1. Promotion in a given post does not confer upon the incumbent any personal right to the said post but invests him with the public legal status related to the post.
2. The executive power may, in its capacity as the authority responsible for managing and organizing public establishments, amend employment laws and regulations at any time according to the requirements of public interest, without the employee acquiring any rights (Court of Administrative Justice, Ruling No. 96/9, session of 9 June 1949).

Among the judicial applications based on the characterization of this relationship is the ruling by the administrative courts that no category of employees holding a given academic degree may challenge a public administrative decision modifying the salary and grade allocated to such academic degree on the grounds that such assessment is not suitable for the degree they hold (Supreme Administrative Court, Challenge 406, session of 26 May 1949), and that the employee must submit to the particular legal requirements of his post which requires a physician employed full-time to devote all his time to his work. The fact that the administration did not object to his practicing his profession outside does not exempt him from being subjected to the organizational regulations (Supreme Administrative Court, Challenge No. 1700/10, session of 26 April 1957).

The Administrative Court of Justice also ruled that the employee is only entitled to the title of the post he actually occupies and that he cannot claim the title of a post which is not his, nor can he force the administrative authority to change the title of his post and to give it a particular name, since 'the naming of public posts is the exclusive prerogative of the administrative authority' (Ruling No. 1789/6, session of 10 November 1954).

The Supreme Administrative Court also ruled that the transfer of the worker from one place to another, at the same grade, is a mere change of location which falls within the scope of the administrative authority's discretionary power, which it exercises in accordance with the public interest (Challenge No. 403/46, session of 7 February 1988). The secondment of an employee to another post is also among the prerogatives of the administration to be exercised at its discretion in other than the abuse of power (Challenge No. 940/26, session of 29 January 1981).

The rulings of the administrative judiciary defined the basic components on which the notion of the public employee is based: he is to be legally appointed to undertake a permanent job in the service of a public utility managed by the state or by a public law person (Challenge No. 983/9, session of 19 May 1969). Thus the capacity of public employee does not change whether he is given a salary or not, or whether his salary is paid from the state's general budget or from an independent budget (*ibid*).

The Court of Administrative Justice excluded from the category of public employees an informer in narcotic cases who is paid a reward for his information (Ruling No. 269/1, session of 27 April 1948).

Moreover, the courts considered that reciters of the Quran were not public servants, their work being temporary, for a short period preceding the Friday prayers each week when they would recite a few verses (Ruling No. 7163/8, session of 16 August 1956).

On the other hand, the courts considered the head watchman to be a public employee, in as much as he is an essential element in the administrative system of the Egyptian village where he makes a major contribution to maintaining security as a public service; consequently he has to be considered as an investigation officer (Ruling No. 368/3, session of 22 February 1950).

In our chapter on administrative jurisdiction, we shall submit the solutions and principles established by administrative courts so as to determine the balance between the powers of the administration vis-à-vis the public employee, as a result of the institutional relationship connecting them, and the guarantees prescribed in this connection for the employee.

5.6. State Property

It is clear from the rulings of the Supreme Administrative Court that the latter has determined a criterion according to which public property is defined: 'Article 87 of the Civil Code lays down two conditions for public property: that it be immovable or movable property owned by the State or other public juristic persons such as towns and municipalities, and that it be allocated either in fact or by virtue of a law or decree (presidential decree) for purposes of public utility. Thus a general definition was established wherein

the legislature adopted the criterion of 'public utility', a criterion accepted by judges and jurists. This Article was discussed in draft form by the Civil Code Committee of the Senate, and it was first agreed that its provisions would not apply to some of what is considered public property under Article 9 of the old Civil Code, such as ponds and salty swamps directly connected to the sea and lakes belonging to the government but not clearly or specifically allocated to public use. However, it was finally decided that the general criterion in the new text was correct, and that the criterion of public utility set down in Article 87 of the new Civil Code was the same as that prescribed by Article 9 of the old Civil Code, proving that the legislature did not intend to limit the scope of public property designated in the old legislation but to retain it, provided that it was allocated directly to serve the public, whether the property was man-made or created by nature. It goes without saying that public property prepared by nature, with no human intervention, for public use, is the most salient form of public property. It is possible to qualify as such the Port Fouad salt lake subject of the contract over which this dispute has arisen, in as much as it is directly linked to the sea, owned by the state and allocated to public good and according to its description as given in the above-mentioned contract, it displays the characteristics of public property' (see the ruling of the Supreme Administrative Court on Challenge No. 2487/6, session of 19 May 1992).

On the basis of the above criterion, the court considered roads, streets, bridges, etc. allocated for purposes of public good, that is, for use by the public, to be public property. The allocation of public property to public good is effected either by a legal instrument, which is the official allocation by the competent authority, or in fact, which is when the road, bridge or waterway is actually used by people, animals and means of transportation for a period long enough for it to be allocated in fact to public use as evidenced by factual manifestations of allocation (see Supreme Administrative Court ruling on Challenge No. 1809/33, session of 9 March 1991).

Moreover, the court ruled that the palaces of the royal family in Egypt, which were confiscated in the name of the people, became the property of the state and hence public property (Challenge No. 100/27, session of 12 March 1983).

The court also ruled that votive offerings cease to be private property and become property destined for public good (Challenge No. 124/30, session of 14 March 1984).

It designated the land extending between the banks of the Nile as public property because of its connection with irrigation and drainage, and ruled that the administration was entitled to remove any trespass thereon by administrative means (Challenge No. 2356/27, session of 4 May 1985).

In establishing the characteristic of public property, the court decided that the administration must hold serious proof that the property is indeed public, whether the proof is supported by actual facts or by apparent use by the public (Challenge No. 14/34, session of 26 November 1988).

It ruled that the allocation of a road or bridge could be inferred from long usage by the public, or by allocation in fact of a privately owned property for a reasonable period of time; thus the property becomes public by virtue of its having been allocated to public good (Challenge No. 124/30, session of 14 March 1987).

In respect of the loss of public status by a property, the court adopted the same criterion, ruling that if a cemetery in a given village was abandoned as a burial ground for almost 55 years, it is no longer considered public property, even if the remains of the dead have not been disinterred (Challenge No. 1667/7, session of 15 June 1993).

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M. Rady

15. ADMINISTRATIVE JUSTICE

1. The Establishment of a System of Administrative Justice in Egypt

The establishment of a system of administrative justice in Egypt was accomplished in two stages. During the first stage, a unified judicial system was created, and in the second stage subsequent to the establishment of the State Council, a dual judicial system was introduced.

1.1. The First Stage: Before 1946 and Until the Establishment of the State Council

Before the establishment of the State Council, the unified judicial system alone prevailed in Egypt. In the absence of administrative courts, ordinary courts adjudicated in all disputes arising between individuals, between persons governed by the private law, or between such persons and the administration. In exercising control over administrative actions, courts applied the provisions of both the regulations organizing Mixed Courts issued in 1875, and the regulations organizing National Courts issued in 1883.

Mixed Courts were established in Egypt in response to the urge of foreign countries enjoying capitulations in Egypt, to provide guarantees to ensure the interests of their respective subjects. Those countries dictated their conditions, so that the jurisdiction of the Mixed Courts would apply to civil and commercial disputes between Egyptians and foreigners, or between foreigners of different nationalities, as well as to administrative disputes arising between the Egyptian administration and foreign nationals. Article 10 of the regulations organizing Mixed Courts stated the following: 'Disputes between the Government, the administrative bodies and divisions of his Royal Highness the Khedive and his family on the one hand, and foreign nationals on the other hand, are to be presented before the Mixed Courts'. Article 11 as amended by Article 43 of the amended regulations issued in the wake of the Treaty of Montreux abolishing the Capitulation system stated that 'Mixed Courts have no competent jurisdiction to deal directly or indirectly with acts of sovereignty, nor with matters concerning the validity of the application of Egyptian laws and regulations to foreigners, and have no competent jurisdiction in matters related to the title of public assets. However, while they have no right to interpret or stay execution of an administrative action, Mixed Courts have competent jurisdiction in the following areas:

1. Civil and commercial areas: in all disputes between foreign nationals and the Government over immovable or movable assets.

N. Bernard-Maugiron and B. Dupret (eds.), Egypt and Its Laws, 247–314.
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2. Civil rights claims filed by foreign nationals against the Government and arising from administrative procedures which contravene laws and regulations in force.

With regard to National Courts, Article 15 of their regulations contained a text similar to the above.

From this set of laws, it may be concluded that Mixed and National Courts were vested with the power to entertain an action in all kinds of disputes, including administrative disputes, but their power to act in individual administrative decisions did not exceed verifying their legality and ruling for indemnity in the event that violation of the laws or regulations, resulting in damages to individuals, was proven. But Mixed and National Courts had no power to interpret or stay execution of such decisions (or orders).

Hence, the above courts had no power to stay administrative actions, to issue a ruling for financial threats, or even to cancel administrative decisions contravening the law.

However, the said courts had the power to check administrative regulatory decisions, but only in order to verify their legality and to stop their execution if they were found to contravene the law. They had no power to cancel such decisions.

1.2. After the Establishment of the State Council in 1946 (the Dual Judicial System)

In 1939, the idea of establishing a State Council was gaining ground, and a bill was drafted and submitted to the Council of Ministers. But the bill remained ineffective until a member of the Council of Deputies submitted it in 1945. The bill was referred to the legislative committee on 16 April 1945. The government presented another bill to the Council of Deputies which was referred to the same committee on 29 April 1946, and promulgated as Law No. 112 of 1946 concerning the establishment of the Egyptian State Council. The law was amended four times by Law No. 9 of 1949, Law No. 165 of 1955, Law No. 55 of 1959 and, finally, by Law No. 47 of 1972 which is in force today.

Since the establishment of the State Council and until 1972, all State Council laws provided an exhaustive list of its functions, in other words, its functions were limited to those prescribed in the law establishing it. Nonetheless, the current Law No. 47 of 1972, has designated the judicial section of the State Council as the organ generally competent to rule on administrative disputes.

With the establishment of the State Council, Egypt came to have two independent judicial bodies, or a dual judicial system. With the abolition of the Mixed Courts in 1949, Egypt was left with its former ordinary courts, with their various levels of jurisdiction (to adjudicate in civil and commercial disputes between individuals and private legal persons) and the State Council to deal with administrative disputes.

2. The Jurisdiction of the State Council in Exercising Administrative Justice

In Law No. 112 of 1946 on the State Council, the Egyptian legislature enumerated the exclusive functions of the State Council. But when the said law was amended by the

current Law No. 47 of 1972, the latter added a paragraph to its Article 10, which placed all administrative disputes within the jurisdiction of the State Council. Hence, the State Council has become the judiciary body duly authorized, in principle, to adjudicate in administrative disputes, as confirmed by Article 172 of the Constitution.

Without prejudice to this principle of general competence, certain legal prescriptions have authorized other bodies to adjudicate in matters which are within the jurisdiction of the administrative judge. Certain laws have transferred State Council jurisdiction to other bodies, like Article 83 of the Law of 1972 on the Judicial Authority which entrusted the Supreme Judiciary Council with the power to decide on grievances raised by members of the judiciary and of the public prosecution in claims of promotions missed for reasons other than unsatisfactory performance. Also, the same Article relegates to the civil and commercial division of the Court of Cassation the power to adjudicate in appeals by members of the judiciary and of the public prosecution for changing decisions in matters related to their careers, except in cases of transfer and secondment. The same applies to Law No. 174 of 1957 amended by Law No. 232 of 1959 which shifted jurisdiction in administrative disputes related to members of the armed forces from the State Council to a special committee in the Ministry of War.

On the other hand, according to Article 11 of the Law on the State Council, State Council courts have no jurisdiction over acts of sovereignty, which are a special category of decisions of the executive power not subject to judicial control, such as decisions pertaining to the procedures governing the relationship between the Government on the one hand, and the People's Assembly or the Shura Council on the other; measures to safeguard the internal and external safety and security of the state; emergency and martial laws, and measures related to military affairs.

In determining the competent jurisdiction of the State Council, the legislature has drawn on the following criteria:

2.1. The Specific Criteria for Determining the Jurisdiction of the State Council

Article 10 of Law No. 47 of 1972 on the State Council states that State Council courts shall enjoy exclusive jurisdiction in the following matters:

1. Actions related to the elections of local bodies;
2. Disputes regarding salaries, remunerations and pensions due to civil servants or to their heirs;
3. Actions against final administrative decisions regarding appointment, promotions and increments of civil servants;
4. Actions related to administrative decisions of retirement, provisional release from duty or dismissal of civil servants without due disciplinary action;
5. Actions by individuals or bodies against final administrative decisions;
6. Actions against final decisions by administrative bodies in disputes about taxes and charges duly processed in accordance with the law regulating the review of such cases by the State Council;

7. Nationality claims;
8. Actions against final decisions issued by administrative bodies with judiciary jurisdiction, except for decisions issued by reconciliation and arbitration bodies in labor disputes, if the challenge is based on lack of jurisdiction, on a formal defect, a violation of laws or regulations or on a mistake in their application or interpretation;
9. Requests by civil servants to abrogate final decisions passed by disciplinary authorities;
10. Compensation actions against decisions referred to in the above paragraphs, be it in the main issue or on related matters;
11. Disputes related to the implementation of contracts for concession, public works, supplies or any other administrative contracts;
12. Disciplinary claims prescribed in that law;
13. Actions against penalties imposed on public sector employees according to the law.

The types of disputes prescribed by Article 10 may be listed as follows:

2.1.1. Actions Related to the Election of Local Bodies

These include contesting the polls in elections to local people's councils in governorates, districts, towns, quarters and villages regulated by Law No. 43 of 1974 on Local Government, amended by Law No. 145 of 1988. Challenges include contesting decisions rejecting candidacy, change of candidate's quality or registration of candidates on pretexts of non-qualification to run. They may also include objecting to voters, candidates, ballot count, election results, the constitution of election committees, or objection to rulings regarding the cancellation of membership of an elected member for having lost his qualification to run on a peasant or worker ticket, or cancellation of his membership on account of ceasing to qualify for running.

In cases of the kind cited above, the Court of Administrative Justice has full jurisdiction. Its powers include monitoring the election process from all aspects, checking the legality of all past, present and complementary activities for the election process, verifying dates, ascertaining the soundness of procedures for establishing election committees, the casting and sorting of votes, candidates' compliance with the requirements to run, and the declaration of the results. The court verifies the application of the law on a case-by-case basis.

2.1.2. Actions by Civil Servants

Article 10 of the State Council Law has allocated to the State Council, in its capacity of administrative judge, the review of disputes relating to civil servants (paragraphs 2, 3, 4, 5 and 9). The importance of such jurisdiction is reflected in the fact that requests by civil servants constitute the largest portion of the total disputes brought before the courts of the judiciary section of the State Council.

To show the limits of the jurisdiction of the State Council in civil servant claims, we should first define a 'civil servant'. According to jurisprudence and court decisions, a civil servant is any person entrusted with permanent responsibility in some public utility managed by a public juristic person. Thereupon, the jurisdiction of State Council courts includes claims by all civil servants (with the exception of those designated by the

legislature and mentioned above, such as judges, members of the public prosecution and army officers) whether they be employed by the central government or by a regional decentralized authority or utility, and regardless of their legal status, in terms of permanent or temporary tenure, salaried or unsalaried, such as village heads (*'umad*), sheikhs or officials authorized to register civil marriages (*ma'dhun*).

Disputes and claims of civil servants relate to the following:

(1) Salaries, remuneration and pension claims due to civil servants or their heirs. In terms of salaries, the amount is not limited to the basic salary determined in accordance with the civil servant's grade level, but also includes all the allowances and fringe benefits, material or moral, in cash or in kind, which are considered as necessarily appended to the basic salary, such as incentives, increments, allowance for work under conditions of hardship, overtime, allowances such as travel and subsistence, risk allowance, housing, clothes, representation, risk of contagious disease, travel allowance in cash for free transport by railway and compensation for inventions and artistic production.

Lastly, settlement claims based on laws concerning equating standards and duration of service, which are aimed at enhancing the civil servant's grade and, consequently, increasing his salary, are also included.

Remuneration claims include amounts due to the civil servant at retirement in accordance with the pension law, and amounts paid as compensation to encourage good performance.

Pension claims include fixing and calculating the amount of pension, or other kinds of dues such as pension payments on account of work injuries and insurance in case of illness as determined by the pension law.

(2) Actions related to appointment to office and promotions. Appointment is the entry into office of a civil servant, hence, disputes in this regard may stem from the conditions of appointment that may be at variance in nature or other circumstances, or from transfer to another job which may be considered an appointment to a new job. Disputes may also be caused by secondment which could virtually be tantamount to an appointment to the job seconded to.

In disputes over promotion, a missed promotion, or a work performance report which serves as the basis for promotions to higher grades can also be areas for contestation.

(3) Civil servants' actions against final decisions for retirement, provisional release from duty, or for transfer to other posts through non-disciplinary channels. Such actions may also call for abrogating decisions to terminate the service of civil servants who have reached the legal retirement age, who have resigned, who are physically unfit, pensioned off, dismissed, convicted of a criminal offence or who are serving a freedom-restricting penalty for committing a dishonorable act.

(4) Appeals against final decisions of disciplinary authorities. These include appeals to change a final decision of a disciplinary nature, whether issued by the superior disciplinary authority or by a disciplinary council, including final decisions for transfer of a civil servant if such action carries any punitive implication, for precautionary suspension from work, or for charging for damages incurred by error as a disciplinary measure.

It may be noted that administrative courts enjoy full jurisdiction in disputes over salaries, remunerations and pensions, but can only abrogate decisions of appointment, promotion, termination of services of civil servants, or decisions issued by disciplinary authorities.

2.1.3. Challenges by Individuals or Bodies to Abrogate Final Administrative Decisions

Though individuals and bodies, in this context, do not refer to civil servants, civil servants are not deprived of the right to contest decisions which compromise their interests, not in their capacity as civil servants but as normal individuals, for example to appeal a decision which expropriates their private property, or refuses them a license to carry a gun.

Such disputes deal with all defective administrative decisions which could be harmful to individuals. The word 'bodies' in this context means public and private juristic persons, who are therefore entitled to contest final administrative decisions in the same way as individuals or natural persons.

2.1.4. Actions against Decisions of Administrative Authorities with Judicial Jurisdiction

The State Council has competent jurisdiction to abrogate decisions of such authorities, since they are considered as administrative decisions in form. Such jurisdiction is prescribed in Article 10.8 of the State Council Law. Among such decisions are decisions of the Committee for the Settlement of Real Estate Debts, the Committee for Cemeteries, the Committee for addressing Contests to the Decisions of Improvement Committees, the Committee on the Violation of Canals and River Bank Regulations, etc. Decisions of authorities responsible for reconciliation and arbitration in labor disputes are excepted from the jurisdiction of the State Council.

2.1.5. Compensation Actions against Administrative Decisions

According to paragraph 10 of Article 10 of the State Council Law, the State Council can issue a ruling to indemnify the plaintiff for an amount of money proportional to the damage that has ensued from a defective administrative decision which the State Council is duly empowered to abrogate.

2.1.6. Disputes Arising from Administrative Contracts

Jurisdiction of the State Council applies to cases in which administrative contracts are at stake, meaning contracts concluded by a public legal person, related to the activity of a public utility and that contain exceptional conditions not customary in private law. State Council jurisdiction covers all aspects of the contractual relation, starting from the initial procedures for its establishment to the last results of the liquidation of all relations, rights and obligations arising thereunder. The jurisdiction of the State Council to review such disputes is absolute and comprehensive, covering all administrative contracts and their sequelae.

2.1.7. Disputes about Taxes and Charges

Law No. 165 of 1955 and all subsequent State Council Laws have asserted the competence of the State Council, sitting in its capacity of administrative judge, to review

actions against final administrative decisions issued by administrative bodies in disputes about taxes and charges. Such jurisdiction, however, was conditional on the promulgation of a law regulating the review of such disputes, but such a law has not been promulgated to date. Nevertheless, on the grounds that administrative courts are competent to review all administrative decisions, the State Council has been accustomed to exercise its jurisdiction over disputes related to taxes and charges, taking into consideration the fact that they can be considered as relying on explicit or implicit administrative decisions.

2.1.8. Nationality Claims

According to Article 10.7 of the State Council Law, the jurisdiction of the State Council is general and comprehensive in all disputes related to nationality. This applies to disputes where the main issue is: to prove a right to Egyptian nationality if such be denied by the state; actions asking for the abrogation of explicit or implicit decisions refusing to deliver a document ascertaining the right to Egyptian nationality of a foreign wife or of children begotten by a foreign wife; claims to abrogate a decision which deprives or withdraws Egyptian nationality; or claims for indemnity against administrative decisions related to nationality matters.

2.2. General Criterion

According to Article 10.14 of the law on the State Council, the State Council is competent to rule on 'other administrative disputes'.

Hence, the State Council is the authority duly endowed with jurisdiction to adjudicate in all administrative disputes unless stated otherwise by a special provision. The essence and characteristics of administrative disputes will be expounded at length below.

3. The Structure and Organization of the Judicial Section of the State Council

In accordance with Article 3 of Law No. 47 of 1972, the judicial section of the State Council consists of the following:

1. The Supreme Administrative Court;
2. The Court of Administrative Justice;
3. administrative courts;
4. disciplinary courts.

3.1. The Supreme Administrative Court

State Council Law No. 165 of 1955 has established the Supreme Administrative Court with competent jurisdiction to challenge specific decisions passed by the Court of Administrative Justice. Article 23 of Law No. 47 of 1972 has allowed for judgments passed by the Court of Administrative Justice and by the disciplinary courts to be brought before the Supreme

Administrative Court in the following cases:

1. if the decision contested is built on a breach of the law, or on an erroneous implementation or interpretation of the law;
2. if the judgment is invalid or if the invalidity of a procedural measure bears on the judgment;
3. if the decision is at variance with a precedent judgment having the force of res judicata, whether or not that precedent is mentioned in the plea.

Appeals to decisions of administrative courts may not be referred to the Supreme Administrative Court directly, but, rather, indirectly – through challenges of judgments of the Court of Administrative Justice sitting as an appeal body of the judgments of the administrative courts, provided the Head of the State Commissioners' Body files the challenge within 60 days from the issue of the decision, and in two cases only:

1. if the decision issued is at variance with the unbroken line of precedents of the Supreme Administrative Court;
2. if ruling on the decision appealed requires the adoption of a legal principle which that court has never adopted before (Article 23 of the law).

The Supreme Administrative Court is a single court located in Cairo. It is headed by the president of the State Council, and its decisions are issued by circuits each of which is composed of five counselors, and includes one or more circuits of three counselors to prepare the decisions.

3.2. The Court of Administrative Justice

The Court of Administrative Justice is also located in Cairo, but by virtue of a decision of the president of the State Council, circuits of the Court of Administrative Justice may be established in other governorates. The president of the State Council may rule that court hearings be held in any competent circuit in the capital of a governorate, if the court's jurisdiction extends to several governorates (Article 4).

The Court of Administrative Justice consists of a sufficient number of counselors and is headed by a vice-president of the State Council. Its decisions are issued by circuits of three counselors (Article 4). The court exercises a two-fold jurisdiction: first, it is a court of first instance in deciding matters specified in Article 10, with the exception of matters within the jurisdiction of administrative and disciplinary courts; thereupon it is considered as having the general competence in administrative disputes (Article 13). Second, it sits as a court of second degree (a court of appeal) to review decisions of administrative courts, brought before it by the concerned parties, or by the Head of the State Commissioners Body, within 60 days from the issue of the decision (Article 13).

3.3. Administrative Courts

The Egyptian legislature created administrative courts in Cairo and Alexandria and empowered the president of the State Council to establish more courts in other governorates.

Administrative courts hand down their rulings in circuits presided by an assistant counselor and composed of at least two assistant counselors.

The president of the State Council designates the jurisdiction of each court by a decision to this effect (Article 5). The court has competent jurisdiction to adjudicate in the following matters (Article 14):

(1) Actions by civil servants of the second and third level, and equivalent levels, to abrogate decisions as prescribed under paragraphs 3 and 4 of Article 10 of the State Council law, which are specifically, the final administrative decisions regarding the appointment to public office, promotion and increments, and decisions regarding the transfer of civil servants to retirement, provisional release from duty, or dismissal without due disciplinary action. The court is likewise competent to review claims for indemnity resulting from the above-mentioned decisions.

(2) Adjudication in disputes related to salaries, pensions and remunerations of servants of the said two levels (and others of an equal level) and their heirs.

(3) Disputes related to administrative contracts mentioned in paragraph 11 of Article 10 of the Law, provided the amount disputed does not exceed 500 pounds.

It is clear from the above that administrative courts have a specific or exceptional jurisdiction, while the Court of Administrative Justice enjoys a general jurisdiction in administrative matters.

3.4. Disciplinary Courts

Disciplinary courts consist of the following:

1. disciplinary courts for the highest administrative level and the equivalent;
2. disciplinary courts for first, second and third levels of civil servants and the equivalent (Article 7 of Law No. 47 of 1972).

The Egyptian legislature established disciplinary courts in Cairo and Alexandria, but empowered the president of the State Council to establish new courts in other governorates, specifying their number, location and competent jurisdiction, after having taken the opinion of the administrative parquet. The first category consists of disciplinary courts of one or more circuits, each circuit composed of three counselors. The second category of courts consists of circuits headed by at least an assistant counselor and two deputies as members. A decision of the president of the State Council determines the composition of the court (Article 8).

The jurisdiction of disciplinary courts is set out in Article 15. Disciplinary courts are of competent jurisdiction to review disciplinary actions in offenses committed by: (1) civil servants employed in the administrative organs of the state, of local government units, of public institutions, and companies for which the government guarantees a minimum of profits; (2) board members of labor unions duly established in accordance with the labor law, and board members duly elected in accordance with the provisions of Law No. 141 of 1963; (3) agents in private organizations and associations designated by a

presidential decree, who earn salaries of more than 15 pounds a month; and (4) disciplinary courts are competent to review challenges as specified under paragraphs 9 and 13 of Article 10. These are specifically requests by civil servants to abrogate final decisions passed by disciplinary authorities and actions by public sector employees against penalties inflicted on them.

4. Procedures

Article 3 of the law promulgating Law No. 47 of 1972 on the State Council states that: 'The procedures prescribed in this Law, or the provisions of the Code of Procedure if no provision can be found in the former, shall be applied in matters where no specific prescription exists, until a law governing the procedures for the judicial section is issued'.

In view of the fact that the law governing the procedures for the judicial section has not yet been promulgated, the administrative judge applies the procedural provisions found in the law on the State Council, and the provisions of the Code of Civil and Commercial Procedure to the extent that they do not conflict with the nature of administrative disputes. We will deal below with the procedures followed in legal actions before the Court of Administrative Justice and administrative courts, with the procedures followed in legal actions before the disciplinary courts and, lastly, the procedures followed in legal action before the Supreme Administrative Court.

4.1. Procedures before the Court of Administrative Justice and before Administrative Courts

4.1.1. Time Limits for Taking Legal Action to Abrogate a Decision

The Egyptian legislature has provided only a short period of time in which legal action against a decision must be initiated, after which time the right of action is denied and the decision becomes unappealable. The objective is to ensure the rapid restoration of stability to administrative conditions which would be compromised by the abrogation of decisions which further entail the modification of legal status. Such time limitation therefore serves public interest. Article 24 of the State Council Law prescribes a 60-day period for initiating legal action before the court, starting from the date of the publication of the decision to be abrogated in the official gazette or in a publication issued by public authorities, or from its notification to the person concerned.

According to the above mentioned text, the period for initiating proceedings to abrogate a decision will start as of the date of publication of the challenged decision in the official gazette or in publications issued by public authorities, or from the date of its notification to the person concerned. Expiry of the said period bars the chance to challenge the decision, and courts will declare these actions non-admissible ex officio. Yet, there are certain instances in which the time period for proceedings is not strictly applied, following a provision adopted by the legislature or upon a discretionary decision of the State

Council. Such cases may be summed up as follows:

(a) When the last day in the period falls on a public holiday, as prescribed in Article 88 of the Code of Procedure.
(b) In case of force majeure, in application of the general principle that the time limit does not apply to cases where a party is unable to claim its rights for reasons out of its control.
(c) In application of Article 24.2 of the State Council Law, presenting an administrative complaint will postpone the time period for initiating legal proceedings to abrogate a decision. The law prescribes that the complaint should be decided on within 60 days from the date of its submission to an administrative authority, which, in the event that no decision is taken, may be construed as an implicit decision of rejection of the complaint and, thereupon, the time period for proceedings to abrogate the implicit or explicit decision on the complaint shall be 60 days which will start from the date of the expiry of the said 60 days.
(d) Requesting judicial assistance for exemption from litigation fees, following a ruling of the State Council that considers such a request as tantamount to a complaint against the decision which, hence, entails suspending the time period for proceedings until a decision is issued on the request for judicial assistance.
(e) Initiating legal action before an incompetent court, since it indicates the plaintiff's determination to establish his rights. Consequently, the time period for proceedings is suspended until a decision of lack of competence is issued.

4.1.2. Lodging the Petition

A request is submitted following certain procedures that can be initiated by any of the two parties in a dispute, who decides to lodge a petition at the clerk department of the competent court. Thereupon, the administrative litigation is established, provided the petition respected the legal time limit and Article 25 of the State Council Law, stating that: 'The application is made to the clerk department of the competent court in the form of a petition duly signed by a lawyer registered in the list of lawyers recognized before that specific court'.

4.1.3. The Petition and its Appendices

A valid petition contains substantive information as prescribed in Article 25. It must first provide information about the names of the parties to the dispute, their qualities and addresses. The name of the plaintiff, his title, his occupation, the quality according to which he is acting (i.e. as an individual or as a civil servant), the name and quality of the person to whom the petition is addressed and the name of his representative must also be mentioned. The petition must also state clearly the object of the claim, the facts of the case and the legal points at stake, the date on which the complaint against the administrative decision was made, the content of the complaint and its outcome, since it is relevant to the acceptance of the petition if it was a mandatory complaint and to the extension of the time limit to initiate the legal action in the case of a voluntary complaint. The law

requires the petition to be appended by a summary or a photocopy of the protested decision, if it is within the means of the plaintiff to procure this.

According to Article 28 of the Law, the commissioner is entitled to propose a settlement to the dispute on the basis of the legal principles established by the Supreme Administrative Court, within a defined period. If the settlement takes place, it will be duly documented in a verbal process and signed by the parties to the dispute or their representatives. The verbal process in this case will have the force of a writ of execution, and the case will be deleted from the list of cases pending review. In the event that the dispute is not settled, when examining the case the court has the right to pass a sentence on the objector to the settlement, consisting of a fine not exceeding 20 Egyptian pounds. It may be granted to the other party. When the claim has been fully reviewed, the commissioner will lodge a report determining the facts of the case and the legal aspects invoked by the dispute, and giving his own substantiated opinion on the issue (Article 27 of the Law).

4.1.4. Adjudicating on the Dispute

Article 29 of the Law provides that the State Commissioners' Body undertakes, within three days from the day the report is lodged as prescribed in Article 27, to submit the file of the claim to the president of the court, to fix a date for the court hearing.

In Article 30, the law prescribes that the court Clerks' Department notifies the concerned parties of the date of the court hearing, provided that the date falls at least eight days from the notice, so as to enable the concerned parties, or their representatives, to appear before the court, to submit their testimony, their disclosures and any additional information and documents they may regard as relevant to support the defense, and to follow the procedures in court.

Articles 31 and 32 of the Law deal with the procedures to be followed by the court during its examination of the case. The court president may ask the concerned parties or the commissioner to provide any information he may see fit. In view of the fact that it is assumed that the concerned parties have been given the opportunity to express their views during the preliminary period, the law has barred the court from accepting any new claim, plea or document which should have been presented before the case was referred for hearing, unless the court is ascertained that the need to present a new claim, plea or document had arisen at a date subsequent to the referral of the case for hearing, or had been necessitated by the fact that they were unknown to the plaintiff when the case was referred for hearing. The law has permitted the court – if it so desires in its quest for justice – to accept new claims, pleas or documents, while sentencing the party charged with neglect to payment of a fine not exceeding 20 pounds. As to pleas related to public order, they can be filed at any time and the court may even raise them ex officio. In accordance with Article 32 of the Law, the court has the power to pursue any investigative procedure during the court hearing, if it deems it to be necessary, and is likewise empowered to delegate one of its members, or a member of the Commissioners' Body, for this purpose.

The judgment is passed in a public hearing in accordance with Article 33 of the Law.

4.2. Procedures before Disciplinary Courts

In Article 34 of State Council Law No. 47 of 1972, the Egyptian legislature established the procedure for pursuing disciplinary legal action before disciplinary courts. The administrative prosecution lodges the investigation documents, or the bill of indictment, with the Clerks' Department of the competent disciplinary court.

The bill of indictment contains the names of the civil servants indicted, their ranks, the offences they are charged with and the applicable legal provisions. Once the indictment is lodged, the court assumes competence to examine the case.

The president of the court fixes the date of the hearing within 15 days from the date the documents were lodged in the court Clerks' Department, provided the court Clerks' Department serves notice to the concerned parties of the bill of indictment, and of the date of the court hearing, within a week of the lodging of the documents.

Article 36 prescribes the competence of the court to administer the interrogation of agents brought for trial and to hear the testimony, given under oath, of witnesses from among agents and others. Witnesses are subject to the legal provisions related to failure of a witness to appear before court, refusal to give testimony or giving false testimony. In such instances, it is for the court to issue a verbal process of the actions of the witness, and to refer the same to the public prosecution if it deems such to be criminal behavior. In the event that a witness fails to appear in court, or refuses to give his testimony, he is an agent falling under its jurisdiction, and the disciplinary court has competent jurisdiction to sentence him by admonition or by some cut in his wages for a period not exceeding two months.

An agent facing trial has the right to defend himself. He is entitled to appear before the court or to solicit a lawyer, and to defend himself in writing or orally (Article 37). The legislature has obligated the courts to hand down their judgments expediently, and likewise obligated Ministers and competent chiefs to provide the court with information, files or any other documents requested. The courts have to issue their judgments within no more than two months from the date of the decision to bring the case to court (Article 35).

While the general principle is for the court to rule on the facts as reported in the bill of indictment (Article 40), yet, the legislature has made the two following exceptions:

(1) Article 40 of the State Council Law prescribes that a court may, ex officio or in response to a request by the administrative prosecution, deal with facts or offences other than those specified in the bill of indictment and pass judgment thereon, in the event that the elements of the offence are established by the documents, and provided the agent is granted sufficient time to prepare his defense if he is asked to do so.

(2) Article 41 of the State Council Law gives the court the right to take legal proceedings against other agents, besides those brought to justice, if it possesses serious elements indicating that they have committed offensive actions and provided they are granted sufficient time to prepare their defense. In such cases and on the request of the President of the Court, the entire issue is referred by the President of the State Council to another court circuit, in order to separate the accusatory and the adjudication authorities.

On the other hand, the court has the right to refer the fact contained in the bill of indictment or any other incident included in the investigation, to the public prosecution, if such are construed as elements in a criminal offence, while, at the same time, the court can issue its judgment on the disciplinary offence.

However, the disciplinary proceedings must be suspended if the judgment on its merits is pending on the sentence passed in the criminal offence, and until such sentence is passed.

4.3. Before the Supreme Administrative Court

Article 44 of State Council Law No. 47 of 1972, stipulates that the appeal against a judgment be submitted within 60 days from the date it was passed. It may be noted that the period is equal to that within which an action to abrogate an administrative decision may be submitted, except that in actions for abrogation, the 60 days start from the date of publication or of the notification of the decision, or the date when the knowledge of its existence can be ascertained, while, on the other hand, in the case of appeals against judgments before the Supreme Administrative Court, the period starts from the date of the judgment.

Proceedings before the Supreme Administrative Court are organized by Articles 44, 45, 46 and 48 of State Council Law No. 47 of 1972, as follows:

1. Appeals must be presented by the parties concerned in a report lodged with the Supreme Administrative Court Clerks' Department.
2. In addition to general information regarding the names, qualities and addresses of adversaries, the report must also include an account of the appealed judgment, its date of issue, the grounds on which the plaintiff is contesting and his demands.
3. The appeal must be initiated by a lawyer recognized before the Supreme Administrative Court.

The appeal must be presented accompanied by a deposit of a ten-pound bail as prescribed by law. Upon the lodging of the appeal, the clerk department of the court appends the file of the appealed judgment to the appeal, before referring it to the State Commissioners' Body (Article 45 of the Law). As soon as the said Body completes its report, which spells out its legal opinion, the appeal is reviewed by the Circuit for Appeals Examination, who may hear disclosures by the state commissioner and the concerned parties, if the circuit president deems it necessary (Article 46 of the Law).

The legislature has determined two courses for the appeal when examined by the Circuit for Appeals Examination:

(1) The circuit may, by consensus, decide that the appeal is non-admissible in form, or that it is invalid or unworthy of referral to the Supreme Administrative Court. In such cases, the circuit would rule to reject the appeal, and find it sufficient to note the decision or judgment in the verbal process of the court session, and briefly express the court opinion thereon.

(2) The circuit may consider the appeal worthy to be referred to the Supreme Administrative Court, after its due fulfillment of the requirements in terms of form, either because it is probable that the appeal will be accepted, or because adjudication in the case would require establishing a legal principle which the court has not established as yet. In this case, the court would rule to refer the case to the Supreme Administrative Court. Meanwhile, the court Clerks' Department would state this on the appeal report and would notify the concerned parties and the State Commissioners Body of this decision.

Article 48 of the State Council Law states that in the absence of special provisions regarding the Supreme Administrative Court, the principles, procedures and time periods prescribed in Chapter 3.1 of the law regarding the Court of Administrative Justice and administrative courts apply to the Supreme Administrative Court.

5. Principles and Provisions of Administrative Law

5.1. On the Determination of the State Council Jurisdiction as an Administrative Judicial Authority

We have mentioned above that Law No. 112 of 1946, which created the State Council, limited its judicial jurisdiction, while Law No. 47 of 1972 extended it to include all administrative disputes. The Court of Administrative Justice and the Supreme Administrative Court have both worked towards setting the boundaries between matters to be designated as being within the State Council jurisdiction in its capacity as an administrative judicial authority. The Supreme Administrative Court has also sought to define the nature and matter of administrative disputes to be reviewed by the State Council courts, and in which the court would decide either on its lack of competence or on its competence, and thereupon pass judgment in terms of the form and substance of the issue.

5.1.1. Acts of Sovereignty

In this respect, the Supreme Administrative Court has defined the acts of sovereignty mentioned in Article 11 of Law No. 47 of 1972 on the State Council, which states that 'State Council courts have no jurisdiction over claims related to acts of sovereignty'. The court considered Presidential Decree No. 239 of 1984, calling on the electorate to elect members of the People's Assembly, to be an act of sovereignty, on the grounds that acts exercised by the government in its capacity as the ruling authority and within its political function are acts of sovereignty falling outside the judicial jurisdiction of the State Council. They are distinct from acts exercised by the government in its capacity as an administrative authority, which are subject to judicial control. Thereupon, the court concluded that the presidential decree mentioned above had been issued by the president in his capacity as the ruling authority and was, hence, considered an act of sovereignty falling outside the judicial control of the State Council (Challenge No. 1939/30, session of 12 December 1987).

The court has also made it clear that a decree declaring a state of emergency is an act of sovereignty, issued by the government in its capacity as a ruling authority and not only

an administrative one, since it is a supreme measure to defend the integrity of the state, to safeguard its national security and to maintain public order. Yet, the measures taken for the implementation of a state of emergency, whether they be individual or regulatory measures, must be taken within the limits of the law and must abide by its controls. Consequently, they are not outside judicial control, and not beyond the scope of administrative decisions which are subject to the judicial jurisdiction of the State Council. The administrative courts, therefore, were duly competent to examine legal actions to abrogate the decision of the Minister of Finance to transfer the plaintiff to the governorate of Cairo for security reasons under the emergency laws, even though the court whose judgment was being appealed had considered the decision to be an act of sovereignty (Challenge No. 1439/31, session of 25 June 1989).

The court has stated that the decision declaring the results of a referendum was the final procedure in the amendment of the Constitution, and that the implementation of the constitutional amendments was linked with, and inseparable from, that declaration, in the sense that it is a public report on the referendum. As for the declaration of the results of the referendum, the constitutional ratification is considered effective, and thereupon any violation of the referendum declaration, in terms of its integrity, entails, by necessity, a violation of the amended constitutional provisions themselves, an obstruction to their execution. Consequently, the point raised by the plaintiff's appeal regarding the procedures for the promulgation or amendment of constitutions, was to be considered one of the matters which are beyond the jurisdiction of the administrative judiciary to review or comment (Challenge No. 675/30, session of 11 January 1986).

5.1.2. Legislative Restrictions on the State Council Jurisdiction

With respect to the matters which have been considered by the legislature to be outside the State Council's jurisdiction, by special prescriptions, the court has issued a ruling on the lack of competence of the State Council to review appeals to decisions in cases of denial of licenses for the publication of newspapers. In accordance with Article 15 of Law No. 148 of 1980 concerning the Press, the Court of Values is the competent court specifically established to exercise certain powers, including the review of appeals related to the denial of licenses to newspapers (Challenge No. 1605/33, session of 11 June 1988).

The court has also denied the State Council's jurisdiction, as an administrative judicial authority, to examine appeals from decisions of the Committee on Derelict Buildings, on actions needed to protect lives and property, whether by ordering complete or partial demolition, reinforcement, restoration or maintenance, as prescribed in Article 57 of the Law concerning the lease of premises and the organization of the relationship between landlord and tenant No. 49 of 1977, the jurisdiction over which has been assigned to the competent court of first instance (Challenges No. 317, 326/27, session of 25 January 1986).

The Supreme Administrative Court has ruled that State Council courts have no jurisdiction in administrative disputes involving military personnel, which fall within the jurisdiction of judicial committees for military officers, as regulated by Law No. 71 of 1975 (Challenge No. 437/20, session of 4 December 1977).

Meanwhile, the Supreme Administrative Court ruled that State Council courts do have competent jurisdiction to adjudicate in actions for compensation following the arrest of military officers on political charges, on grounds that such administrative disputes are not related to any aspect of their functions as regulated by the laws related to the service of officers (Challenge No. 1569/31, session of 29 October 1988).

5.1.3. Actions undertaken by other State's Authorities

With respect to actions undertaken by other authorities in the state, the Supreme Administrative Court adjudicated that military courts are an independent judicial authority, the same as administrative and ordinary judicial authorities. Consequently, the State Council has no jurisdiction to comment on military court judgments, nor has it jurisdiction to examine disputes over executive proceedings related thereto. The dispute in question was about an order to arrest and detain the plaintiff in implementation of a Supreme Military Court order (Challenge No. 1977/33, session of 7 January 1989).

The court likewise ruled that the State Council had no jurisdiction over appeals against decisions of customs officers to seize publications banned from entering the country, on grounds that such decisions are measures taken within the judicial police jurisdiction conferred on investigation officers by virtue of Customs Law No. 66 of 1963 and the Code of Criminal Procedure (Challenge No. 1155/30, session of 8 March 1986).

The court has ruled that the jurisdiction granted to the People's Assembly to decide on the validity of membership in the Assembly for its members, in accordance with Article 93 of the Constitution, applies to the validity of the elections as such. The underlying concept is that decisions in all that pertains to the will of the people as expressed in the elections, must be left to the People's Assembly as being the embodiment of that will, while appeals to a decision of the administration on any stage of the elections, in exercise of its competent jurisdiction as an administrative authority monitoring the process of elections, or declaring its results, remains within the competent jurisdiction of the State Council courts (Challenge No. 3096/30, session of 25 May 1985).

5.1.4. Professional Disputes

With regard to jurisdiction to examine professional disputes, the Supreme Administrative Court ruled that the administrative judge is competent to rule in administrative disputes involving civil servants only if such quality is proven. The case in question was one in which the plaintiff was a teacher employed in an auxiliary private school, in which the employees were bound to the owner of the school by a contract, and not bound to the ministry by any regulation; thus the plaintiff was not a civil servant, and the dispute was outside the jurisdiction of the State Council courts (Challenge No. 839/9, session of 27 March 1968).

Hence, a dispute between an agent and a public sector company which employs him, about his right to a promotion to grade one, is not more than an employer–employee dispute in which the competent jurisdiction for the appeal is with the ordinary courts rather than with administrative courts (Challenge No. 278/16, session of 19 June 1977).

5.1.5. Contracts

In disputes arising from administrative contracts, the administrative judge has established that an administrative contract is a contract concluded by a public juristic person with the purpose of administering a public utility, in which the intention of the administration to follow the methods of public law is evident. Hence, the Supreme Administrative Court asserted that the State Council had competent jurisdiction in disputes arising from contracts concluded by the Public Land Reform Authority to supply calves with the aim of expanding the cultivated area, since its jurisdiction included exceptional conditions which are not customary in private law contracts (Challenge No. 2184/29, session of 21 February 1981).

At the same time, the administrative judge ruled that the State Council was not a court of competent jurisdiction in a case where the city council in Hurghada was accused of exploiting the residences of a certain company, during the war of attrition, by renting them to its employees, on the grounds that the contract did not include any exceptional conditions (Challenge No. 1278/28, session of 11 February 1984).

The Supreme Administrative Court explained that the fact that the contract pertains to a public utility does not necessarily imply that it is an administrative contract, since it should also contain exceptional conditions, including the condition which entitles the administration to amend the obligations of the other party, and to terminate the contract according to its own subjective will, without the need to secure the approval of the other party, as well as the administration's right to abrogate the mean of execution, to impose penalties on the other party in the event of failure to honor his commitments, without the need to prove ensuing harm. If the contract is free from exceptional conditions, it necessarily falls within the competent jurisdiction of the provisions of private law, and the dispute is removed from the competence of the State Council (Challenge No. 3128/35, session of 24 January 1995).

The same applies to public sector companies, which are not public legal persons. Their actions are not considered as an exercise of public authority and the contracts they conclude with non-public law persons are not considered administrative contracts. The disputes relating to them are under the competent jurisdiction of civil courts (Challenge No. 708/33, session of 11 June 1988).

With regard to private property of the state, the Supreme Administrative Court ruled that the sale of property that is privately owned by the state, is considered to be a contract subject to private law as long as the state has acted in the same manner as private individuals with their own property and in accordance with the civil law. The dispute would, therefore, be removed from the jurisdiction of the administrative courts (Challenge No. 559/11, session of 24 February 1968).

5.1.6. Administrative Disputes

With respect to the general jurisdiction over administrative disputes, the mere stipulation submitting all administrative disputes to State Council jurisdiction as stated in paragraph 14 of Article 10 of the State Council Law does not necessarily imply that all administrative disputes to which the administration is party fall within the jurisdiction of the

administrative judge. However, the essence of the administrative disputes must be determined. The Supreme Administrative Court has ruled in this respect by setting the following requirements to qualify a dispute as an administrative dispute:

(1) to claim a right ensuing from the administration's operation of the public utility, in accordance with public law and procedures;
(2) the aspect of public authority must be clearly reflected;
(3) public law must be the rightful law to be applied to the dispute.

An example of this is as follows: since the dispute raised by the plaintiff is related to the legality of procedures decided by the Faculty board, which provides for the distribution of public international law courses among faculty members, and since the other party in the dispute is the University of Cairo, which is a public legal person, responsible for a public utility for university education, and since the Faculty board and the Department council fall under administrative jurisdiction by virtue of the law, therefore the dispute is an administrative dispute which falls within the competent administrative jurisdiction of the State Council (Challenge No. 2064/30, session of 24 November 1985).

In determining administrative disputes, the court ruled that the State Council enjoys a general jurisdiction in administrative disputes and in disputes arising therefrom, concerning the execution of administrative judgments, on the principle that the judge of the main issue is the judge of accessory matters. Hence, the judge in charge of the enforcement of judgments in the ordinary courts is not competent to examine disputes related to the laws of administrative justice. The court rejected the plea on the basis that the court had no competent jurisdiction, and affirmed the jurisdiction of administrative courts to adjudicate in the dispute.

The Supreme Administrative Court has recently ruled that the introduction of data into a criminal record by a competent administrative authority, in accordance with the provisions of the law, is not performed without its will or reason, and that therefore such dispute is an administrative dispute for which administrative courts have competent jurisdiction (Challenge No. 1904/36, session of 20 July 1996). This ruling disagrees with the position adopted so far by administrative courts regarding the lack of competence of the State Council in disputes over material acts, and contradicts its previous judgment issued on 24 November 1985 which specified that the administration had to appear as a public authority for the dispute to be administrative.

5.2. Actions for the Abrogation of Decisions

5.2.1. Conditions for the Admissibility of Appeals

The provisions of State Council Law No. 47 of 1972 indicate that State Council courts are empowered with a twofold judicial jurisdiction:

(1) jurisdiction to abrogate final administrative decisions which contravene the law;

(2) full judicial jurisdiction in claims for indemnity, settlement, nationality, administrative contracts, etc.

With respect to actions for the abrogation of administrative decisions, and in accordance with precedents established by the administrative judge, the action must meet certain requirements to be declared admissible by the courts. The court would therefore duly examine such compliance, before even looking into the substance of the case, since the court cannot examine the case without first ascertaining that all the requirements are met. In the event of non-compliance, the court would rule to reject the case without looking into it further (Challenge No. 1006/6, session of 25 March 1962).

The State Council courts have specified the following requirements as conditions for admissibility of actions against administrative decisions:

1. conditions related to the administrative decision to be abrogated;
2. the condition pertaining to the interest served;
3. the condition of time limit;
4. the condition of having submitted a previous complaint to the administrative authority which issued the decision or to its superior authority.

The judicial principles established by the administrative judge regarding the requirements for declaring actions admissible are as follows:

5.2.1.1. The Administrative Decision to be Abrogated

It is an established fact that the litigation in an action for abrogation is an action in rem regarding the administrative decision itself, with the aim of determining its legality. Thereupon, the action must be directed towards an administrative decision. The administrative judge has determined the legal nature and specific characteristics of administrative decisions to be accepted for examination, by specifying the requirements for admissibility, which, in case of non-compliance, lead to the rejection of the action.

The requirements may be summed up as follows:

(1) It must be an administrative decision. An administrative decision is defined in judicial terms and in jurisprudence as an expression by an administrative authority, of its subjective will to induce a certain legal effect – when it is legally possible and feasible – by virtue of the powers conferred upon it by laws and regulations, being motivated by the desire to serve public interest. Consequently, an administrative decision – in terms of its nature – is a single unilateral, legal act undertaken as the expression of the will of the administration alone (Challenge No. 1080/7, session of 5 April 1964). Consequently, no action may be addressed against material acts or executive procedures.

In this respect, the Supreme Administrative Court has distinguished between administrative decisions which could become subject to actions, and other administrative actions which cannot, depending on the source of the personal right claimed by the plaintiff. If he is claiming a right established for him in a general regulatory rule, be it a law or a regulation, the claim will be a claim for entitlement of a right, and any orders or dispositions issued by the administration in such a case will be nothing more than executive

actions which only aim at the application of the law to the case of the employee. Such measures are not qualified as administrative decisions, but merely as executive procedures or material actions. On the other hand, if the employee's position is not based on a general regulatory rule, but necessitated the issuance of a special decision which entitled the employee to such a legal position, the claim will be considered an action to abrogate a decision (Challenge No. 947/8, session of 26 January 1963).

A decision to demolish a building in execution of a sentence in a criminal case is not an administrative decision; it is simply an executive measure of a sentence in a criminal case and, consequently, the decision cannot be subject to appeal for abrogation (Challenge No. 807/31, session of 4 July 1986).

Material acts are not subject to appeals. An administrative decision is distinguished from a material act in which case the administration does not willfully seek to induce legal consequences – even though the law may provide for such – in view of the fact that such consequences are considered the result of the direct will of the legislature and not an outcome of the subjective will of the administration (Challenge No. 930/11, session of 24 February 1968). Among such material acts is the registration of documents in the Public Real Estate Registry department, where the department merely performs material acts which are void of what constitutes an administration decision (Challenge No. 240/13, session of 21 January 1969).

Also the administration may execute a legal judgment for a parent to see a child by deciding that the visitation shall be at the police station, and not in the father's house, which again is a material act rather than an administrative decision (Ruling by the Court of Administrative Justice No. 2802/9, session of 11 February 1958).

In a recent ruling, the Supreme Administrative Court established that entering data in the criminal record by a competent administrative authority, in accordance with the provisions of law, is a material act which does not engage its will or reason. Nevertheless, the court ruled that, regardless of the absence of an administrative decision in this case, it is no more than an administrative dispute for which competent jurisdiction is with the administrative justice (Challenge No. 1904/36, session of 20 July 1996).

Administrative contracts are not administrative decisions since they are not a unilateral act, but engage the wills of two parties. However, separable administrative decisions which contribute to the conclusion of a contract, such as the decisions of tender committee deciding on bids, may be appealed.

On the other hand, the decision must be issued by the administration in its capacity as a public authority, and not in its capacity as a private legal person. Hence, if by virtue of its subject, the decision deals with a private law matter, or with the administration of a private juristic person, such as in the redemption of a *waqf* or charitable endowment, administered by the Ministry of Waqfs (Endowment) of a personal right, it is not considered an administrative decision within the competent jurisdiction of administrative justice (Challenge No. 1565/10, session of 22 June 1968).

(2) The decision must be issued by a national administrative authority. Basically, actions for abrogation are a means for judicial control over the acts and operations of national administrative authorities, not foreign authorities. Consequently, no appeals can

be made against decisions of foreign or international authorities, nor are they acceptable against decisions of national employees working for foreign organizations, even if such organizations have their headquarters or branches located in Egypt. In application of this principle, the Supreme Administrative Court ruled that since the Arab University of Beirut is a private sector educational institution, established by Al Bir Wal Ihsan charitable society in Lebanon, domiciled in the city of Beirut, the effects of the decisions issued by the University of Alexandria fall back to the University of Beirut, since they apply to students at that university. Thereupon, they do not express the subjective binding will of the University of Alexandria and, consequently, the decisions thereof are not considered Egyptian administrative decisions (Ruling issued on 28 May 1977 to Challenge No. 525/22).

With respect to the decisions of national public legal persons, and whether they are considered administrative decisions or not, the Supreme Administrative Court ruled, regarding professional syndicates, such as the Bar Association and the Doctors' Syndicate, that the organization of such professions, which are public utilities, is within the jurisdiction of the state which is responsible for safeguarding public interests and public utilities. Consequently, if the state deems it fit to entrust such organization to the members of the professions, on the understanding that they are more capable of so doing, the state will have conferred on them a share of public authority to enable them to fulfill their task, while the state maintains its right to supervise and control them in the interest of the public. However, this has not altered the legal status of such professional syndicates as public utilities. In fact, the provisions of Law No. 62 for 1949 concerning the establishment of the Doctors' Syndicate, has given it an independent juristic personality and granted certain rights which are specific to public administrative authorities. These are: the right to monopolize the profession which is a public utility; the right to fix financial charges in the form of mandatory subscriptions; the authority to discipline its members; and the right to issue internal regulations as well as regulations concerning the ethics of the profession. The syndicate is, therefore, one of the administrative persons which are public legal persons, and its decisions, whether on disciplinary matters issued by its competent bodies or by its board on matters related to the registration or other matters, are administrative decisions subject to action for abrogation (Challenge No. 608/3, session of 12 April 1958).

In addition to professional syndicates, the Court of Administrative Justice established that decisions issued by the Supreme Sufi Council, concerning the appointment of leaders of Sufi orders, are administrative decisions subject to appeal on grounds that the Supreme Sufi Council is a public legal person (Ruling No. 421/4, session of 17 November 1954). The court also asserted its competent jurisdiction in a case initiated by a priest against the chief of the Public Anglican Milli Council to abrogate a decision forbidding the use of the title of Anglican Church to the Council of the Anglican Pentecostal Church of God (Ruling No. 3450/43 on 16 July 1991), and stated that the church councils must be considered as public legal persons managing public utilities in the state, by drawing on certain powers of the public authority and, therefore, there was nothing to prevent decisions of church councils from being regarded as administrative decisions (Ruling No. 3282/43, session of 15 January 1991).

(3) The decision must be final. The legislature has specified, in Article 10 of State Council Law No. 47 of 1972, that the decision to be appealed must be a final decision. The administrative judge has construed the finality of a decision to mean that the decision has been issued by an authority with competent jurisdiction and that no further ratification by a higher authority is needed. It also asserted that the fact that the decision may be subject to a complaint does not compromise its finality (Court of Administrative Justice, Ruling No. 1523/6, session of 7 January 1954). The Supreme Administrative Court confirmed this principle and added that to establish the finality of an administrative decision, it is not enough that it be issued by an authority with competent jurisdiction, but its author must be intending it to achieve its legal effect promptly and directly upon issuance and there should be no administrative authority with the power to comment thereon, for, if so, it would be a proposal or an opinion which would not produce the legal effect ensuing from a final administrative decision (Challenge No. 234/9, session of 20 January 1966).

Thereupon, the Supreme Administrative Court has ruled that the task of the committee of marriage registrars (or *ma'dhun*) is merely a preparatory task for the Minister of Justice, that it is limited to the recommendation of candidates to become marriage registrars and that the outcome of the committee's effort is not an administrative decision for the appointment of marriage registrars, since the administrative decision in this respect is the decision of the Minister of Justice which establishes the legal position for appointment to such post (Challenge No. 3/5, session of 7 February 1959).

The Court of Administrative Justice ruled that the decision of the purging committee, suggesting the resignation of the plaintiff from his position to occupy a lower one, is not an administrative decision, but an advisory and preparatory decision, and, as such, cannot be appealed (Ruling No. 3374/7, session of 8 December 1955). All procedures preceding the military conscription decision are preparatory procedures which may not be appealed: only the final decision of military conscription may be appealed (Ruling No. 998/13, session of 14 June 1960.

(4) The decision must have an effect on the legal position of the plaintiff. For an appeal against a final decision to be admissible, the administrative decision in question must have an effect on the legal position of the plaintiff, whether in terms of establishing, amending or abolishing such a legal position. Unless such an effect is entailed, the decision is not considered an administrative decision. Thereupon, the Court of Administrative Justice dismissed an allegation that a statement published by a Minister in the press constituted a public defamation of the persons pensioned off, including the plaintiff, on the grounds that it was not an administrative decision (Challenge No. 41/2, session of 7 August 1948).

The Supreme Administrative Court established that the comments made by superiors to their subordinates regarding their performance, which are kept in an employee's file, are mere opinions to guide the employee in the performance of his duties. They are not meant to assess his efficiency, hence are not open to appeal as an administrative decision (Challenge 514/11, session of 23 December 1965).

In addition, the State Council established that internal instructions, orders, and departmental circulars which aim at explaining laws and legislation, and advise on methods for their implementation, are not administrative decisions open to appeal for abrogation. Those

internal instructions, orders and departmental circulars are originally addressed to the employees who are committed to abide by them and apply them in their work, but have no effect on individuals, nor do they entail legal consequences, such as orders in schools prohibiting students from wearing certain badges, or carrying tools which could be used in school fights. That is why the Court of Administrative Justice established that instructions issued by the Ministry of Manpower, concerning the election of staff representatives for boards of directors of projects, are only internal instructions and directives and do not attain the level of administrative decisions (Challenge No. 8441/45, session of 21 November 1991).

The Supreme Administrative Court ruled that the decision of the committee of the Radio and Television Union to screen certain features, (the riddles) on TV during Ramadan are internal instructions and directives, addressed to staff members responsible for preparing programmes to include such features in the array of programmes approved for screening. Therefore, there is no final administrative decision to be appealed and the action is not admissible (Challenge No. 3004/34, session of 28 February 1993).

5.2.1.2. The Condition of a Vested Interest

It is established that an action for abrogation would only be accepted if the plaintiff has a vested interest. Article 12 of the State Council law specifies that: 'The following actions are not acceptable (1) Actions where the plaintiff has no personal vested interest'. This condition reveals the legal nature of the action as being an action in rem against the administrative decision itself provided by the law, to defend the principle of legality. For this reason, it has imposed the condition that the plaintiff must have a personal interest, as opposed to full judicial actions that aim to protect the personal rights of a concerned party, and in which the condition of a vested interest of the plaintiff, must be substantiated by the violation of a right.

The administrative judge has determined the characteristics of the vested interest required to declare an action for abrogation admissible. The Supreme Administrative Court has defined it by ruling that the plaintiff does not himself have to be the owner of a right violated by the decision appealed, but that it is enough for him to have a direct moral or material personal interest in requesting the abrogation of the decision, for instance if he is in a legal position where he may be directly affected by the decision (Challenge No. 1121/10, session of 23 March 1968).

Thereupon, the court ruled that the plaintiff had a vested interest to appeal against a decision by the President of the Republic granting a vice-president of the State Council a national award of the first order, on the grounds that when the award was granted, this vice-president was chairing a circuit before which the plaintiff, in his capacity as lawyer, was engaged in litigation against the President of the Republic in his official capacity. Thus, the plaintiff had an interest in appealing against the decision, to check its integrity and objectivity (Challenge No. 691/27, session of 26 November 1983).

The Court of Administrative Justice ruled that a plaintiff had a direct personal interest in appealing against a decision to cancel approval for building a complex on a plot of land he had donated for this purpose, in his capacity as an employee, as village head and

as the donor of the land. It was even enough for the action to be deemed admissible to put forward the fact that, as a citizen resident in the village, the plaintiff has a personal interest in each decision taken for the welfare of the village and its residents (Challenge No. 330/6, session of 7 November 1988).

Since the respondent in an action was an active member of the Zamalek club, he had a capacity and interest in appealing the decision of the Supreme Council for Youth and Sports entailing amendments to the statutes of the sports clubs (Challenge No. 1294/26, session of 26 January 1991).

The Supreme Administrative Court has ruled that the requirement of a vested interest in appealing the decision must be present as from the initiation of proceedings and until the final judgment is passed. The court concluded that the plaintiff no longer had any interest in pursuing an action for abrogation of a decision for his transfer, after the disciplinary court had passed judgment for his dismissal, which he did not appeal. Thus, the appeal was deemed inadmissible because the interest had ceased to exist (Challenge No. 2555/34, session of 18 February 1995).

The court also ruled that since the plaintiff's demands aimed at abrogating the decision of the State Council to refrain from paying his pension entitlement, on the grounds that a decision had been issued terminating his service; and since the State Council president had issued a decision considering the plaintiff as not having resigned, which meant withdrawing the decision to terminate his service and considering the latter to have continued uninterruptedly; thus the plaintiff had no interest anymore, and this lack of interest justified the rejection of his action (Challenge No. 1614/33, session of 21 December 1994).

Lastly, the plea of non-admissibility of an action for lack of interest may be raised at any level of litigation, even before the Supreme Administrative Court for the first time. It is up to the court, even if such a plea is not raised, to declare ex officio a case inadmissible for lack of interest of the plaintiff in challenging the administrative decision (Challenge No. 210/25, session of 5 December 1981).

5.2.1.3. The Condition of the Time Limit

The Supreme Administrative Court has established the following rules for the time limit for filing an action:

(1) The time limit for an action to abrogate an administrative decision applies only to decisions that can be abrogated. The time limit is not applicable to actions against non-existent decisions or to those that can be appealed at any time and do not acquire immnity with the lapse of time. Among such decisions are decisions involving the usurpation of authority, which are reduced to material acts with a limited legal effect (Challenges No. 35, 36/2, session of 14 January 1956).

Also, the time limit for an action in abrogation of an administrative decision issued in implementation of the law does not apply if the legal position has been created directly as a result of the law. The action for settlement, therefore, is not subject to the said time limit (Challenge No. 874/7, session of 24 May 1964).

The time limit does not apply to appeals against negative administrative decisions refusing to issue a specific decision. An appeal may be filed against them at any time, regardless of the time period, unlike the case of temporary decisions which are bound by time periods (Challenge No. 115/2, session of 20 May 1961).

(2) With respect to the beginning of the time limit for abrogation of decisions, the court has distinguished between publication and notification. Despite the fact that the legislature has set the date for filing the appeal as starting either from the date of the publication of the decision, or from the date of its notification to the concerned party, thus placing publication and notification on an equal footing in terms of their function in ascertaining that the concerned party has been duly informed of the decision, equality between the two is still not complete. Serving notification is still the principle means, publication is the exception, so that publication is not deemed sufficient when notification is possible. Thus the judge has endeavored to specify the cases in which it is possible to use publication, and cases in which notification must be used. In this regard, it has distinguished between regulatory administrative decisions and individual administrative decisions. In respect of the former, by virtue of their generality and frequency, it is impossible to reach all of those concerned by way of notification. While in the latter, which are directed to specific individuals previously known to the administration, there may be no reason to be satisfied with publication, and notification becomes imperative (Challenge No. 201/18, session of 24 April 1977).

(3) The administrative judge added a third means to notification and publication, which is stipulated in the State Council law, namely, ascertained knowledge. Ascertained knowledge is a substitute for notification and publication. It must be characterized by a level of certainty of the underlying meaning and contents of the decision, beyond conjectural and hypothetical levels. It must comprise all the items which reveal the legal position vis-à-vis the administrative decision and upon which the plaintiff is able to determine the course of his appeal. The time period to appeal is calculated as of the date on which the comprehensive ascertained knowledge is proven to have occurred (Challenge No. 68/1, session of 28 January 1956).

Proving the occurrence of ascertained knowledge is the responsibility of the administration. The proof may be built on any fact or presumption without limitation of its means. It is for the administrative judge to verify the occurrence of such ascertained knowledge, and to estimate its partiality or adequacy in the light of documents and circumstances (Challenge No. 1689/34, session of 9 June 1991).

Thereupon, the knowledge of the plaintiff's colleagues in various areas of the appealed decision is not a decisive proof of the plaintiff's ascertained knowledge of the meaning and contents of the decision, and cannot serve as a substitute for publication or notification as the starting date from which the time period for appeal will be calculated (Challenge No. 1010/34, session of 11 April 1992).

Similarly, depositing the entitlements of the plaintiff at the bank is no reason for the plaintiff to derive ascertained knowledge – either conjectural or hypothetical – that he has been dismissed, nor to comprehend all the underlying meanings and contents enabling

him, on the basis of such knowledge, to determine his legal position and initiate legal action (Challenge No. 1049/25, session of 22 December 1985).

The fact that the plaintiff is employed in the personnel department is not sufficient evidence of his knowledge that he had been overlooked for promotion on an elective basis. Consequently, in the event that the administrative authority fails to provide proof that the contested decision has been published, or that the plaintiff had ascertained knowledge of it, or that he has been notified of it, the plea of non-admissibility of the case on grounds of form must be rejected (Challenge No. 582/16, session of 19 January 1975).

Arresting a person is not sufficient to prove his ascertained knowledge of the decision to arrest him. Ascertained knowledge must be comprehensive of the contents of the decision (Challenge No. 1720/6, session of 23 March 1963).

The court established that the mere fact that an agent breaks from his work for four years, after having been warned of the termination of his service in case he failed to return, does not prove an ascertained knowledge of the decision terminating his service (Challenge No. 1521/37, session of 8 December 1992).

(4) However, in a recent judgment, the Supreme Administrative Court has recognized publication in the official gazette, rather than ascertained knowledge, as the date from which the time period for appeal starts running, and has taken into consideration the date of the publication of a presidential decree to appoint a number of assistant deputies to the State Council as the date from which the time limit started running, although the plaintiff claimed his lack of ascertained knowledge of the decision existed until well after the date of publication (Challenge No. 57/34, session of 28 January 1995).

5.2.1.4. The Condition of Mandatory Complaint

Article 12 of Law No. 47 of 1972 concerning the State Council, states that: 'The following requests shall not be accepted: (...) Appeals made directly against final administrative decisions stipulated in items 3, 4 and 9 of Article 10, without having previously presented a complaint to the administrative authority which issued the decision or to its superior authority, and without abiding by the time for deciding on the complaint'.

The decisions concerned are the following:

- final administrative decisions regarding appointment, promotions and increments of civil servants;
- final decisions of disciplinary authorities;
- administrative decisions of retirement, provisional release from duty or dismissal of civil servants without due disciplinary action.

In view of the foregoing, actions for abrogation of the above administrative decisions must not be initiated directly, but must be preceded by a complaint addressed to the authority that issued the decision, or to its superior authority. The plaintiff is mandated to pursue the procedures for making a complaint and to await the time period determined for adjudication, prior to filing the action, otherwise the latter will be deemed non-admissible (Challenge No. 1518/2, session of 14 December 1957).

The object of this condition as disclosed by the legislature in the explanatory notes to Law No. 165 of 1955 concerning the State Council, is: 'to reduce as much as possible the number of legal cases, and to pursue administrative justice through an easier procedure for the people, by stopping such disputes in their earlier stages, in cases where the administration decides that the plaintiff has a right to his complaint. If the administration refuses or fails to adjudicate within the time limit, the plaintiff has the right to initiate legal proceedings'.

However, the complaint as stipulated by the law applies only to decisions which may be withdrawn. But in the event that the administration cannot review the decision, its competence being limited to the issuance thereof, the complaint would be unproductive, and its purpose defeated. Thereupon, the Supreme Administrative Court has adjudicated that filing a complaint with the council of '*shiyakhat*' (urban districts), acting as a disciplinary council, for revoking a disciplinary decision, would be futile, since the Minister of the Interior has no competence to review it once again. It would then be useless to pursue such complaint before taking legal action to abrogate the decision, in fulfillment of the condition for the acceptance of the appeal (Challenge No. 161/3, session of 15 June 1957).

The court has further established that it is unproductive to file a complaint against a decision issued by the Committee of village heads and sheikhs; therefore, the decision should be appealed against within 60 days of being informed of the decision, otherwise the appeal will be rejected on the grounds that by signing the decision of the Committee of village heads and sheikhs, the Minister of the Interior has exhausted his prerogatives, and is barred from reviewing the decision, from revoking or amending it (Challenge No. 1612/8, session of 11 June 1966).

5.2.2. Substantive Conditions of an Action for Abrogation

These conditions pertain to the different defects which could render an administrative decision illegal. Once the judge has verified the soundness of the action in respect to form, he duly proceeds to examine the matters of substance regarding the appealed decision, with the view to establishing its legality. If legality is established, the action is rejected; where the decision is judged illegal, the decision is revoked. Article 10 of the State Council Law No. 47 of 1972, in its penultimate paragraph stipulates the following:

> 'Final administrative decisions may be appealed on grounds of lack of jurisdiction, of defect in form, of infringement of a law or regulation, of error in the application or interpretation of them, or on grounds of abuse of power'.

Therefore, the defects that render administrative decisions illegal, hence null, are defects related to the lack of jurisdiction, defects in form and procedures, infringement of the law and abuse or misuse of power. To the foregoing, the French administrative judge and, subsequently, the Egyptian State Council, have added a fifth defect, namely, the lack of motive, an independent defect from that of the infringement of the law. We will review, below, the defects in administrative decisions and the principles established by the administrative judge in this respect.

5.2.2.1. Lack of Jurisdiction

The Court of Administrative Justice has defined the lack of jurisdiction in an action for abrogation as the incapacity to take a specific legal action because the legislature has entrusted it to another authority or individual.

Contemporary public law is based on the idea of competent jurisdiction, i.e. on the principle of granting certain powers to certain administrators, as a natural outcome of the principle of the separation of powers. Such a principle not only necessitates the determination of the jurisdiction of the three public powers, but also the determination of the distribution of jurisdiction within each power.

Determining competent jurisdiction serves the public interest, since it enables an employee to perform the work he is specialized in and administrative work to proceed with promptness. Clear principles for the distribution of jurisdiction will also help determine responsibility.

The jurisdiction is determined by the legislature, and it is for the employee or authority responsible for issuing the administrative decision to abide by the limits of the jurisdiction prescribed by the legislature. Decisions issued by an authority outside its competent jurisdiction will be considered to be defective. The plea of lack of jurisdiction is considered as belonging to the public order; as such, it may be invoked at any level at which the appeal is reviewed. The court may address such a defect ex officio if it is not raised by any of the litigants.

(1) Types of Lack of Jurisdiction. The defect of lack of jurisdiction may be a petty one, if it occurs within the scope of the administrative function, such as if an employee or an authority issues a decision which lies within the competent jurisdiction of another employee or authority; this can be construed as an encroachment by some subaltern on the competences of his superior. An example is the encroachment of administrative trustees on the jurisdiction of a decentralized authority which may be attributed to a mistake in the delegation of power, or to the substitution of an authority for another.

Lack of jurisdiction may be a gross defect, called usurpation of power, in cases where an administrative decision is issued by an ordinary individual or by an administrative authority, regarding a matter which lies within the competent jurisdiction of the legislative power or of the ordinary judiciary. The usurpation of power also occurs if the decision is issued by a person whose position does not qualify him to issue this kind of decision or who was illegally appointed to his position.

A petty lack of jurisdiction can lead to the nullity of the administrative decision, the action being restricted by the time limit of an action for abrogation. If the time limit elapses, the illegal administrative decision can no longer be appealed; it is considered as legal in the interest of stabilizing the legal positions of individuals and of acquired rights. As for a gross defect of lack of jurisdiction, the usurpation of power, it leads to the administrative decision inexistent, and, consequently, makes it subject to appeal without limitation of time. An action is permissible at any time, and the administration may also retract the decision at any time without being bound by the principle of respect of acquired rights.

The following are the solutions established by the State Council regarding the defect of lack of jurisdiction:

(a) As far as gross defect of lack of jurisdiction is concerned, the Court of Administrative Justice established that the decision of the Minister of Finance regarding the distribution of alluvial deposit lands to people other than the legal beneficiaries was a form of usurpation of power, and was consequently null and void, having contravened the law and the provisions of the Constitution which state that it is illegal to dispose of state property without prior consent of Parliament (session of 12 January 1957). The Court of Administrative Justice adjudicated, on 29 March 1950, that the decision to charge the plaintiff with the amount of the deficit, and to deduct such amount from his salary, was a judgment in a civil dispute, and, therefore, lay within the competent jurisdiction of the ordinary judiciary and not within the jurisdiction of disciplinary authorities. Thereupon, the appealed decision had gone beyond the limits of competent jurisdiction and had to be abrogated.

The Supreme Administrative Court has established that the competent jurisdiction of Assessment Committees, defined by Law No. 118 of 1961 and Law No. 72 of 1963 concerning the Nationalization of Companies and Establishments, is to assess the value of capital of the companies and establishments nationalized pursuant to the nationalization law. Thus, if the Committees proceed to assess any item other than those included as capital, they will subject to nationalization items not included by the legislature in the nationalization program, thus usurping his power (Challenge No. 1295/25, session of 25 December 1982). The Supreme Administrative Court also passed judgment that the legislature had not empowered the Minister of the Interior to dismiss an employee by other than disciplinary means, and that such a dismissal, outside disciplinary procedures, implied a usurpation of power, thus rendering the decision void and without legal effect (Challenge No. 1594/29, session of 23 November 1985). It has likewise adjudicated that the decision of the administration to stay the execution of a judgment by the Court of Administrative Justice until the Supreme Administrative Court decides on the appeal filed is null and void, on the grounds that it usurped a power restricted to the Circuit for Appeals Examination in the Supreme Administrative Court (Challenge No. 3/32, session of 20 May 1989).

(b) With respect to the petty defect of lack of jurisdiction, which does not lead to the inexistence of the administrative decision, the Court of Administrative Justice has established that it is illegal for any Ministry to delay the execution of a decision of the Council of Ministers, as the highest authority in the state, and that it is illegal for any authority at a lower level to obstruct or delay the execution of its decision (9 July 1949). The court also established that, on grounds that Law No. 210 of 1951 has empowered the representative of the Ministry and the Head of the department with the competent jurisdiction to sign the penalties of admonition and salary deduction, for a period not exceeding 15 days per year, none other than those two in their respective spheres of jurisdiction is entitled to sign such penalties. Thereupon, the decision issued by the assistant representative for the penalties is defective because of a lack of jurisdiction which leads to its nullification (Court of Administrative Justice, 12 December 1954).

In a case where a director appointed a non-qualified woman to a post, whereas appointment decisions are within the competent jurisdiction of the board of directors, the appointment decision was found to imply a petty defect of lack of jurisdiction, which did not, however, attain the level of the usurpation of power (Administrative Court of Justice, 22 March 1971).

5.2.2.2. Defects in Form and Procedures

Defects in form and procedures may be defined as the lack of respect, by the administrative authority, for the standards setting the procedures for governing administrative decisions as prescribed by laws and regulations.

The law may require the notification of the concerned party, the conducting of an investigation or consulting with a committee prior to issuing a decision. It may require that the decision be grounded or include certain data, to protect the rights and freedoms of individuals from any rash action by the administration, and to guarantee that the administration shall duly deliberate, examine and research before issuing its decisions, thus ensuring adequate operation of public utilities. In the event that the administration breaches the prescriptions of the law with respect to matters of form and procedures in issuing its decisions, the decisions become defective in form and procedure and subject to action for abrogation.

Defects in form and procedure lead to the nullification of the administrative decision, in cases where the law prescribes for such a penalty. In cases where no such provision is made in the law, contravention of such standards does not, necessarily, lead to nullification. Thereupon, the State Council differentiates between substantive forms and non-substantive forms, whereby decisions are not nullified unless the procedure or form overlooked is substantive. A procedure is deemed substantive if it has been decided upon to guarantee the rights and interests of individuals. Among such guarantees is the defendant's right to defense during disciplinary investigation and trial; that decisions be adequately grounded as required by law, and that a committee be consulted. If the procedure is decided in the interest of the administration, the procedure is deemed not substantive and, therefore, does not lead to the nullification of a decision issued thereby.

In this respect, the Supreme Administrative Court noted that a defect in form leads to the nullification of an administrative decision only if the law has prescribed such a penalty or if this procedure is substantive, in which case the intention of the legislature was to prescribe for that penalty (Challenge No. 969/2, session of 23 November 1957).

With respect to cases in which the State Council deemed the procedure to be substantive, leading to the nullification of the administrative decision, the Court of Administrative Justice established that the absence of the signatures of the committee members required by Article 16 of Law No. 106 of 1976 concerning Construction Works, on the decision appealed against, was to be considered as a lack of a substantive formal procedure, a condition conducive to the nullification of the decision (Challenge No. 7683/47, session of 24 November 1994). The court added that the decision for the demolition of a building, issued in accordance with Article 16 mentioned above, had to be duly grounded,

and that the grounds had to be mentioned in the text of the decision itself, otherwise the decision would be lacking a substantive condition of form required for its legality. It was not sufficient for the administration to ground its decision by stating that it was caused by the plaintiff's act of building without securing a license (Challenge No. 857/48, session of 4 August 1994).

The administrative judge considered as secondary, not leading to the nullification of the administrative decision, a police officer's absence from the meeting of the Committee for sanitation on the matter of filling up a well in a plot of land owned by individuals, since the ministerial decision did not prescribe for it. The attendance of the officer, to protect public health, was not a substantive procedure (Challenge No. 881/7, session of 15 June 1963). An academic committee, constituted to examine the academic work of a candidate to become an assistant professor, is required to solicit the advice of the competent department, this being a basic guarantee provided for by law; however, the enormous difficulty involved in following such procedure due to the hostility between members of the department, is considered a justification for default of the procedure; consequently, there are no grounds for the nullification of the decision (Challenge No. 1424/13, session of 5 December 1971). If a decision establishing a certain building to be a public utility has clearly designated it by specifying its substantive features and purposes, the omission to append the memorandum of the project, or the complete designs of the plan required by Article 2 of Law No. 577 of 1954 concerning expropriation of buildings to become public utilities, is not conducive to the nullification of the decision since it has been shown that the decision has accommodated such default by the details included in its text, which need not be duplicated in a memorandum or in any other separate statement (Challenge No. 571/18, session of 12 May 1979).

While Law No. 117 of 1958 concerning the reorganization of the administrative prosecution has required the administrative prosecution to notify the Minister, or the employee's superior before investigations are initiated, yet the law has made no provisions for a penalty of nullification in case of default in following the procedure, on grounds that the procedure was conceived in the interest of the administration and does not in any way compromise the interests of employees. It is not, therefore, a substantive condition the absence of which entails nullification (Challenge No. 120/11, session of 30 May 1970).

5.2.2.3. Violation of the Law

Article 10 of State Council Law No. 47 of 1972 mentions different aspects of violation of the law as follows: 'Final administrative decisions may be appealed on grounds of (...) infringement of a law or regulation, or error in the application or interpretation of them (...)'.

Accordingly, violation of the law is a contravention of the substantive provisions of the law. Consequently, the review of the administrative judge in this case is designed to show to what extent the object of the administrative decision is in conformity with the provisions of the law. The object of the administrative decision is its direct and immediate legal effect. For a decision to be legitimate, this legal effect should be possible and admissible. It should, in other words, be in conformity with the provisions of the law. Otherwise, it would be in violation of the law and, consequently, subject to abrogation.

In terms of jurisprudence and court decisions, it is established that violation of the law is not restricted to the contravention of the law in the narrow sense of the word, namely, the law issued by the legislative authorities. Rather, it includes all contraventions of a legal rule in its wide sense whether written or unwritten and whatever its sources. It includes the violation of constitutional rules, regulations and the general principles of law. It also involves the contravention of the rules increasingly applied by the administration until they become regulatory rules. It also means that custom is assimilated to the law as far as violation is concerned. In this respect, the Administrative Court ruled in a case where the parties differed over the interpretation of a regulation on which a legislation has not yet been issued, i.e. it was still a draft which had not been adopted, and which the University nevertheless considered as binding and had been systematically applying, thus making a regulatory rule of it, that the violation of the said regulation shall be considered a violation of the law. Violation of the law is not restricted to the contravention of a provision of a law or regulation, but also applies to the violation of all rules that the administration applies or by which it is bound (4 May 1950).

Violation of the law occurs when the administration deliberately or not fails to implement the law or to comply with its provisions. It also occurs when the law is wrongly interpreted or incorrectly applied.

(1) Court Applications in Cases of Violation of the Law

Among court applications of the defect of violation of the law is the ruling by the Supreme Administrative Court that an administrative decision has to be both possible and admissible under the law, and to be taken in the general interest. If it is proven that the plaintiff has been promoted to a grade which is not included in the budget, his promotion is not legally possible, since its object does not existent. Therefore, the promotion decision can be either revoked or withdrawn, regardless of any date limit (Challenge No. 675/28, session of 9 December 1984).

Among such applications is the ruling that general regulatory rules, which are of a general and abstract nature, shall be complied with by the administration in individual cases. The ruling also indicates that the amendment or repeal of such a rule shall be similarly undertaken, i.e., by a similar general regulatory decision and not as an exclusive individual application, in which case it would be a violation of the law (Challenge No. 59/29, session of 28 April 1984).

The court also ruled that secondment or transfer is inadmissible under the law except to a post equal in status to that of the person seconded or transferred. Transfer, or secondment, aims at moving an individual from one place to another or from one post to another in the interest of the work, and is not meant to prejudice his legal status, or to reward or punish the said individual. If the decision does not involve a specific and appropriate function, similar to that of the seconded or transferred individual, it is considered a gross violation of the law (Challenge No. 1228/30, session of 28 January 1989).

The court also ruled that the refusal to admit a student to a faculty for which her grades qualified her, as a result of a computer mistake in the office for co-ordination of admission

of the university, is a decision that violates the law (Challenge No. 1290/36, session of 23 March 1991).

Regarding the violation of the general principles of law, which constitute a source of the law deduced and are included by the judge in his rulings to bind the administration, the administrative judge deemed that the rule of non-retroactivity of laws enshrined in the Constitution was also applicable to administrative decisions. Accordingly, the Supreme Administrative Court ruled that the essence of natural law is respect of acquired rights, as required by justice and by public interest. It would be unjust for rights to be threatened, nor is it in the public interest for people to lose confidence in the fact that their rights are well established. Accordingly, the Constitution has affirmed this basic and natural concept, prohibiting any prejudice to acquired rights or to established legal status except by a law. It has stipulated that retroactivity shall only be decreed by a special provision in the law, i.e. making it exclusively the competence of the legislative authority in order to safeguard the relevant guarantees. Consequently, on the basis of this principle, administrative decisions shall not be retroactive, even if a provision to that effect does exist (Challenge No. 1050/7, session of 21 August 1965).

The administrative judge also established that it is inadmissible to withdraw viable administrative decisions, namely, decisions which comply with the law. Among the applications of the latter is the ruling by the Administrative Court of Justice that since the administrative decision had been enacted in conformity with the law, it could not be challenged, nor did any authority had the power to withdraw or revoke it: it had become irrevocable. The plaintiff had, thus, acquired a legal status; it had become his acquired right and could not be prejudiced by any administrative authority (19 January 1960). The Supreme Administrative Court confirmed the ruling by indicating that since a license had been correctly issued after fulfillment of the legal conditions, and enacted by the administration according to its discretionary power, any change or withdrawal thereof was in violation of the law (Ruling on 17 June 1961).

However, with respect to withdrawal of illegal decisions generating acquired rights, such illegality requires their withdrawal or abrogation. This, however, is in conflict with the rule concerning respect of acquired rights of individuals. That is why the administrative judge has sought appropriate solutions to reconcile the two rules by making a distinction between invalid decisions and decisions that do not exist. With respect to the former, the administration may withdraw them within the period specified for an action for abrogation. If the specified period elapses without the withdrawal of the said decision, it becomes irrevocable. In this respect, the Supreme Administrative Court decreed that administrative decisions may not be withdrawn except within 60 days of the date on which they were issued. If the deadline has elapsed, the decision can no longer be abrogated or amended. The individual shall then have acquired the right to all that is included in the decision. Any infringement of such right by a subsequent decision is in contravention of the law, hence defective and null. With respect to inexistent decisions, they may be withdrawn at any time, regardless of the time limit allowed for an action for abrogation. The Supreme Administrative Court, therefore, made a distinction between a decision that is null and void and one that is inexistent. An administrative decision is inexistent if

its defect is so blatant as to imply usurpation of power or inexistence of the object (17 June 1962).

Among the cases of incorrect application of the law is the power to temporarily seize real estate pursuant to the Law on Expropriation of Real Estate for the Public Good (No. 10 of 1992). The Law specifies the emergency or urgent cases which require the Minister to intervene, such as the submersion or collapse of a bridge, or the outbreak of an epidemic. Both constitute a case of emergency that enable the temporary seizure of real estate. The decision by the governor of Cairo regarding the temporary seizure of the real estate owned by the plaintiff and others to house the ʿAbidin Khayriyya school does not fall within the scope of this situation, and is in violation of the provisions of the law, not having been issued in a state of emergency which entitles the governor to temporarily seize real estate. No such unpredictable emergency had come up (Court of Administrative Justice, No. 3077/44, 6 May 1995).

5.2.2.4. Abuse or Usurpation of Power

Abuse or usurpation of power occurs where the authority issuing the decision intends it to serve a purpose other than the one for which the administration was given the competence to issue it.

Consequently, the Court of Administrative Justice ruled that the abuse of power which flaws the administrative decision resides in the issuing of decisions in contradiction with the administration's spirit, purposes and targets and in the use of the authority vested in it by the law to fulfill targets which are far removed from the public interest. In that case, the use of power is the object of the will of the person who issued the decision (8 June 1950). It is therefore a defect related to the purpose of the decision.

The rule is that the competence and authority enjoyed by the administration were granted for the fulfillment of a general objective, namely, to serve public interest. If the administration uses its authority to achieve another purpose, the decision issued in this respect is flawed with the defect of abuse or usurpation of power, since the authority was used for a purpose other than the one intended by the legislature.

In some cases however, the legislature may not consider public interest to be the only purpose; he may pursue other objectives also related to public interest. The judge can infer those objectives from the will of the legislature, such as in the case of seizure of property with the aim of building installations for a teaching utility or for lower income housing. The special objective may also be deduced from the nature of the competence granted to the administration, such as police or administrative police, in which case the administrative judge considers that the objective is the fulfillment of a purpose related to public order, namely, public safety, public health and public peace.

The administration issuing the decision may not necessarily be ill-intended when it deviates from the purpose of serving public interest; it may be complying with the public interest, yet deviating from the special purpose for the authority granted to it. Such a decision also bears the defect of usurpation of power. In this respect, the Court of Administrative Justice ruled that usurpation in the use of power shall cause the administrative

decision to be flawed. Such a defect is different from other defects which flaw administrative decisions in that it is not inherent, but only exists when a decision is taken for personal purposes such as revenge, personal benefit, political or partisan reasons. It is defective also if the decision deviates from the spirit of the law. The law, in many administrative acts, does not only aim at serving public interest in its general sense, but rather sets a specific target for a specific administrative act. In such a case, the decision shall not be aimed at serving public interest alone, but also the special target specified by the law for this decision. If the decision deviates from such a purpose, even where it serves public interest, it is flawed with the defect of usurpation of power (22 April 1956).

It is established by the State Council that the defect of usurpation of power may appear when the administration makes use of its discretionary power. With respect to its use of restricted power, where its competence is determined by clear provisions of the law, a decision is either issued correctly, if the administration complies with the conditions and situations specified by the law and, accordingly, the judge refuses the action, or the administration breaks the rules set by the law with respect to conditions and situations and, accordingly, the decision is flawed as being in violation of the law. It can be abrogated on this ground, without need for the judge to consider the defect of usurpation of power.

Where the administration enjoys discretionary power, it is free to decide on whether or not to issue an administrative decision, on when to issue it and what it should contain. In this case, the administration shall only comply with the objective set by the legislature, be it the general objective of serving public interest or a special objective, i.e., what is known as the rule of specifying objectives. It will then be up to the administrative judge to consider the extent of compliance of the administration with the said objective, and to decide on the existence or absence of a defect of usurpation of power.

In this respect, the Court of Administrative Justice ruled that since the discretionary power of the administration is legally unlimited and unrestricted, and the matter is left to its discretion, its decision is not subject to the control of this court, except in cases of usurpation of power. Where its power is limited or restricted, such as in the case of promotion by absolute seniority, the decision on promotion is subject to the control of this court in terms of its compliance or non-compliance with the law (26 November 1952).

An administrative decision may be revoked for usurpation of power if the person in charge serves a purpose other than public interest or the special purpose set by the legislature. Following are some rules and principles reached by the administrative judge in this respect.

Power may be used for purposes of revenge, as pointed out by the Court of Administrative Justice which stated that the circumstances of the case and attending circumstances indicated that when the administration fired the plaintiff, it did so because the mayor was adamantly against the plaintiff for purely personal reasons, in no way related to public interest. Consequently, the decision which was the subject of the appeal was in violation of the law (6 May 1953). Power may be abused for the personal benefit of someone other than the issuer of the decision, such as what was ruled by the Court of Administrative Justice, namely that since it was evident from the circumstances that the

appealed decision to transfer the plaintiff was not intended to serve public interest, but was rather meant to benefit a given person, who replaced the plaintiff in his post, with the intention of promoting him to grade one, the decision was flawed with the defect of abuse of power (15 June 1953).

There are several cases where the administration aims at the fulfillment of purposes other than the specific targets set for it in discharging its authority. Even when such decisions do not run counter to public interest, they are in contravention of the law.

The seizure of real estate and property belonging to individuals is an exceptional measure to which the administration may not resort, even in the interests of the public, except where all other available means have been exhausted, and if the administration is compelled to resort to such means to fulfill its purpose. In this case, the administration found itself faced with an urgent necessity to act in the public interest. The interest of the public prevails, provided the need is estimated correctly. In this light, Article 1 of Law No. 95 of 1954 on Supplies stipulates that the Minister of Supplies is responsible for ensuring adequate supplies for the country and equity in the distribution thereof, and may seize any movable or immovable assets for the fulfillment of both targets. For the decision on seizure to be legal, in addition to the existence of the purposes specified by the legislation, it is necessary to prove the urgent needs which justify the use of such exceptional measures instead of the regular means (Challenges No. 849, 815/27, session of 18 January 1986).

It also decided that since it appeared from the documents that a decision was issued to seize the real estate owned by the plaintiff in the interest of Misr Company for Consumer Societies (under foundation), and since that company was not founded, the Minister amended his first decision, allocating the seized real estate to the Ahram Company for Consumer Societies, the latter decision went beyond the target specified by the law. The circumstances of the case show that there was no urgent need to persist in the seizure of the real estate owned by the plaintiff, considering the change in the initial circumstances which required issuing the original decision, when it became clear that the company in the interest of which the real estate was seized so that it might practice its activities was not to be established. The subsequent decision was designed to persist in keeping the real estate, under the pretext of giving it to another company owned by the Ministry. Accordingly, the appealed decision appears to have gone beyond the purpose specified by the legislature when he allowed the Minister of Supplies to seize real estate belonging to individuals (Challenge No. 2291/32, session of 10 November 1990).

Usurpation of power may happen in the use of administrative police. This power is specified to maintain public order in its three components: public safety; public health; and public peace. In the event that the administration used the said power to fulfill ulterior motives, its decision is flawed by the defect of usurpation. An example of the aforementioned is a decision of the Court of Administrative Justice regarding a decision issued by the administration, refusing to grant a license to open a cinema, even though all the required conditions had been fulfilled. The court found that there was no motive for such a decision, except for the wish of the Ministry of Public Works to buy the land on which the cinema was built, without the buildings and at a reduced price (27 December 1949).

5.2.2.5. Lack of Cause

Article 10 of State Council Law No. 47 of 1972 shows that the cases specified by the legislator for abrogating administrative decisions do not include absence of causes, or what is known as the defect of cause in administrative decisions. Such a defect is not considered an independent defect rendering the decision null, but rather a form of violation of the law or a wrong application or interpretation of it. It has been established by the Egyptian administrative judge that cause is one of the bases of the administrative adjudication, the absence of which renders the administrative decision null and void.

The element of cause in the administrative decision means the material or legal facts on which the administrative decision was based. The Supreme Administrative Court has, since its establishment, monitored the existence of the element of cause in administrative decisions. In this respect, it has ruled that the control of the administrative judge of the validity of the factual or legal situation which constitutes the element of cause is, naturally, confined to the verification of whether the result achieved by the decision is materially and legally justified. If it is based on other than established principles, the decision lacks the element of cause and is in violation of the law (Challenge No. 1/159, session of 5 November 1955). Accordingly, the Supreme Administrative Court ruled to abrogate a decision dismissing an employee for reasons which existed when he was a student but had ceased to exist when he was appointed (Ruling of the Supreme Administrative Court, session of 23 May 1959). It also ruled for to abrogate a decision penalizing an employee on grounds that the decision was not based on all the elements of the case. The penalty was estimated on several charges, whereas the employee was guilty only of some of them. Such being the situation, the penalty was not based on all the elements of the cause and had to be abrogated (Ruling of the Supreme Administrative Court, session of 9 November 1957).

It also ruled that the consideration of individuals as constituting a threat to public security and order must be based on actual facts leading to such a conclusion, and that these facts must be acts proven to have been committed by the individual and directly connected to the conclusion to be drawn. In other words, for a person to be considered a threat to public security and order, he must have actually and personally committed acts that warrant his description as such (Challenge No. 810/28, session of 12 March 1985).

Control by the State Council is not restricted to the material existence of the facts, it also extends to the legal characterization of such facts, on the assumption they actually exist. The purpose is to verify the extent to which the characterization of the submitted facts was correct and justified the administration's decision. A clear example may be verification of whether the facts attributed to an employee may be described as a professional mistake or an offence justifying the imposition of disciplinary measures by the administration. If the administration did not give a correct legal description of the facts, its disciplinary decision is null due to absence of cause. An example of the aforementioned is the ruling of the Supreme Administrative Court that if a veterinarian proceeded to insure cattle on the holiday of the Prophet's anniversary, this did not constitute a punishable offence, since the facts did not represent a violation of the duties of his office (Challenge No. 270/15, session of 27 March 1971). Investment is not in itself a commercial activity

contrary to the duties and dignity of the office, hence not a professional misconduct (Challenge No. 32/2, session of 26 April 1960).

Other rulings related to the control of legal characterization of the facts is that which is related to the condition of a good reputation. The Supreme Administrative Court ruled that an employee who uses creed and religion to further his own ends commits gross misconduct. Freedom of conviction as such is not to be confused with the misuse thereof (Challenge No. 3/853, session of 21 June 1958). In yet another ruling, it was decided that if a candidate for the office of village Sheikh is sentenced to imprisonment for an uncovered check, with a stay of execution, this puts an end to the condition of good reputation, as far as he is concerned (Challenge No. 34/2801, session of 9 December 1989).

5.2.3. Ruling on the Action for Abrogation

The action for abrogation either leads to the abrogation of the appealed decision or to the rejection of the action.

Article 33 of State Council Law No. 47 of 1972 stipulates that rulings shall be handed down in public session.

Article 52 of the State Council Law stipulates that all rulings are governed by the principle of the force of res judicata and that rulings on abrogation are binding on third parties. Accordingly, the rulings delivered by the State Council courts, like other final court rulings, are based on the principle of the force of res judicata and are binding in respect of what has been judged. This means that rulings on abrogation are definite and binding to all and sundry. If the action for the abrogation of an administrative decision leads to its abrogation, the decision is null and void and considered as though it had never existed. The ruling is binding not only on the parties to the dispute, but also with regards to all and sundry. This is different from the rulings delivered by civil courts or by the Court of Administrative Justice on matters other than abrogation, which are binding on the concerned parties only (Court of Administrative Justice, No. 4/296, session of 23 May 1951), the dispute being strictly personal, the ruling on it is confined to the parties to the dispute (Challenge No. 9/1184, session of 20 January 1969).

Accordingly, if the State Council abrogates an administrative decision, and another appellant initiates another legal action before the State Council, requesting the abrogation of the same decision, the second action shall be considered irrelevant, as a consequence of the absolute force of res judicata of the first ruling (Challenge No. 31/495, session of 9 November 1986).

The enacting terms of the ruling only shall be governed by the res judicata, but not its grounds, except where they are so closely related to the enacting terms that the latter cannot stand on their own. In such a case, the grounds of the ruling shall also benefit from the res judicata (Challenge No. 7/1577, session of 16 April 1960).

It has been established by the Supreme Administrative Court that a ruling to abrogate shall destabilize all the unsound legal positions resulting from the decision which contravened the law and was, consequently, abrogated (Supreme Administrative Court, No. 35/883, session of 5 January 1992).

5.3. Actions for Compensation

An action for compensation is an action initiated by the parties concerned, requesting a certain amount of money to repair damages incurred as a result of the administration's actions.

Paragraph ten of Article 10 of the State Council Law No. 47 of 1972, has touched upon such actions. It stipulates that the State Council courts shall be exclusively competent to rule on the following questions: '(...) Compensation actions against decisions referred to in the above item, be it in the main issue or on accessory matters'.

Article 10 stipulates that among the above-mentioned decisions the following may give rise to an action for compensation:

1. Decisions related to elections of local bodies;
2. Decisions related to appointment to public offices, to promotion or to increments;
3. Actions related to administrative decisions of retirement, provisional release from duty or dismissal of civil servants without due disciplinary action;
4. Final administrative decisions touching upon individuals or bodies;
5. Final decisions taken by an administration with respect to disputes over taxes or charges, in accordance with the law regulating the review of such cases by the State Council;
6. Decisions related to nationality;
7. Final decisions taken by administrative bodies with judiciary jurisdiction;
8. Final decisions taken by disciplinary authorities.

It appears from the aforementioned provisions that the jurisdiction of the State Council as a judicial body over actions for compensation is strictly restricted to the damages incurred as a result of administrative decisions. Compensation actions for material acts of the administration do not fall within the scope of the Council's jurisdiction, but rather within that of ordinary courts. The reason may be that material acts by the administration are not considered acts of authority, which is one of the fundamental theories defining the jurisdiction of the State Council where administrative disputes are concerned. Consequently, it is enough for an action for compensation to be based on an administrative decision for it to fall within the scope of the State Council's jurisdiction, regardless as to whether the decision in question is positive, negative, explicit or implicit.

That is why ordinary courts have jurisdiction over a number of administrative liability actions. They are actions related to the liability of the administration for material acts undertaken by its employees and agents, and are governed by the provisions of the Civil Code. Compensation for illegal acts is seen as a legal action, not as a material act. It is related to the fifth source of liability stipulated in the Civil Code, and its compensation is subject to the prescription of the right to claim compensation, which is one and the same as the general prescription of such rights, namely, 15 years (Challenge No. 928/27, session of 15 March 1986).

Consequently, a plaintiff who has not initiated an appeal for abrogation within the specified time limit, is entitled to claim compensation for damages incurred as a result of

the defective decision taken in violation of the law (Challenge No. 560/31, session of 9 April 1988).

There is a similarity between an action for compensation and an action for abrogation in that both are a means of supervising the work of the administration. They do, however, differ in the following two aspects:

(1) Action for compensation is not subject to the time limit set by the legislator for an action for abrogation, namely, 60 days. The reason is the difference in the legal grounds of each of the two actions. An action for compensation is a action in rem designed to protect general legal positions. This is why the legislator set a short time limit thereto, so as to maintain the stability of the administration's work. On the other hand, an action for compensation is designed to protect personal legal positions as such and personal rights. It is, therefore, not as serious as an action for abrogation and is, consequently, subject to the regular time limits set for civil legal actions.

(2) It is not enough for a plaintiff in an action for compensation to have a direct and personal interest, as is the case with an action for abrogation. He should, in addition, claim that one of his rights has been violated as a result of the administrative decision.

With respect to the legal rules governing the liability of the administration for administrative decisions, the State Council does not comply with the rules of liability for omission as set forth in the Civil Code. It applies the solutions reached by the French State Council, namely, the existence of special independent rules governing the liability of the administration, rules that are different from the ones governing civil liability. This is due to the fact that any activity of the administration is connected to a public utility. Consequently, the Court of Administrative Justice, followed by the Supreme Administrative Court, differentiates between the mistake on the part of the public utility (faute de service), for which the administration is liable for compensation, and the personal mistake, for which the employee is liable for compensation from his personal funds. They also admitted yet another kind of liability, namely, responsibility for risk, which is based on the two elements of damage and relation of causality. This in no way completely rules out the stipulations of the Civil Code. The latter may be applied where appropriate to the nature of the administrative dispute, particularly with respect to the damage and the relation of causality between the mistake and the damage.

We shall touch upon the two kinds of administrative liability in the following paragraphs.

5.3.1. The Liability of the Administration on the basis of a Mistake

Many rulings of the administrative judge have established that the liability of the administration for administrative decisions hinges on proving the existence of a mistake committed by the administration, which leads to the illegality of the administrative decision, damaged by one or more of the defects stipulated by the State Council's Law. The decision should also have resulted in a damage to the person concerned and there should be a relation of causality between the mistake and the damage. In the absence of one or more of the three above elements, the administration will not be held liable.

In the following section, we shall deal with the elements entailing the liability of the administration.

5.3.1.1. Mistake

The basis of liability of the administration for its administrative decisions is the presence of a mistake. Such a mistake causes the decision to be illegal, as a result of one of the defects set forth in Article 10 of the State Council's Law No. 47 of 1972. Such defects are: lack of jurisdiction; a defect in form; infringement of a law or regulation; error in the application or interpretation of a law or regulation; abuse of power; and lack of cause. If the decision is legal and in accordance with the law, the administration is not liable whatever the resulting damage, since the element of mistake is absent. If that is the case, the individuals shall bear the consequences of the administration's activities, since they are in accordance with the law and in the interest of the public (see, for example, the ruling of the Supreme Administrative Court on Challenge No. 1755/2, session of 29 June 1957).

If it is proven that the person concerned would not have been eligible for secondment as part of the quota of teachers to be seconded, the administration is not liable and the person has no grounds to claim compensation for being deprived of the chance to be seconded, since there was no mistake committed and the administration may not be held responsible (Challenge No. 1779/29, session of 4 January 1987).

The Supreme Administrative Court has ruled that the liability of the administration must be based on a confirmed and proven mistake, be it petty or gross. Rulings must be based only on certainty, not on speculation, interpretation or possibilities. If opinions differ as to the interpretation of the law, and are respectively justified, so that none can be absolutely validated or considered prevalent among the majority of members of a given profession or discipline; and since the work of the government, when it issued its decision, was similar to that of professional lawyers and their like, i.e. based on its interpretation and application of laws, the administration is not considered to have committed a mistake unless it has acted against an established opinion, no longer subject to discussion and recognized as such by the members of a profession or discipline. Deviation from the said established opinion would then be a mistake resulting in liability, regardless of its seriousness (Challenge No. 349/4, session of 21 May 1960).

Contrary to that, the Supreme Administrative Court ruled that a misinterpretation of the facts or of the law does not preclude liability. A mistake is a pure fact on its own; when actually committed, its perpetrator must be held liable for compensation for the resulting damage, irrespective of why the mistake was committed. The mistake cannot be qualified according to the interpretation, by its perpetrator, of the relevant legal rule. Since it was proven that the administration committed a mistake by deciding to withdraw the decision to appoint the plaintiff, thus causing her damage, namely, dismissal from her office and loss of salary, the conditions for the liability of the administration have been fulfilled (Challenge No. 1247/21, session of 28 January 1978).

Furthermore, for the administration to be responsible for its decisions and liable for compensation, the mistake must be on the part of the public utility. The administrative judge has differentiated between a mistake committed by an authority or public utility, in which

negligence and neglect are attributed to the public utility itself, on the one hand and between a personal mistake, attributed to the employee, on the other hand. In the former, the administration alone is responsible and will pay the compensation, but in the latter the employee is personally responsible. He is held responsible for his personal mistake and the compensation is paid from his personal funds. The criterion for distinguishing a personal error from an error committed by a public utility was established by the Supreme Administrative Court: a mistake is personal if the wrongdoing is of a personal nature, revealing human weakness, a personal whim and lack of foresight. In the event that the wrongdoing is not of a personal nature and involves an employee who is exposed to wrong and right, the mistake is attributed to the public utility. What is important is the intention of the employee while performing the duties of his office. Whenever his intention is to do harm, cause losses or further his own interests, his mistake is personal, and he is held responsible for its consequences. If the administrative decision he issued was designed to further public interest, or if he acted in fulfillment of one of the objectives set for the administration, and which falls within the scope of his administrative duties, his mistake becomes part of his functions and cannot be separated from them. The mistake is, consequently, attributed to the public utility. Here, the mistake of the employee would be considered as one pertaining to the utility. If it is found that the employee was not acting in the public interest, but was motivated by personal factors or committed a gross mistake punishable by the Penal Code, such as using the leverage of his position to stop the enforcement of a ruling, a court order or a request, the mistake in this case is considered a personal one and the employee is held responsible for compensation from his own funds (Challenge No. 928/4, session of 6 June 1959).

It is established that the theory of distinguishing between personal and public utility mistakes and holding the employee liable for compensation for his personal mistakes, was only developed in the context of the employment regulations for personnel of the administrative agencies of the state and local government bodies. The administrative judge developed this theory to ensure the regular and efficient function of public utilities, so that public utility personnel would not refrain from fulfilling the duties of their office for fear of being held responsible for mistakes committed in the course of running the public utilities. The legislator distinguished between personal and public utility mistakes in Article 58 of Law No. 46 of 1964, Article 55 of Law No. 58 of 1971 and Article 78 of Law No. 47 of 1978 on the State Civil Servants. It clearly shows that the legislator did not intend to apply this theory in the area of disciplinary responsibility of public sector employees. The basis for that is that the Law on the Regulations for Employees in the Public Sector (Law No. 48 of 1978) does not contain any provision similar to the successive provisions set forth in the laws governing civil servants of the state, which resulted in the implementation, in this domain, of the rules established by the Labor Law (Challenges No. 524, 527/30, session of 22 April 1986).

Among the applications of the aforementioned theory, where the Supreme Administrative Court considered the mistake to be personal, is the ruling that a damage to the administration was the result of mistakes committed by the plaintiff and his gross negligence in inserting incorrect data in the disbursement form, withholding the applications

papers of those who made reservations and tampering with the reservation registers. There is no doubt that such a series of gross mistakes are personal ones for which he alone is liable from his personal funds. Accordingly, the administration should be compensated by him to the full value of the loss it incurred (Challenge No. 542/16, session of 10 March 1973).

Another example is the ruling by the court that the plaintiff's appearance before the Criminal Court for a mistake attributed to him, committed in violation of the orders of the marine command and of traffic regulations, for which he was convicted, is considered a gross mistake, tantamount to a crime which falls within the scope of the Penal Code (Challenge No. 1448/78, session of 12 November 1967).

Yet another example is the ruling that since the head bailiff of the court, in spite of his experience and knowledge, accepted the implementation papers without the document proving publication, had left the matter to a newly appointed bailiff without noting that the sale was not to be carried out except after publication, he committed a gross mistake considered to be a personal one. He was, consequently, liable for compensation from his own funds (Challenge No. 205/15, session of 4 February 1979).

The Supreme Administrative Court also considered the failure of the respondent to appear in order to perform the work assigned to him, without justification of his absence or of his negligence to instruct the contractor to withdraw all the consignments the following day and his negligence in dispatching the wagons carrying the consignment, to be a personal mistake. The court considered it was a gross mistake of a personal nature entailing the liability of the respondent for compensation from his own funds (Challenge No. 638/29, session of 26 December 1987).

There is, however, no connection between the disciplinary responsibility of an employee and his civil responsibility. Whereas the civil responsibility of the employee entails his disciplinary responsibility, the opposite is not true. The slightest violation of his professional duties results in his disciplinary responsibility, whereas civil responsibility occurs only if the act committed is more than a mistake on the part of the public utility and is considered a personal mistake. The responsibility for a mistake on the part of a public utility is born by the public utility, since it is part of the natural risks involved in its activity as carried out by the employees. Each employee is exposed to committing a mistake due to unintentional negligence. A personal mistake is one that is deliberately committed by an employee, or as a result of gross negligence indicating a low level of insight and caution, well below the required average caution and normal performance. Accordingly, the mistake attributed to the head of the power network, in which a kiosk was burnt as a result of technical defects attributed to the employees under his direction and as a negligence of the head in supervising them, was deemed the mistake of the public utility (Challenge No. 1528/31, session of 21 April 1960).

Among other applications with respect to mistakes attributed to a public utility is a ruling by the Supreme Administrative Court on a mistake committed by the administration that issued a decision firing the plaintiff, decision which was not based on valid grounds justifying it. Such a mistake may not, under any circumstances, be considered a personal one. The President of the Republic did not issue the decision in his personal capacity so

that he could be held civilly responsible for it. He issued the decision as President of the Republic, making use of the duties and authority vested in him by the law to fire or pension off employees. The decision was taken at the request of the competent administration, in the general interest, as indicated in the law. There is nothing in the documents to prove that the President of the Republic had any intention other than to further public interest, or that he had any personal motives such as harm or revenge, as held by the plaintiff in his appeal. Accordingly, the mistake attributed to the President of the Republic, namely, issuing the decision ending the service of the plaintiff, is not a personal one for which he was liable from his own funds. Consequent, the request of the plaintiff to hold the ex-President of the Republic personally liable for the damage incurred as a result of ending his services was held not to be based on any valid factual or legal grounds (Challenge No. 143/24, session of 13 June 1981).

It is to be noted that the administrative judge does not hold the administration liable in all cases where a decision is legally defective and the presence of a mistake established. It differentiates, in this respect, between defects of form and defects of merits. The defect of form or lack of competence which damages a decision and leads to its abrogation does not definitely and inevitably constitute grounds for compensation, unless the defect bears on the merits of the decision. If the decision is valid in terms of merits, if it is grounded even though contravening the rule of competence or form, there is no ground to hold the administration liable for compensation. The decision would have been issued anyway, on the same merits, if the rule had been taken in consideration. Accordingly, the Supreme Administrative Court ruled that if the decision to fire the plaintiff is valid in terms of merits, being based on valid grounds, the plaintiff is not entitled to receive compensation simply because the decision is defective in terms of competence (Challenge No. 1006/10, session of 22 March 1975). It has also ruled that the decision to suspend the respondent, as a precautionary measure, even though issued by the head of the court of first instance rather than by the personal status circuit of the court of first instance which is competent to issue such a decision as stipulated by the regulation pertaining to marriage registrars, is defective in terms of lack of competence. However, this decision is valid on grounds of merits, because it is based on grounds that do justify it, i.e. the contraventions attributed to the respondent in the performance of his functions, involving serious breaches of his duties and of the honesty and good conduct expected from him. He was accused of tampering with certain marriage contracts, and of deliberately and on purpose falsifying some of the data. Accordingly, the court did not deem it fit to hold the administration liable for compensation to the respondent for damage incurred as a result of the decision (Challenge No. 421/24, session of 15 December 1979).

With respect to the defect of form in an administrative decision, the Supreme Administrative Court ruled to abrogate a decision to end service for absence from work on the basis of a defect of form, namely, failure to notify the agent prior to issuing the decision. Had such notification been given, the dismissal would have been valid and there would have been no grounds to hold the administration to account. Accordingly, in terms of merits, the administration may not be held to have committed a mistake when it ended the service of the agent. It had been proved that he quit work without an acceptable excuse, for a period

which entitled the said administration to end his service. On the assumption that the plaintiff had suffered damage as a result of ending his service, such damage is, basically, due to his absence from work and not due to a mistake committed by the administration in ending his service. Such being the case, there are no legal grounds to claim compensation (Challenges No. 926, 955/35, session of 7 April 1991).

5.3.1.2. Damage

In addition to the condition of a mistake committed, a damage must have been suffered by the concerned person in order for the administration to be held responsible for its administrative decisions. The damage may be either material or moral. A material damage is an actual harm to the interest of the person, of a financial value (Challenge No. 765/30, session of 23 February 1986).

As for a moral damage, it harms the victim not in financial terms, but in terms of feelings, sentiments, dignity or honor (Challenge No. 899/28, session of 15 May 1988).

The person suffering the damage must prove the extent of his loss so that the court may grant compensation for the loss actually incurred or for loss of opportunity to gain. In both cases, it must be proved that the damage is real, that it has actually been incurred, or that it will certainly be incurred. It means that there shall be no compensation for an eventual damage until it does occur (Challenge No. 754/26, session of 14 December 1985).

The principle in compensation is that it shall be in cash. However, it is recognized that compensation, in a broader sense, may be in kind, namely execution in kind, or compensation in return, which may be a compensation in cash or otherwise (Challenge No. 3214/33, session of 25 November 1990).

Among the applications in which the Supreme Administrative Court recognized the different kinds of aforementioned compensations, is a ruling stating that since the appellant had been given all his professional rights, rights of which he had previously been deprived by two decisions overstepping him and subject to the appeal, this constitutes a compensation in kind for the damages incurred, both moral and material. They had all been recovered as a result of two fully executed rulings which restituted the appellant's professional rights of which he had been previously deprived, including restitution of his dignity and reputation, as well as his rehabilitation with respect to promotion. Since the compensation in kind is enough for the restitution of all the damages resulting from the decisions to overstep him in the aforementioned promotion, there is no ground for ruling for compensation in cash (Challenge No. 3214/33, session of 25 November 1990).

It also ruled that if an agent is released, after his prison sentence was replaced by a fine, the administration must reinstate him in his job as soon as it is informed of his release and as soon as the agent puts himself at its disposal. If the administration delays to do so without justification, it is depriving him of his salary without any legal grounds. Consequently, the agent is entitled to a just compensation equal to his salary for the full period following his release while being at the disposal of the administration (Challenge No. 223/27, session of 26 January 1986).

The court also ruled that a challenged decision which, on the face of it, appeared to be a transfer but was in reality a disciplinary sanction, completing a previous one applied to

the plaintiff, namely, cutting off two days of his salary, was defective, since an agent may not be punished twice for the same act. This decision contravened the law, which constitutes a mistake for which the administration is accountable. The plaintiff had incurred a material damage by being transferred, since he had been deprived of the incentives, annual increments and the additional fixed salary which is granted to administrative directors, throughout his absence from the distribution department. Such a damage being the result of a proven mistake by the administration, the relation of causality is present as well as the grounds for the administration's responsibility, entitling the plaintiff to compensation for material damages incurred as a result of his transfer.

As for the plaintiff's claim for compensation for moral damage, his reinstatement to his job is compensation enough for any moral damage which might have been incurred as a result of the aforementioned decision (Challenge No. 3147/32, session of 16 March 1991).

The court also ruled that the abrogation of the decision of dismissal which gave rise to the claims, the reinstatement of the plaintiff and the recognition of his right to the full period of service and promotion, are adequate compensation for material and moral torts incurred (Challenge No. 411/12, session of 31 January 1997).

Among the cases where the court did not rule for compensation in cash, is its ruling that in respect of the moral damage, the abrogation of the two decisions to transfer the plaintiff and the implementation of this judgment by the administration, was an adequate compensation to his damage. Consequently, the plaintiff was not deemed entitled to claim compensation in cash, having already been compensated for his damages, since it is legally established that the compensation must be proportional to the tort (Challenge No. 899/28, session of 15 May 1988).

It is to be noted, from the rulings of the Supreme Administrative Court, that although the latter is usually satisfied with the abrogation of the challenged decision and its implementation to make up for the moral damages incurred, yet, in certain cases, it has also ruled for financial compensation for moral damage. An example thereof is its ruling that to delay the plaintiff's promotion for reasons for which he is not responsible, places this delay in the realm of enmity and personal conflict, making it an obvious mistake on the part of the administration. That mistake deprived the plaintiff of promotion to the post of professor and of its privileges, for almost ten years, causing psychological harm and prejudice to the plaintiff's status among his peers and students. To promote him retroactively is not compensation enough for such a damage (Challenge No. 3496/3, session of 29 January 1989).

Among such applications is the ruling that even though litigation is a recognized right for all, it is, nonetheless, a material burden for the litigant, not only in terms of judicial fees, it also involves the efforts and expenses of pursuing the litigation until rights are restored by the courts. It is obvious that the administration had repeatedly overlooked the plaintiff, depriving him three times in succession of promotion to the office of general director and, later, to the offices of under-secretary of state and first under-secretary of state. This forced him, each time to resort to the courts for the promotion to which he was entitled, in spite of his seniority over those who were promoted and the absence of justifications for maintaining him on a lower grade of office. This gave rise to questions and

unjustified rumors as to the reasons thereof among his subordinates. Such a situation was undoubtedly a cause of pain and psychological suffering to the plaintiff, both of which are not easy to assess, making it difficult to say that their effects were entirely eliminated by a subsequent late promotion as a result of a mandatory ruling. Accordingly, the plaintiff was entitled to a compensation of 5,000 pounds (Challenge No. 673/24, session of 15 July 1990). The court also ruled that it was justified in granting compensation for the moral damage suffered by the plaintiff so that he may realize that the state refuses injustice and that it shall not have its citizens harmed nor their future prejudiced without cause and against the law. This does not conflict with the principles established by the administrative judge, namely, that the reinstatement of a dismissed employee to his job constitutes a moral and material compensation. The abrogation of the decision to dismiss him, the granting of his salary, increments and due promotions are not, as such, sufficient to overcome his sense of injustice and the suffering to which he was subjected as a result of being uprooted from his community, becoming a subject of their suspicion, their derision and their gloating. The ruling challenged by the administration took all those elements into consideration, indicating that the court recognized the injustice done to him, and deciding that the administration, even though it had executed the court ruling abrogating the decision to dismiss, was obligated to compensate him for the mistake and to make up for the moral damage incurred by him. Thus the court's decision did not violate the law, the compensation being justified (Challenge No. 9551/29, session of 30 June 1987).

Among the cases in which the court failed to rule for compensation because there was no proof of damage, is the ruling that a mistake was committed since a person was drafted in contravention with the provisions of the law. However, since this did not incur any damage justifying compensation, there was no ground for compensation to the plaintiff by the administration for its illegal decisions. Military and national service are the duty of any Egyptian having reached the age set by the law, in fulfillment of any citizen's obligation to sacrifice life and property for his country by carrying out his military service, at the cost of life, time and profit, in return for security and services provided by the nation. Since military service is an honor and an obligation due to the country, and since the law compensates the conscript and gives him advantages in kind, salary, increments and compensation, as well as an end of service remuneration, it would be contrary to the provisions and spirit of the law to consider that drafting, in itself, deprives the conscript of gain, thus justifying a claim of compensation. Accordingly, there was no grounds for damage in the action on liability (Challenge No. 1058/31, session of 9 April 1988).

5.3.1.3. A Relation of Causality between the Mistake and the Damage

For the administration's liability for illegal decisions to be established, the damage incurred by the persons concerned should have occurred as a result of a mistake committed by the administration. Among the cases in which the Supreme Administrative Court denied the existence of a relation of causality entailing administrative liability is the ruling that with respect to the damage incurred by the respondent as a result of the administration's choice of a rabbit as his logo in local elections, such a damage, on the

assumption that it did occur, did not arise from a mistake committed by the administration in choosing the rabbit logo. Like other logos enumerated in the decision of the Minister of Interior, the rabbit was designed to help illiterate electors identify and elect the candidate of their choice by means of his logo, which is usually chosen from among the fauna and objects in the local environment. The damage resulted from the acts of strangers, namely, the circumstances of the elections, the presence of supporters and opponents of the candidates. It is natural for competitors and opponents to exploit the candidate's traits, profession, name, surname and assigned logo to his detriment, in an attempt to ridicule him. Usually the candidate is resigned to such ridicule which may help in making him known to the electorate. Under the system of elections in application, failure or victory depend on the love, confidence and respect that the candidate or his party command. This explains the victory of the respondent, regardless of any tort he may have incurred (Challenge No. 2590/29, session of 21 April 1985).

It also ruled that the legislator has set restrictions to be complied with for the facilitation of air navigation, the ultimate interest being military, i.e. public interest. The legislator recognized a property owner's right to compensation for removal of his property if it encroaches on air navigation. The compensation is to be estimated by a committee set up by decree of the Minister of Defense. The owner is entitled to object to the estimation before the court of first instance. A decree by the governor to seal the pigeon holes in the pigeon towers close to the airport so as to allow the Air Force to conduct its activities, was found to be a sound decree. Hence, there were no grounds to claim compensation for the damage incurred as a result of the decree, since there is no relation of causality between the damage and the decree. The damage was due to the fact that the place chosen was inappropriate for the activity, and not to the decree itself as held by the plaintiff before the expert, namely, that the sound of the aircrafts at take-off and landing made pigeon breeding impossible (Challenges No. 1513, 1525/28, session of 31 October 1987).

5.3.2. Administrative Liability for Risks

Such a liability is based on only two grounds, namely damage and a relation of causality between the activity of the administration and the damage, irrespective of whether the former has committed a mistake. In France, jurisprudence establishes responsibility in such cases on the basis of the equality of individuals where public expenses are concerned, namely, the community is responsible for public expenses, hence for the risks, incurred in the event of a damage suffered by certain individuals as a result of the administration's activities.

Contrary to what was established by the French State Council which has developed this idea into a complementary theory, with its own bases and conditions, the Egyptian State Council has ruled out the applications and solutions adopted by the French State Council in this respect. The Supreme Administrative Court ruled that the establishment of the responsibility of the government on the basis of risks incurred cannot be accepted as a general principle, since it means that responsibility would be based on two grounds only, namely, damage and relation of causality between the activity of the administration and the damage, even where the activity involves no mistake. The Civil Code and the State Council Law

clearly rejected this. Both linked responsibility to the commission of a mistake, and the State Council Law considered the defects of an administrative decision to be a lack of jurisdiction, a defect of form, an infringement of the laws and regulations, an error in the application or interpretation of them or an abuse of power only. Such being the case, responsibility may not be allocated on the basis of the liability for risks, as a general principle, but requires a special legislative provision. The explanatory note for the Civil Code indicates that, with respect to the allocation of responsibility on the basis of liability for new risks, there are only special laws dealing with matters that have reached a degree of maturity to justify this type of regulation (Challenge No. 1519/2, session of 15 December 1956; Challenge No. 449/9, session of 22 June 1968).

Among the applications of the idea of liability for risks adopted by Egyptian legislation, is the Law on Work Injuries No. 64 of 1936, and Law No. 89 of 1950 which replaced it, which stipulate that any agent who suffers an injury during and while performing work, is entitled to compensation from the employer, estimated by the law according to the seriousness of the injury. Law No. 79 of 1975 regarding the rules of social insurance adopted the same principle, the legislator providing protection by insurance for work injuries with respect to accidents which occur during or because of work. It covers accidents which occur to agents because of their work, irrespective of whether they occur during formal working hours, provided there exists a relation of causality between the accident and the work. There is also Law No. 88 of 1943 regarding compensation for damages to factory buildings, to agents and to fixed machinery as a result of war. The legislator also adopted this idea in Law Decree No. 181 of 1952 concerning dismissal of agents for other than disciplinary reasons. It stipulated compensation on the basis of the addition of certain periods of service to the actual service period, and payment of the difference between the salary and the pension for this additional period.

5.4. Public Office and Public Officers

5.4.1. Relationship between the Officer and the Administration

The Administrative Court of Justice, followed by the Supreme Administrative Court, clarified the nature of the relationship between the officer and the administration as well as the regulations governing that relationship. It also sought to establish true justice between the officer and the government and to determine whatever guarantees he is entitled to. It ruled that the relationship between the officer and the government is a regulatory relationship relative to the application of laws and regulations, that the government has the power to amend whenever public interest so requires. That, however, does not prejudice the officer's right to the salary or grade he has attained or their equivalent; that is an acquired right and may not be affected by a ministerial decree amending the scale of remuneration or the hierarchy. Since the Ministry has issued instructions which include a general regulatory rule, they are considered as completing the applied regulatory rules and regulations, and they may not be amended by individual decisions, so long as they remain in force. Otherwise it would be a contravention to the law, even if the amendment, in the given individual case, was issued within the same instrument as that of the general rules.

5.4.2. Regulations

As to the regulations governing the regulatory relationship between the officer and the administration, it has been established by the State Council that transferring an officer from one administration to another, within the same grade, is a transfer of location which falls within the scope of the discretionary power of the administration, according to the requirements of public interest, and which does not fall under the jurisdiction of the judiciary provided the decision is not defective as a misuse of power, and provided it is not arbitrary or prejudicial to the transferred officer, i.e. conducive to a loss of promotion, or infringement of the law (Challenge No. 1403/46, session of 7 February 1988). The administration exercises its authority to transfer the officer for reasons of public interest and good functioning of public utilities. The officer is not entitled to insist on remaining in a certain post. If the administration uses the transfer as a kind of punishment, it is an abuse of power and the decision is illegal (Challenge No. 3470/31, session of 7 February 1988).

5.4.3. Transfer

However, if the agent is transferred because he is accused, this does not, by necessity, constitute a disguised disciplinary action. Proof to that effect must be provided. To hold otherwise would place the offending agent in a more advantageous position than an agent transferred because of the requirements of public interest. Linking the transfer to a disciplinary action is not, in itself, a proof that the transfer constitutes a disguised punishment, so long as the transfer is carried out in the public interest (Challenge No. 758/49, session of 16 February 1988). The court also considered that a transfer of location carried out in the interest of the public utility, for a better redeployment of employees to achieve a regular performance of the work, is not a disciplinary measure, and may not be described as such, so long as it is not taken subsequent to a given incident after which the transfer would have taken place as an expression of the administration's intent to punish the agent (Challenge No. 1115/33, session of 13 May 1989).

5.4.4. Secondment

With respect to the secondment of an officer, the court pointed out that secondment of an officer to another office is a prerogative of the administration which belongs to its discretionary power, so long as it does not misuse it. However, it indicated that the exercise of that power is subject to the limitations set forth by the law, such as the feasibility of the secondment and the fact that the it shall not be to a lesser position. Accordingly, it ruled that repeated secondment of the agent to one function, then to a series of different functions, without returning him to his original work, is not conducive to stability in a specific post. This is indicative of a new situation to be deduced from all the above actions, that the administration abused its power of secondment. This constitutes a defect which, without doubt, caused damage to the appellant, by having a negative effect on his psychological state and health (Challenge No. 940/26, session of 29 January 1981).

The court also ruled that the secondment of the plaintiff, who occupies the post of chief of section for local contracts in the traffic sector, for an unspecified period of time to an unspecified job in another sector, when the situation at his original job required at

the same time the secondment of someone to replace him, is in contravention of the law (Challenge No. 1742/31, session of 22 November 1987). It also ruled that the plaintiff was transferred from her office, as a member of the legal administration, to work in the personnel administration, and that the decision of transfer was later amended to become a secondment, then the secondment was cancelled, then decided again. All such decisions were issued in a relatively short period of time and in contravention of the law, because the decision on secondment was final and for an unlimited period of time. The administration also, unequivocally, indicated that the decisions were meant as disciplinary measures against the plaintiff. Accordingly, the administration had abused its power for illegal purposes and, consequently, there was a mistake on the part of the administration (Challenge No. 2301/27, session of 21 December 1986).

5.4.5. Disciplinary Sanctions

With respect to disciplinary action, Article 76 of the Law on State Civil Servants stipulates that public office aims at serving the citizens by serving public interest, pursuant to the relevant laws, rules and regulations. In that Article, the legislator spelled out the duties with which the officer is to comply in the service of public interest and public benefit. Under Article 77 of the same law, the legislator prohibited many things, and indicated numerous contraventions that the agent must avoid committing. The said duties and prohibitions are so general and comprehensive that they apply to all public personnel, in whatever administration, irrespective of the nature of their work or functions. On the other hand, those contraventions and prohibitions are not exhaustive, the established principle being that administrative offenses or contravention are different from criminal offenses, i.e. not governed by the principle that there is no offense without a legal provision. Any failure by an officer to fulfill the duties of his function, or any proof of a contravention of the duties of his office, or the orders of his superiors, any deviation from the requirements of the duties of the work of his office and the dignity of the said office are punishable by disciplinary action.

Pursuant to the aforementioned principles, the Supreme Administrative Court acted on the assumption that disciplinary contraventions were not exhaustively spelled out in any of the laws on agents, and that any deviation from the requirements of the function or duties is considered an administrative offense justifying disciplinary action (Challenge No. 62/28, session of 4 March 1986).

The court also ruled that an administrative offense is completely different from a criminal offense in terms of nature and components. One act may constitute both offenses, the principle being that what differentiates them is their components and the purpose of the penalty for each of them. An administrative offense is designed to protect the public function, while a criminal one is meant to punish the offender and to protect the community. Consequently, a sentence in a criminal offense does not prevent a disciplinary action against the same person for administrative contraventions involving a criminal act (Challenge No. 2253/29, session of 31 January 1987).

The court also decided that whereas the act attributed to the appellant took place outside the scope of the work of his office, the private life of a public officer is not his private property. Rather, he should take into consideration that his behavior outside work

must not affect the work itself, nor should it diminish respect for him, which may result in a loss of confidence in the public function and in those who manage public affairs (Challenge No. 3394/33, session of 11 January 1992).

Pursuant to the aforementioned principle, the Supreme Administrative Court ruled that the existence of a sinful relation between the teacher accused and the school attendant involves a serious breach of his duties as a teacher whose first function is to educate a new generation and to give a good example to be followed by all. Having lost his good reputation by his conduct, he is no longer worthy of his office, regardless of the fact that the act took place with the full consent of the person who was subjected to the act (Challenge No. 1061/8, session of 12 January 1963).

The court also ruled that when a professor sheltered a minor girl who had fled from her family, this constituted an offense with implications reaching beyond his private life to affect the dignity of his office (Challenge No. 875/7, session of 4 January 1961).

Furthermore, for the accused to be alone with a colleague in a hotel room, as proved by the investigation, runs counter to the teachings of religion and social traditions which do not condone the presence of a female alone with a man not of her immediate family, even if she is engaged to him. As a teacher, he should have avoided suspicious situations and should have behaved in such a manner as not to lose people's confidence and respect. Accordingly, his behavior is considered a punishable administrative offense because it involves deviation from the requirements of the office and its dignity (Challenge No. 345/10, session of 6 February 1965).

Whereas the offense of the person against whom the objection was made, namely the dissipation of his wife's movable assets, is not an offense of breach of honor, it is nonetheless an administrative offense worthy of disciplinary punishment, even though it was perpetrated outside the scope of his work. Such an act constitutes a shameful conduct affecting the dignity of the office (Challenge No. 771/12, session of 22 January 1972). Complaint is allowed for all, but an agent should not use that as a way to be rude or to slander his superiors (Challenge No. 1137/14, session of 22 January 1972).

The administrative court has been strict in controlling the validity of disciplinary measures and administrative penalties. It has subjected disciplinary penalties to prior investigation or questioning. Punishing an agent without prior investigation and without hearing his defence, would be in contravention of the law and abrogated. The investigation should fulfill all the requirements of a proper legal investigation, as well as provide assurances and guarantees in terms of the need to summon, question and confront the officer. The agent should be able to defend himself and must be given the chance to hear the witnesses of the prosecution, confer with all the witnesses of the defense and be provided with all other requirements for his defense. If the administrative investigation does not include all these components, it is not considered a proper investigation (Court of Administrative Justice, session of 18 January 1953).

Confronting the officer with the contravention attributed to him is considered a basic guarantee which must be included in the investigation. The idea of such a guarantee is to inform the agent of what is attributed to him so that he may defend himself (Challenge No. 399/30, session of 28 October 1986).

Furthermore, for the investigation to be proper, the complete impartiality of the investigator must be guaranteed. Accordingly, considering that the plaintiff was in charge of the investigation with the person who is subject to the complaint, the investigation is null and lacks the guarantee of the impartiality of the investigator (Challenge No. 1340/31, session of 16 December 1986).

The court also concluded that if the administrative prosecution is in charge of the investigation, the administration itself may not take any measures regarding the investigation unless the administrative prosecution refers it to them. Consequently, any decision issued by the administration before the administrative prosecution reaches a conclusion in the investigation, is procedurally defective and, hence, invalid (Challenge No. 500/29, session of 10 January 1987).

With respect to penalties, the Supreme Administrative Court stressed in its rulings that an officer may not be penalized twice for the same error, a condition required by natural justice and the very essence of penal law. Accordingly, since the agent had previously been penalized by a loss of two days' salary for absence from work without permission, on 27 and 28 January 1960, namely, the same act for which he was taken to the disciplinary court, the court should not have penalized him for the same charge (Challenge No. 1330/7, session of 12 January 1963).

On the other hand, the Supreme Administrative Court controls the adequacy of disciplinary penalties. The court ruled that whereas the disciplinary authority was, alone, entitled to assess the seriousness of the administrative mistake and the appropriate penalty, the legitimacy of its decisions should not be tainted by any kind of excess. Among the forms of excess is the lack of proportionality between the administrative mistake and the penalty. If such is the case, the penalty loses its legitimacy and the decision to dismiss the appellant from service is defective, being excessive, hence to be revoked (Challenge No. 2935/35J, session of 8 February 1992).

Furthermore, the court also controls the measures decided by disciplinary courts. It ruled that failure to notify the agent of the decision to refer him to a disciplinary court, and of the date set for the consideration of his case, renders the disciplinary decision null (Challenge No. 76/18, session of 20 April 1974).

The court should closely consider the evidence so that law may prevail, it should ascertain the existence of a contravention in the light of the facts reached by the investigation and the defense of the accused. It follows that the court may not base itself on charges that have not been fully investigated (Challenge No. 419/34, session of 3 March 1990).

The court further ruled that conviction by disciplinary courts must be based on certainty, not on doubts and speculation. In view of the inadequacy of the investigation, the plaintiff may not be penalized on mere suspicion of the act subject of the charge (Challenge No. 1585/34, session of 17 March 1990).

5.4.6. End of Service

With respect to the end of service, the Supreme Administrative Court ruled that the resignation may be refused or not accepted, in view of the fact that a resignation is an indication of the agent's wish to end his service; it must, consequently, reflect his consent. It is flawed if

there is any coercion, namely, if the resignation was submitted in fear of the administration and because the agent felt threatened in his life, body, honor or property. In as much as it affects the validity of the administrative decision, the presence of coercion is subject to the estimation of the administrative judge, in the frame of its control over the legitimacy of administrative decisions (Challenge No. 580/10, session of 12 November 1966; Challenge No. 3161/34, session of 6 February 1994).

With respect to implicit resignation due to absence from work for an uninterrupted period of 15 days, or an interrupted period exceeding 30 days in one year without permission, as prescribed by Article 98 of the Law on State Civil Servants, the court has set the necessary restrictions and guarantees regarding this way of ending service. It ruled that, in view of the circumstances of the case, it was clear that the absence of the servant was due to reasons other than the intention to resign, the agent having been drafted for military service, and had no intention of resigning from his office. Accordingly, there was no evidence of an implicit resignation and he could not be considered to have tendered his resignation (Challenge No. 229/29, session of 12 June 1986). Other such circumstances are the fact that the absence of the agent was followed, next day, by a request for reference to the medical commission, indicating that his absence was due to illness. In that case either, there was no grounds for an assumption of an intention to quit service (Challenge No. 2548/32, session of 6 June 1989). Furthermore, proof of the University's approval of the secondment of the appellant to work in Saudi Arabia is no indication of the appellant's implicit intention to resign since he did not quit his work after that (Challenge No. 898/38, session of 28 June 1994).

The court also set out rules regarding end of service by implicit resignation, namely, that written notification be given to the agent, pursuant to Article 98 of the law, five days after his uninterrupted absence, or 10 days in case of interrupted absence. In this context, it has been established by the Supreme Administrative Court that the notification is an essential condition, the aim of which is to indicate to the administration the extent of the agent's will to resign and to inform him of the measures to be taken in view of the said absence. He is, thereby, in a position to make his reasons known before the said action is taken. Neglect to notify him results in the abrogation of the decision as illegal and in contravention of the law (Challenge No. 565/37, session of 25 January 1994).

The court, however, considered that proof of notification of the agent by cable or mail, to the address mentioned in his service file, constitutes a presumption of his knowledge and therefore a presumption of his resignation, unless the agent provides evidence that the administration did not send him a written notification within the period determined by the law, or that it was addressed, but he did not receive it (Challenge No. 375/34, session of 28 November 1989).

5.5. Administrative Contracts

In order to carry out its activities of conducting the affairs of a public utility, and to provide for its needs in services and commodities, the administration enters into contracts with third parties. The said contracts are divided into civil contracts, which are subject to

private law and treated like any civil contracts, and administrative contracts, which are subject to the rules of administrative law, namely, special rules, different from the rules of civil law governing civil contracts. These special rules reflect the advantages given to public authority which do not apply to relations among individuals and which exist to facilitate the efficient conduct of public utilities.

In view of the scarcity of legal provisions regarding administrative contracts, the State Council played a creative role in establishing and improvising legal theories and solutions to the problems arising from the very nature of public law, from the needs of public utilities and from the regular and increasing conduct of their work, unrestricted by the provisions of the Civil Code. This had a great influence on the establishment of a special theory on administrative contracts, distinguishing them in terms of their legal nature, methods of conclusion, rules governing their execution and the provisions ending such contracts.

5.5.1. The Legal Nature of an Administrative Contract

An administrative contract, according to jurisprudence and court rulings, is a contract entered into by a public legal person with the purpose of conducting or organizing work in a public utility. Such a contract must reflect the intention of the administration to apply the provisions of public law by including exceptional conditions which are unfamiliar in private law, or authorizing the contracting party to participate directly in conducting the work of the utility (Challenge No. 576/11, session of 30 December 1967).

Accordingly, the existence of the administration as a party to the contract is a necessary condition for the contract to be considered an administrative contract. The rules of public law were meant indeed to govern the activities of the administration, rather than that of individuals and private organs. However, if it is clear that an individual or private organ contracted, in fact, on behalf of an administration and in its interest, the contract acquires the status of an administrative contract, where the other elements of administrative contracts are fulfilled. Pursuant to that, the Supreme Administrative Court ruled that the purpose of the contract which was the subject of the dispute, made by Shell Company, was to conduct work in a public utility and to include the measures provided by public law. Therefore, it had to be considered an administrative contract (Challenge No. 1558/7, session of 7 March 1964). The court also ruled that the pledge signed by an employee, sent abroad on a scientific or training scholarship, to return to Egypt upon termination of the scholarship or grant, and to work for the administration who sent him abroad, bears the characteristics and components of administrative contracts (Challenge No. 1195/28, session of 9 April 1985). On the contrary, the court ruled that public sector companies are not public legal persons and the contracts to which they are parties are not administrative contracts (Challenge No. 708/33, session of 11 June 1988). The court also ruled that the lease contract, subject of dispute, which was concluded between the plaintiff and the Egyptian Joint Stock Company for Construction and Touristic Installations who acquired the franchise to develop and manage the Montazah Palace, was a contract falling within the scope of private law (Challenge No. 708/32, session of 11 June 1988).

However, the Supreme Administrative Court considered that for a contract to be administrative, the administration needs to resort to the means of public law. The fact that the contract is related to a public utility is not enough in itself to make it an administrative contract. An example of exceptional conditions is the condition which vests the administration with the right to alter the obligations of the other contracting party, or to unilaterally end the said contract, without its approval, or to change the means of execution and to penalize the contractor without need to prove the loss incurred, nor to have recourse to the courts. Consequently, where the contract does not include exceptional conditions, it shall be governed by the provisions of private law, and may not be considered an administrative contract (Challenge No. 3128/35, session of 24 January 1995). Pursuant to the above, the Supreme Administrative Court ruled that the contract between the railways utility and the plaintiff, for the sale of gravel extracted from its mines, did not have the characteristics of an administrative contract. It was merely a contract for the sale of privately owned property of the State, similar to property sold by individuals in accordance with the provisions of the Civil Code. The conditions of the contract were, in no way, different from those specified in private law (Challenge No. 559/11, session of 24 February 1965).

5.5.2. Concluding an Administrative Contract

With respect to concluding an administrative contract, and the way of determining the rights and duties of the contractor vis-à-vis the administration, the Supreme Administrative Court ruled that the laws and regulations governing contracts are applicable to all. Parties to contracts are supposed to know the contents of those laws and regulations. If they enter into a contract with the administration, they are supposed to have accepted all the provisions thereof, which become an integral part of the contract, unless the contract clearly rules out part or all of those provisions, with the exception of those related to public order. Accordingly, since the contract concluded with the plaintiff did not rule out the regulations on tenders and auctions, nor the regulations related to procurement, the provisions of such regulations shall be applied (Challenge No. 858/10, session of 6 January 1968. See also Challenge No. 1511/31, session of 4 April 1989).

The court also ruled that the rights and duties of the contractor vis-à-vis the administration are determined by the provisions of the contract binding the contractor and the administration, rather than by the correspondence, publications or periodicals addressed by the Ministry to its different administrative organs (Challenge No. 354/11, session of 1 February 1969).

With respect to the conditions for the validity of the administrative contract, the object of the contract must be related to legal activities which may be carried out, and it cannot be binding if it involves illegal activities in contravention of public order. This would render the contract null and void. In that case, the court may rule, ex officio, that it is null and void (Challenge No. 1303/8, session of 31 December 1966).

The Supreme Administrative Court also ruled that a mistake in the sold or supplied article is a defect of will, and the contracting party may request the contract to be declared void, pursuant to the provisions of Articles 120 and 121 of the Civil Code,

provided it is a gross defect, i.e. so great that the parties would have refrained from entering into the contract had they known of it. The mistake is essential if it concerns an essential characteristic of the article in the view of the contracting party. If there is no such essential mistake, or if its existence was known to and accepted by the contracting party, the contract may not be declared null and void (Challenge No. 882/10, session of 2 March 1968).

With respect to the element of will in the contract, the announcement by the administration of a tender, auction or negotiation for the supply of all kinds of articles by submitting bids is an invitation to enter into a contract. The submittal of bids according to the announced specifications and conditions is the response, and must be approved by the administration if a contract is to be concluded (Challenge No. 333/10, session of 2 December 1967).

The Supreme Administrative Court ruled that acceptance, as an expression of will, does not become a legal reality and does not have any effect, until it is known by the person to which it is addressed. Accordingly, a contract is not considered concluded until it becomes known to the second party that it has been accepted. If the administration accepts the bid of the plaintiff, but the acceptance is not known by the defendant, it cannot be claimed that the contract was made. Accordingly it does not have any effect (Challenge No. 688/14, session of 24 November 1973).

In principle, the administration enters into contracts through tenders and auctions, according to the relevant laws and regulations. It can only exceptionally resort to negotiation, in accordance with the established rules and conditions. Tenders provide better guarantees for the public interest, provided the principle of equality of the tenderers is respected, without any discrimination or exceptions. Otherwise, the balance would be disrupted and competition, which is based on equal chances, would be disturbed by tricks of unfair competition. Accordingly, acceptance of the bid submitted by the respondent, after the deadline, is in clear contravention of the principle of equality among tenderers. This was an exception, in contravention to the announced conditions, and an infringement of equality of chances. The administration should have refused the offer and should not have considered it under any circumstances, because it was contrary to the conditions of the tender (Challenge No. 1558/6, session of 24 November 1962).

With respect to the contracting process, the Supreme Administrative Court has pointed out that the different types of authority vested in the administration, constitute a complex process governed by the rules and regulations prescribed by the law and by the executive regulations on tenders and auctions. Pursuant to administrative rules, three bodies are involved in the process which leads to the contract, each with its own responsibility. The first is the committee in charge of opening the envelopes of bids, the second is the committee which decides on the offers and the third is the organ which concludes the contract. Each has a specific competence. The committee who opens the envelopes of the bids does so as a preliminary step to the consideration and verification of their compliance with the announced conditions, ruling out those which, for one reason or another, do not meet the conditions. The committee to decide on the offers then carries out its function, namely, follows the appropriate process to select the best offer. The competence of the committee in this respect is

restricted. It carries out its work according to rules prescribed in the interest of the administration and of the individual involved. The rules are designed to ensure the respect of the principle of equality of all tenderers. The decision of this committee is not the last step in the process, it is only one of the preliminary steps in the complex process of concluding an administrative contract. Then comes the authority who is competent to enter into a contract. If it decides to conclude a contract, it does so with the candidate chosen by the previous committee. Its competence, in this case, is restricted, since it cannot conclude a contract with any other tenderer. It does, however, have a discretionary power, namely, the right not to conclude a contract and to refrain from so doing, provided its refusal is for reasons related to the public interest (Challenge No. 313/4, session of 13 February 1960).

The contract is considered to have been concluded between the administration and the tenderer as soon as the latter is notified of the acceptance of his offer. The fact that the plaintiff delayed in providing the final insurance has no effect on the validity of the contract (Challenge No. 138/11, session of 27 April 1968).

5.5.3. Execution of the Administrative Contract

Even though an administrative contract presumes the agreement of both parties to produce a legal effect binding to both parties, by virtue of the principle that the contract is the law of the contracting parties, the fact that the contract is related to the activity and function of a public utility implies that it is governed by the rules governing the conduct of work in the public utility, and the above mentioned principle does not always apply.

An administrative contract is only one of the means of managing a public utility. Consequently, the rules for its execution are influenced by the rules on conducting the work of the public utility for which the contract was made. The need for a regular and sustained conduct of work in a public utility, and the fact that such utility is subjected to change and replacement at all times, justify the great powers given to the administration to supervise the execution of administrative contracts, namely, its power to alter the obligations of a contractor without need for his prior agreement, and its right to inflict penalties to force him to execute the contract without need of recourse to the judge. In respect of the contractor's rights, the rules controlling the conduct of work in a public utility require the administration to stand by the contractor if losses are incurred by him, so that he may not become unable to abide by the contract, thus disrupting the work in the utility. The aforementioned principles have been pointed out by the Supreme Administrative Court when it held that administrative contracts are to be distinguished from civil contracts by their special nature, namely, the needs of the utility that the contract is designed to meet and the fact that the public interest prevails over the interest of individuals. Whereas the interests of the two parties to a civil contract are balanced and equal, they are not equal in administrative contracts; public interest must have prevalence over the private interest of individuals. This idea governs the relations arising from an administrative contract. It results in vesting the administration with the power to supervise and direct the execution of the contract, and the right to change the conditions of the contract by adding such new conditions as it believes appropriate to the public interest, denying the other party's right to challenge such changes on the basis of the rule that a contract is

the law of the contractors; provided the amendments are not such that they completely breach the contract, allowing the other party to cancel it while maintaining his right to compensation for non compliance with the financial conditions (Challenge No. 1520/2, session of 20 April 1957).

Pursuant to the above, the contractor shall devote all the necessary care to the execution of the contract. His obligations to the administration are of a personal nature, not allowing him to be replaced by another nor allowing him to sub-contract, except with the approval of the administration. If he does so without the approval of the administration, the sub-contract is null and void and is not relevant vis-à-vis the administration (Challenge No. 1109/8, session of 28 December 1963).

Furthermore, the Supreme Administrative Court ruled that in exercising its power to amend or terminate a contract, the administration is only doing so in keeping with the changing conditions of the public utility. Said right is not derived from the provisions of the contract, but rather from the conditions of public order governing the work in public utilities, to ensure the regularity of its services in keeping with public interest. Accordingly, the right of the administration to amend or terminate an administrative contract is established without being spelled out in the contract and regardless of the approval of the other party. Where the provisions of the contract refer to the right of the administration to said amendment, it is merely in order to regulate such a power of amendment and to clarify the conditions of exercising it (Challenge No. 3986/35, session of 15 November 1992).

Nevertheless, the power of the administration to amend the contract is not absolute. It is subject to certain restrictions required by the need to reconcile the public interest of the utility with the interests of the individuals who have entered into a contract with the said public utility. It is a power to be exercised within the limits determined by the law, provided it does not destabilize the economics nor disrupt the financial balance of the administrative contract. Accordingly, the Supreme Administrative Court has set restrictions on said authority. For example, an administration may not make any relevant amendment to the contract unless it complies with the established rules of competence. Only the authority with the competence to amend may do so. Any instructions issued by other than the said authority shall not produce any effect by way of amendment of the contract, alteration of its effect or change of its purport (Challenge No. 845/19, session of 29 November 1980).

Additional work imposed by the amendment shall be similar in kind to the original works agreed on in the contract. The increase in quantity or volume of work in the contract shall be executable and financially accountable with the original contractor, in keeping with the categories and prices agreed on for the original work. If the additional works are not connected to the original works, they need not be assigned to the same contractor (Challenge No. 1944/33, session of 29 April 1989).

Furthermore, the Supreme Administrative Court has indicated that the power of the administration to amend is restricted to the conditions for conducting the work of the public utility. It does not give the authority to change the financial remuneration, since the conditions of the latter are carefully stipulated in the contract, and may not be amended by either party without the approval of the other (Challenge No. 2519/24, session of 31 August 1993).

With respect to penalties that the administration is entitled to impose on the contractor, such as the termination of the contract, withholding of the insurance and striking off the name of the contractor from the roster of contractors acceptable to the administration, they are penalties the administration may impose when the contractors do not fulfill their obligations, or if they resort to cheating and prevarication with the administration. The latter must ensure the good execution of the contract in relation to the conduct of work in the utility, its regularity and commitment to public interest. The administration may impose the said penalties pending a court ruling (Challenge No. 1109/8, session of 28 December 1963). Accordingly, if the administration has withheld sums due to the supplier in settlement of the fines and differences in prices for which he has been held responsible, this does not constitute a contractual breach by the administration (Rulings No. 1553, 1541/27, session of 7 November 1987).

Furthermore, the administration is entitled to terminate administrative contracts unilaterally, if public interest so requires. The other party to the contract will only be entitled to whatever compensation is due (Challenge No. 2289, session of 20 March 1990).

Only the administration is entitled to impose fines for delays without need for a ruling on proof of tort incurred. It is also entitled to estimate the need for the said fines, considering that it is in charge of the good conduct of work in the public utility. It may also decide to exempt the other party from all or part of the said fines (Challenge No. 61/2, session of 26 September 1960). The contractor may not be exempted from payment of the fine, except if he proves that the non-fulfillment of his obligations was due to a force majeure over which he had no control, or if the administration has not fulfilled its obligations (Challenge No. 2551/30, session of 30 May 1989).

The administration, however, can only impose a penalty for delay if it can prove that the contractor did not fulfill his obligations (Challenges No. 843, 922/26, session of 20 November 1989). The fine shall only be imposed on the contractor who is responsible for delay in handing over the work on the fixed date and, consequently, the said date is not effective if the order to operate was not issued to the contractor because he failed to pay the final insurance; he may not be asked to pay the fine for delay (Challenge No. 858/10, session of 6 January 1968) since the delay is due to force majeure.

The right of the administration to impose a penalty was defined by the Supreme Administrative Court as a means for the administration to obtain execution in kind, executed by the administration instead of the defaulting contractor and under his responsibility. The contractor who has defaulted in execution shall therefore bear the differences in prices. Execution at the expense of the defaulter shall not be considered a contractual penalty imposed by the administration. It is rather a measure by which the administration can ensure the good and sustained conduct of work in public utilities and prevent a breakdown of the work which may expose public interest to a loss if the utilities were to come to a halt (Challenge No. 5843/26, session of 20 November 1982). Furthermore, if the administration were to make purchases at the expense of the contractor, it would not lead to a termination of the contractual relation between the two parties, so long as the administration has not proceeded to terminate the contract or to withhold the insurance (Challenge No. 993/8, session of 8 February 1964).

The right of the administration to resort to the said penalty is denied if the articles purchased are different from the ones stipulated in the contract. The administration may not buy automobiles if the contract stipulates bicycles. Nor can it buy trucks if automobiles have been agreed upon in the contract. The difference is not a difference in quality as regards the same kind of articles agreed upon in the contract, because the other quality was not unavailable (Challenge No. 2013/6, session of 16 December 1961). The administration may buy at the expense of the defaulting contractor articles of a similar kind as those agreed upon in the contract, even if they are of a different quality (Challenge No. 710/96, session of 2 March 1974).

The Supreme Administrative Court, with regard to restricting the administration's power to execute the contract at the expense of the defaulting contractor, indicated that the lapse of a short period after the beginning of the execution does not, necessarily, indicate a default by the contractor and is not a viable reason to withdraw the work from him (Challenge No. 1786/30, session of 18 January 1986).

5.5.4. The Rights of Whoever Contracts with the Administration

With respect to the rights of the contractor vis-à-vis the administration, the fact that the contract is related to the activity of a public utility entitles the contractor to ask the administration for help whenever he is faced with unexpected circumstances rendering the execution of the contract difficult or exhausting, so that the contractor may not become completely incapable of pursuing the execution of the contract, thus causing a breakdown of work in the public utility. That is what led the administrative judge to intervene, to establish the financial balance of the administrative contract by applying the theory of 'fait du prince', and that of unforeseen circumstances.

With respect to the theory of 'fait du prince', it may be defined as any measure taken by the public authority, which was not expected when the contract was concluded, and which increases the financial burdens of the party who entered into a contract with the administration (Challenge No. 65/12, session of 20 May 1961).

With respect to the theory of unforeseen circumstances, it applies when, during the execution of the administrative contract, unexpected and uncontrollable accidents or natural or economic circumstances occur, which result in great losses to the contractor, seriously disrupting the economics of the contract. In such a case, the administration shall assume a share of the losses incurred by the contractor for the duration of the unforeseen circumstances.

The role of the administrative judge is restricted to ruling for an appropriate compensation, without the right to amend the contractual obligations (Challenges No. 1562/10, 67/11, session of 11 May 1968).

Pursuant to the above theory, the administrative judge considered that the sharp rise in the price of articles or commodities to be provided by the supplier constituted circumstances unforeseen when he entered into the contract, since it resulted in increasing the burdens of the supplier, which entitled him to ask the administration to share half of the increase in prices (Challenge No. 877/27, session of 21 January 1984).

However, for the theory of 'unforeseen circumstances' to apply, it is necessary for the economics of the contract to be seriously disrupted. That disruption can only be evaluated on the basis of all the relevant elements in the contract. In that respect, the contract must be considered as one unit, and must be examined as a whole. Some of the elements may be lucrative and may compensate for other elements which resulted in a loss (Challenge No. 46/14, session of 17 June 1972). It follows from the above that the compensation for which the administration is obligated is not designed to make up for the lost profits, whatever their amount, nor for the habitual material losses in such transactions. The purpose is for the administration party to the contract to bear part of actual and serious loss with the view to restoring the financial balance between the two parties, in the public interest (Challenge No. 3562/29, session of 16 May 1987).

5.6. Public Rights and Freedoms

The Egyptian State Council has played an important role in the protection of public rights and freedoms, proving its ability to provide a large degree of guarantees for the sovereignty of the law, its respect by the administrative authorities and to provide protection for individuals from the arbitrariness of the administration. As such, the State Council was, rightfully, described as a bastion of freedoms and a refuge for the oppressed.

In the following paragraphs the main principles that the State Council has formulated in this respect are described.

5.6.1. Personal Freedom

In the first years after its establishment, the Court of Administrative Justice strove to affirm that personal freedom is the foundation of human life, which laws can regulate but not create. Restrictions thereof are only acceptable if they serve the common good of the community and public interest. Accordingly, the court abrogated a decision issued by the chief of police of Alexandria requiring a traffic policeman to shave his moustache, considering such an order to be a violation of the personal freedom of the plaintiff (Court of Administrative Justice, No. 217/4, session of 8 March 1951).

The court also ruled for the suspension of a decision by the director of a secondary school, preventing a student wearing a '*niqab*' from entering the school and warning her of expulsion if she did not lift her veil. The court ruled that the veil was not prohibited by the Sharia, but is a garb women are allowed to wear if they consider it to be an expression of their personal freedom and a confirmation of the freedom of belief guaranteed by the Constitution. No authority is entitled to prohibit women from wearing a veil because that would prejudice two constitutional freedoms. It was established by the administrative judge that veils worn by women may not be absolutely banned or entirely prohibited, even if only in a specific administration or place. An absolute ban or total prohibition thereof constitutes a violation of personal freedom and a restriction of the right to wear what one deems appropriate. If a woman decides to choose to abide by a strict doctrine decreeing the '*niqab*', rather than by another decreeing the lighter '*hijab*', it cannot be

held against her. To force a woman to wear other clothes involves a violation of her personal freedom, which is prohibited by Article 57 of the Constitution.

5.6.2. Freedom of Residence and the Non-Admissibility of Deportation

The Court of Administrative Justice abrogated a decision to deport a citizen on the grounds that, being a zionist, he represented a danger to public security, when it was established that he had the Egyptian nationality (Court of Administrative Justice, No. 137/5, session of 17 February 1953).

The court stressed that the rules of public international law and Law No. 49 of 1941 governing Passports and the Residence of Foreigners in Egypt, both established as a general principle that the state is entitled to deport any undesirable foreigners who constitute a danger or a threat to the safety of the nation, since the state has sovereignty over the country. Such a right is unrestricted except to prevent abuse of power. Any deportation must be based on reasons related to public interest. Since the plaintiff had been deported on the basis of a mere report resulting from an investigation which failed to convince the Ministry itself, said investigation lacking any supporting evidence, the court ruled to abrogate the decision to deport the plaintiff, who was a foreigner, because it was based on suspicion without evidence, hence not serious enough to justify deportation (Court of Administrative Justice, No. 1215/5, session of 31 May 1953).

5.6.3. Right of Worship

The court stressed that transforming a private property into a public church is a right recognized by the Constitution, which stipulates that the state shall guarantee the freedom of belief and the freedom of practicing religious rites. The conditions governing the licenses to build houses of worship are incorporated in decrees issued in 1856 and the Khatti Umayun of 14 December 1874. They may however not be used as an excuse to hamper the construction thereof, for such would run counter to the freedom of worship. The license referred to in the aforementioned decree was not meant to obstruct worship, but was meant to provide for the fulfillment of the necessary conditions for the establishment of houses of worship in a respectable environment, concomitant with the dignity and purity of worship, and in such a way as not to cause friction among the different religious denominations. It is within the said reasonable limits, that the system of permits should be established (Court of Administrative Justice, No. 615/5, session of 16 December 1952).

The Supreme Administrative Court followed suit by abrogating a decision that prohibited the construction of a church on a given plot on the grounds that the Ministry of Interior, responsible for law and order, and for preventing any disruption thereof, had the discretionary authority to so decide. The Ministry had justified its decision by claiming that it was intended to avoid friction between Moslems and Christians, but the court did not find the justification viable. There are no districts for Christians and others for Moslems, they live together, and there may be churches in districts where the majority of the population is Moslem, churches built in populated areas, sometimes next door to mosques, without causing a disruption of public order. The tolerance of Islam, the enlightened understanding of the freedom of worship, repeatedly declared by the state on several occasions and the site

on which the church was to be constructed in an area where churches for other smaller denominations than the orthodox Copts already stand, all render the decision to refuse the permit to build the church a contravention of the law, since it lacks the justifications for such a refusal (Challenge No. 1416/7, session of 30 May 1964).

5.6.4. The Right to Litigation

It is a right firmly established in all Constitutions and declarations on rights. Article 68 of the Constitution of the Arab Republic of Egypt stipulates that the right to litigation is secured for all. Each citizen is entitled to resort to his natural judge. Accordingly, the Supreme Administrative Court ruled that the prevention by the clerks of the South Cairo Court of the plaintiff's entering into a legal action before the said court, by requesting a declaration as to the invalidity and forgery of the minutes of the meeting of the general assembly of judges of the North and South Cairo Courts on 28 September 1975, was in blatant violation of a constitutional right guaranteed to all citizens. The court clerks' department may not refuse to register an action initiated by a citizen. Said refusal is an unjustified violation of a constitutional guarantee of the sovereignty of law, namely, the right to litigation (Challenges No. 454, 694/27, session of 23 April 1983).

5.6.5. Economic Freedoms

The Constitution protects the right of individuals to private property. Article 34 stipulates that: 'private property is inviolable and may not be placed under sequestration, except in the cases stipulated by the law and in accordance with a judicial decision. It shall not be expropriated, except for the general good, and in return for compensation in accordance with the law'.

Article 36 also prohibits the public or partial confiscation of assets except by court order.

Accordingly, the Administrative Court ruled that the condition for expropriation of property for the general good, is the existence of a necessary need for the privately owned real estate for projects to satisfy the general good. If circumstances or the facts of the situation prove otherwise, the action is void (Challenge No. 2441/30, session of 18 May 1985). The decree of the President of the Republic imposing sequestration on an individual, invoking emergency law, is in contravention of the law and of its purposes. It constitutes a blatant and gross contravention because it is a violation of personal freedom and the sanctity of private property (Challenge No. 830/20, session of 29 December 1979).

5.6.6. The Right to Security and Safety

Such a right falls within the scope of personal freedom. Article 41 of the Constitution stipulates that no individual may be arrested, searched, detained or his freedom restricted in any way, except in cases of flagrante delicto, personal freedom being a natural human right. The Court of Administrative Justice and the Supreme Administrative Court made it a point to state that right and what constitutes it, as well as the restrictions to it. The court was strict in examining the grounds which may justify any decision by the administration which might infringe upon personal freedom. The court stipulated that the grounds for any such decision must be real, derived from an established and legal basis. Such a decision must meet with the necessary conditions and characteristics stipulated by the law.

Whereas the administration may, in exceptional circumstances, take quick measures that may restrict the freedoms in a manner unacceptable in normal circumstances, the measures in question must be warranted by exceptional circumstances such as a serious danger threatening law and order, and if such measures are the only means to avert such a danger. Accordingly, the Court of Administrative Justice ruled that the basis on which the administration issued its decision, namely, the plaintiff's bad reputation and his alleged threat to security, had no documented foundation. Consequently, the decision subject of the objection, to arrest and detain the plaintiff, was not based on a viable cause and, accordingly had to be considered void (Court of Administrative Justice, No. 869/14, session of 18 April 1961).

The court further ruled that the order issued against the plaintiff and executed by the breaking in and search of his home and by his incarceration for three days, for the purpose of maintaining public peace and order on certain political occasions, on the pretext that such a reason justifies the arrest of certain individuals who exploit their freedom to commit acts detrimental to public interest, is in contravention of the law, because it runs counter to the Constitution. The latter stipulates that the personal freedom of Egyptians is guaranteed, and that no human being may be arrested or jailed outside the provisions of the law, and that homes are sacrosanct and may not be entered except in the circumstances specified by the law (Court of Administrative Justice, No. 438/4, session of 17 April 1951).

The court has further established that the mere affiliation of the plaintiff to an extremist or radical group whose principles are contrary to the Constitution or to the social system, does not necessarily and in itself mean that he is a threat in the true sense of the word according to martial law, so long as he has not actually and personally committed acts really justifying such a description (Court of Administrative Justice, No. 1142/6, session of 30 June 1951).

As an example, we have the ruling of the Supreme Administrative Court, that if a person is suspected to be a threat to public security at a given time, it does not mean that he will indefinitely remain an object of suspicion and, as such, exposed to arrest whenever a state of emergency is declared. Serious evidence that he is still a suspect, along with new facts, must be provided (Challenge No. 675/22, session of 27 May 1978). The court also ruled that the administration's claim that an individual was detained because of his communist activities, without documented evidence, renders the administrative decision illegal (Challenge No. 389/37, session of 15 January 1995).

5.6.7. The Right to Establish Associations

This is one of the rights stipulated by Article 55 of the Constitution. Citizens are entitled to establish associations in the manner stipulated by the law, with the exception of paramilitary associations. In this respect, the Court of Administrative Justice ruled the invalidity of the military order to dissolve the Moslem Brotherhood Association, its provisions being aimed at the termination of the said association as an entity, along with its legal status, and at liquidating all its assets. The ruling was based on the fact that the authority of the military commands to dissolve the association, does not imply its termination as a legal person, nor

that of its legal status, nor the liquidation of its assets. The purpose of dissolving the association is only to prevent its meetings which are its material manifestation, not its legal person or legal status (Court of Administrative Justice, No. 568/3, session of 30 June 1952).

5.6.8. Freedom of Association

The court pointed out that the right of association is not something that the administration may withhold or grant arbitrarily. It is a long-established right recognized by the law and confirmed by the Constitution. Accordingly, it does not necessitate a request to be submitted by the person concerned for that right to stand, nor does it require a decision by the administration allowing the exercise thereof. The person needs only notify the administration of the time and venue of the meeting as well as of any other information stipulated by the law. The authority to ban or stop the meeting is an exceptional power, subject to the control of the court who shall determine whether it was or was not exercised in accordance with the letter and spirit of the law (Court of Administrative Justice, No. 132/5, session of 31 July 1951).

5.6.9. Freedom of the Press and Publication

The court held that, whereas the public censor has, according to the martial law, the power to prevent the publication of newspapers without previous notice, this should be within the limits of the law and justified by the fact that such publication would arouse feelings, provoke sedition, or endanger security and order. Within such legal limits, it is subjected to the control of the judiciary. The court did not recognize a real justification for the prevention of publication in the report of the public prosecutor with regard to the plaintiff on an indisputable matter, which was not proven otherwise by the investigation, nor the pretext that the publication would threaten security. If matters had taken place in the right context, in accordance with the law, they would have enabled the concerned party to defend himself against what was published about him (Court of Administrative Justice, No. 694/6, session of 10 July 1952).

Contrary to the above, the court held that the censor's approval of the publication of a specific book should not prevent its confiscation by the said censor if it is found to threaten public order and if the plaintiff intended his book to attack religions, and encourage atheism and immorality. As such, the book is against public order, the essence of which is religion. It is also against public morality. Consequently, even though the book was published pursuant to the aforementioned provisions, the decision to confiscate it was issued by an authorized person, within the limits of his competence and based on serious causes (Court of Administrative Justice, No. 665/13, session of 9 July 1963).

5.6.10. Freedom of Movement and Travel

This is one of the fundamental rights derived from personal freedom. Article 41 of the Constitution states that freedom of movement may not be subjected to any restrictions nor prohibited, except by an order for the purpose of an investigation or for protecting the security of the community. It should be issued by the competent judge or by the public prosecution, pursuant to the provisions of the law. In this particular case, the Court of Administrative Justice abrogated the decision to withdraw the passport and to prevent an

individual from traveling abroad, on the grounds that the administration suspected he might smuggle gold and that he is trading in hard currency on the black market. However strong the suspicions and however justified they might be in the case of the plaintiff, because of his frequent trips abroad for no acceptable reasons, they are not as solid as a court ruling, nor can they have the strength of an investigation by the public prosecution that may justify such a restriction (Court of Administrative Justice, No. 657/6, session of 9 June 1953).

Along the same lines, the Court of Administrative Justice ruled that the decision refusing permission for an individual to travel abroad, must be based on logical reasons related to his past and to his present. The mere suspicion, because he had been sentenced for possession of drugs 25 years earlier, is not enough reason for a decision refusing him the right to travel (Challenge No. 388/9, session of 19 January 1957).

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A. Sherif

16. CONSTITUTIONAL LAW*

1. DEFINITIONS

Constitutional law, as viewed by Egyptian jurists, is the body of law that examines the system of government within the state, its sovereign powers and the competence of each of them. It also defines public rights, freedoms and the guarantees for individuals in exercising such rights. The essence of constitutional law is to be found in the constitutional instrument itself, i.e. the state's Constitution.

The constitutional instrument, the Constitution, is either a written or customary one. The written Constitution may be rigid, in the sense that its provisions cannot be amended unless various complex procedural arrangements are followed. Yet, at other times the written Constitution may be flexible. This happens when procedural arrangements for constitutional amendment are similar to those applied to any ordinary legislation.

The Constitution may be democratic, allowing for popular participation in running the affairs of the country. It may also be totalitarian, concentrating all powers in the hands of one ruler or a single ruling power, excluding public participation in the decision-making process. Whether the Constitution is written or customary, rigid or flexible, democratic or totalitarian, constitutional law always remains that branch of law which is devoted to the study of the system of government, the state powers and their competence, and the rights and freedoms of the individual.

2. HISTORICAL DEVELOPMENTS AND SUBSIDIARY SUBJECTS

2.1. Historical Developments

In Egypt, until the promulgation of the 1923 Constitution, constitutional law had not been taught in the school of law, in the Egyptian University, as an independent branch of law. Prior to that, it was even taught as a branch of administrative law. Shortly after the promulgation of the 1923 Constitution, however, constitutional law became an independent subject and was taught as a topic of its own to first-year law students under the title of 'Constitutional Law and Political Systems'.

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Egypt came to know the word 'Constitution' with the promulgation of the first Egyptian Constitution on 29 April 1923. There had been, however, since the era of Mohammed Ali, organic laws dealing with the regulation of some aspects of the system of government. These laws include, for example, the order issued on 27 January 1824 establishing the High Council, followed by its organizing edict in 1833, and then the edict on Politics of July 1837. The Rules of Organization of the Consultative Council of Representatives were issued on 22 October 1866, under Khedive Ismail. On 1 May 1883, under Khedive Tewfiq, the Egyptian Organic Law was issued. Under Khedive Abbas Helmy, Law No. 7 of 26 April 1912 was issued, empowering members of the Legal Consultative Council to address questions to the 'overseers' (the ministers).

It is during the reign of King Fouad that the 1923 Constitution was adopted and it remained into force until 22 October 1930, when the 1930 Constitution was promulgated. The 1930 Constitution adopted a totalitarian trend which the people resisted until that Constitution was replaced by the 1923 suspended Constitution. This was effected by Royal Decree No. 97 of 1934 and No. 118 of 1935. The 1923 Constitution prevailed until the revolution of 23 July 1952. On 10 December 1952, a constitutional declaration, abrogating the 1923 Constitution, was issued. A month later, on 17 January 1953, another constitutional declaration was issued dismantling all existing political parties and confiscating their properties in favor of the people. On 10 February 1953, yet another constitutional declaration was issued establishing the rules of government during the transitional period. On 18 June 1953, the Revolutionary Council issued a constitutional declaration putting an end to the monarchy and declaring the establishment of the republican system of government.

The 1956 Constitution was promulgated on 16 January 1956. In 1958, following the political unification between Egypt and Syria, new interim Constitution for the newly emerged state was adopted. On 27 September 1962, after Syria's separation from the newly unified state, a constitutional declaration was adopted regarding the political organization of the state's supreme powers. Finally, in 1964, a new Constitution was promulgated and remained in force until the present Constitution was adopted on 11 September 1971, then amended on 22 May 1980.

2.2. Subsidiary Matters within the Scope of Constitutional Law

Constitutional law describes the structure of the state and explains whether it is a simple, unified state or a complex, federal one. If the latter, it goes on to describe its relation with the member states or provinces of which it is composed, as well as the limits and dimensions of their respective mandates. Constitutional law also shows whether the state is a monarchy or a republic. In the case of a monarchy, constitutional law defines the status of the king or the queen and whether he or she has absolute power or only participates in ruling the country. When it comes to the republic system, constitutional law explains whether it is a presidential or parliamentary system. Within the former, Ministers simply act as assistants to the President of the Republic (who, in turn, is answerable to parliament). In the parliamentary system, instead, the cabinet controls the executive power and

becomes directly responsible before the parliament. Constitutional law also shows us cases in which states may have a mixed structure which embraces elements of both the presidential and the parliamentary systems, as has been the case in all Egyptian Constitutions since 1956.

Constitutional law, moreover, discusses the ideological basis of the regime and whether it is a democratic system or a totalitarian one, with all the powers concentrated in the hands of one single person or body. When the regime is democratic, constitutional law determines whether it is a direct democracy (as is the case in some Swiss Cantons) or indirect or representative democracy (as is the case in most – if not all – democratic states). In the representative democracy the people elect their representatives in the parliament. These representatives legislate, and therefore, oversee the executive power. A Constitution may also provide for a representative democracy as a basis, then resort to direct democracy in some specific cases through a referendum, as is the case in the present Egyptian Constitution in Article 136 (dissolution of the People's Assembly) and Article 152 (referendum in important matters).

Constitutional law, in addition, explains the philosophy of the economic system of the state, whether it is a capitalist, a socialist or a communist system. It also defines the powers in the state, whether they are multiple, each with its respective mandate, or whether they are concentrated in one. Usually there are three powers, the legislature, the executive and the judiciary. The respective mandate of each of these powers is to be determined by the Constitution itself. This should be understood in light of the principle of separation of powers. Today, this separation should not preclude positive co-operation among these powers, whilst maintaining a balance and mutual control.

Constitutional law, furthermore, defines the rights and freedoms of individuals as stipulated by the Constitution and the law. It also defines the ways and means by which they can be claimed, exercised and guaranteed. Usually, the Constitution includes explicit texts providing for the fundamental rights of the individuals, while entrusting legislation with the task of explaining how they are to be exercised and providing for other rights.

When teaching the subject, instructors of constitutional law concentrate on how the Constitution defines the regime, the powers of the state and the rights and freedoms of individuals.

The present Egyptian Constitution, in its first part, deals with the state, its political system, its sovereignty and its economic basis. Part two defines the basic components of the society, namely the social, moral or economic components. Part three is devoted to public freedoms, rights and duties, while part four deals with the rule of law. Part five covers the system of government, with a first chapter devoted to the head of state, a second to the legislative power, a third to the executive power, which includes the President of the Republic, the government, local administration and national specialized councils. The fourth chapter covers the judiciary, the fifth deals with the Supreme Constitutional Court, and the sixth defines the socialist public prosecutor. The seventh chapter then deals with the armed forces and the National Defense Council, while the eighth chapter covers the police. The sixth part of the Constitution bears the title 'General and transitional provisions'. The 1980 amendments to the Constitution covered Articles 1, 2, 4, 5 and 77, adding a new Part

(number seven) entitled 'new provisions' whose first chapter covers the Consultative Council (the *Shura* Council) while the second covers the power of the press.

3. Fundamental Principles and the Role of the Judiciary

3.1. Fundamental Principles Enshrined in the Egyptian Constitution

The Egyptian Constitution is based upon a number of general basic principles that can be summed up as follows:

1. A democratic system of government: The feature of a democratic system of government is evident in various provisions. For example, Article 3 recognizes that the sovereignty belongs to the People who are the source of all powers. Article 5, as amended in 1980, establishes the principle of a multi-party system, while Article 62 considers citizens' participation in public life a national duty and guarantees all citizens the right to vote, to run for election and to express their opinion in a referendum. The elected parliament, the People's Assembly, exercises the legislative power and approves the general policy of the state. It also approves the general economic and social development plan and the state's general budget. Moreover, the Assembly supervises the work of the executive power. Members of the Assembly are not answerable for whatever opinions and thoughts they may express while performing their duties in the assembly and its committees. The Constitution also stipulates that public taxes, their modification or their abolition can only be decreed by law. Members of the Assembly are entitled to direct questions and interpellations. The Prime Minister, the Ministers and their deputies are responsible to the Assembly. The latter has the right to withdraw its confidence in the cabinet. The Constitution, while considering representative democracy to be the basis for state government, still does resort to direct democracy – through a referendum – in specific cases.

The 1980 amendments did establish a Consultative Council, the *Shura* Council. In fact, the legislative power of this council is controversial. It is there to provide its opinion under certain cases clearly specified in the Constitution. This opinion is, nevertheless, an unbinding advice.

2. Overall economic and social planning: The Constitution adopted an economic philosophy of a socialist (democratic) nature. This policy requires the system of government to be based on sufficiency and justice, with the aim of achieving a balance of income, of protecting legitimate earnings and of realizing an equitable sharing of public expenses and responsibilities. That is why the People's Assembly approves the public economic and social development plan, while the opinion of the Consultative Council, the *Shura* Council, concerning this plan is also required.

3. The principle of the separation of powers: The Constitution recognizes the separation of powers and defines the mandate of the legislative, executive and judicial powers. It prevents one power from interfering with the acts of the others. Yet the separation of powers is not comprehensive, but rather one that strikes a balance among them and ensures their mutual co-operation in the interest of the people.

The guarantee of fundamental rights and freedoms: Most basic human rights and freedoms are explicitly guaranteed throughout the Egyptian Constitution. In fact, one of the noticeable characteristics of this Constitution is its devotion of one of its parts (Part Three) to public rights and freedoms wherein a clear emphasis is given to these rights.

5. The principles of the rule of law, of the submission of the state to the law and of the independence of the judiciary: All of these principles are enshrined in, and guaranteed by, the Constitution. The preamble to the Constitution clearly stipulates that the sovereignty of the law is not only a necessary guarantee for the freedom of the individual, but is also the sole basis for the legitimacy of power. The Constitution states that the sovereignty of the law is the basis for the government and that the independence and immunity of the judiciary – affirmed in several sections of the Constitution – are two basic guarantees to protect individual rights and freedoms. Moreover, the Constitution subjects the state itself to the law.

3.2. The Role of the Judiciary in Protecting the Constitution

The multiplicity of judicial bodies is a main feature of the Egyptian judicial system. There are several court systems within the judiciary in such a unified, simple state.

On the one hand, there is the ordinary judicial body (civil and criminal jurisdiction) at the top of which we have the Court of Cassation. The ordinary courts apply private law and are specialized in settling disputes among individuals, including disputes between individuals themselves and/or between them and public agencies.

There is also the State Council, the administrative judicial body that is topped by the Supreme Administrative Court. This Council is vested with the power to settle disputes between individuals and the administration if the latter, in its capacity as a public authority that applies public law in its dealings with the former. The State Council is also responsible for settling disciplinary cases.

Then, there is the Supreme Court of the system, the Supreme Constitutional Court. This court has the exclusive power to exercise judicial review of laws and regulations as well as the interpretation of legislative acts. Its statute entrusts it with the settlement of conflicts of jurisdiction and conflicts of rulings between other courts.

On the other hand, there are some specialized and exceptional courts as well as some administrative councils with judicial power, in addition to those court systems. Moreover, there are many other organs that play a role in the judicial function. One of these is the State Litigation Authority, which defends public interest in all suits filed by or against the state. There is also the administrative prosecution, which is responsible for investigating financial or administrative wrongdoing and misdemeanors of civil servants.

The judiciary ensures due respect for the Constitution from all state authorities and individuals. All judicial bodies play an important role in protecting individual rights and freedoms and defending the Constitution.

The mandate of the Supreme Constitutional Court, for example, extends over all laws and regulations to ensure their conformity with the Constitution, or to pronounce their unconstitutionality when they do not conform. The court's decisions in constitutional cases cannot be challenged and are binding for all. Moreover, such decisions, with reference to

their origin, have retroactive effects. For such reasons the court, in fact, plays the basic role in safeguarding the Constitution and protecting public rights and freedoms. Throughout its conscious exercise of judicial review the court has managed to lay down many fundamental changes in the country.

The State Council prevents the administration from violating the rights and freedoms of individuals throughout its administrative decisions.

The ordinary courts also provide individuals with judicial remedies whenever their rights or freedoms are illegally attacked.

4. Legislative Enforcement of Constitutional Provisions

The Constitution is the supreme law of the country and occupies a privileged position in the state's legal structure. It contains several basic principles that the legislature is bound to abide by. Factually, laws aim at enforcing all of the general principles contained in the Constitution. Because it is difficult to discuss all these principles, we will, therefore, limit the discussion here to the most important of these general constitutional principles.

The present Egyptian Constitution recognizes a number of fundamental principles that can be summed up as follows:

1. Paragraph one of Article 1 of the Constitution, as amended in 1980, provides that the system of the state is socialist, democratic and based on the alliance of the people's working forces.[1]

2. In a more explicit and affirmative way than in any previous Egyptian Constitution, paragraph two of Article 1 of the current Constitution states that the Egyptian people are part of the Arab nation and work for the realization of its comprehensive unity.[2] It even highlights the people's commitment to strive for the achievement of global Arab unity.

3. Article 2 of the Constitution stresses the religious character of the state by providing that Islam is the religion of the state and that Arabic is its official language. Islam, in fact, is the religion of the majority of the people. Various secular concepts, however, can still be found in the Constitution. This can be drawn from the other constitutional provisions and particularly from Article 40 which guarantees equality of rights and obligations between all citizens without discrimination based on race, ethnic origin, language, religion or creed. Also, this can be found in Article 3, which makes it incumbent upon the people to safeguard national unity.

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1 The text before the 1980 amendment stipulated that the Arab Republic of Egypt is a state with a democratic, socialist system based on the alliance of the people's working forces. Egyptian jurists find this amendment somewhat confusing, since it adds nothing new to the original text. They even believe that the concept of the 'alliance of the people's working forces', as the basis of the government, should have been deleted following the constitutional amendments of the 1980s, which led to the abrogation of the Arab Socialist Union as a political organization and replaced it by a multi-party system, as a basis for the political regime of the state.

2 The 1923 and the 1930 Constitutions made no mention of that principle, while the 1956 Constitution simply stipulated that Egypt is an independent and sovereign Arab state. The interim 1958 Constitution stated that the people of the United Arab Republic are part of the Arab nation. The same statement was repeated in the 1964 Constitution.

4. The second part of Article 2 as amended in 1980 states that the principles of *Shari'a* are the primary source of legislation.[3] The impact of this amendment is that from the day of its entry into force, the legislature has to ensure concomitance of legislation with those principles of Islamic *Shari'a* which are absolute in their origin and meaning. These are the principles that are fixed and known to all, and allow all Muslims and non-Muslims to enjoy their public rights and freedoms.

5. Article 3 adopted one of the most fundamental principles of democracy. It declares that sovereignty in the state belongs to the people, who are the source of all powers. Sovereignty, therefore, belongs to the people, not to the ruler or any other authority, group, class or party.

6. The Constitution, by accompanying both the economic doctrine and the political system, seeks to narrow the gaps between incomes. Article 4, as amended in 1980, stipulates that the economic foundation of the state is a socialist, democratic system based on sufficiency and justice in a manner preventing exploitation, conducive to liquidation of income differences, protecting legitimate earnings and guaranteeing the equity of the distribution of public duties and responsibilities.

7. The multi-party system is guaranteed by Article 5 of the Constitution, as amended in 1980. The recent developments in the constitutional history of Egypt and of the region suggested that multiplicity of political parties is a necessary mechanism to ensure a better and more democratic system of government.

8. In Chapter 1 of Part 2, the Constitution set forth the social and moral components of the society basing it on social solidarity and equal opportunities. Such social and moral components include, for example, the family, which is viewed as the basis of the society founded on religion, morality and patriotism. The state ensures the protection of motherhood, childhood and youth. Within these components also is the state obligation to ensure that women can reconcile their duties to their families and their work in society, giving them rights equal to those of men, without prejudice to the precepts of *Shari'a*. Society itself is committed to the protection of morality, moral values, the historical heritage and public morality; the state is also committed to abiding by these principles. Moreover, labor is seen as a right, a duty and an honor. In addition, forced labor is prohibited and workers must be fairly paid for their works and services.

All citizens are equal in terms of eligibility for public offices. Civil servants are entitled to constitutional protection as long as they perform their duties in the interest of the people. They can only be dismissed by disciplinary procedures, except in a limited number of cases specified by law.

Priority in working opportunities is to be given to war veterans, to those who have been wounded in or because of war and to the wives and children of martyrs. Some consider such a principle to be contrary to the principle of equality, while others consider such a privilege to be objectively justified.

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[3] The text before the 1980 constitutional amendment stipulated that the principles of *Shari'a* (Islamic law) are a primary source of legislation.

The state must provide cultural and health services, particularly in rural areas which have long been deprived thereof. The state is also obliged to provide social and health insurance services and pensions for all citizens in cases of incapacity, unemployment and old age.

The state must also provide all citizens with their right to education, the latter being mandatory at the primary level. The state is responsible for supervising all levels of education. The independence of universities and scientific research centers is guaranteed, so that the link between education and the requirements of society and of production may be established. Education in state institutions at all levels is free of charge and the eradication of illiteracy is a national duty. Civil titles are prohibited by the Constitution.

9. National economy is to be organized in accordance with a comprehensive development plan which would ensure raising the national income, its fair distribution, raising the standard of living, putting an end to unemployment, linking wages to production and guaranteeing minimum wages. The Constitution guarantees every citizen his/her share of national production, according to his/her work or non-exploitative property. Workers are to participate in the management of public projects and are entitled to share in the profits. The state shall also protect all forms of co-operative establishments. Property is divided into public, co-operative and private property. Public property is recognized, co-operative property is protected and non-exploitative private property that performs its social function is safeguarded. No private property can be put under sequestration except in the cases stipulated by the law and in accordance with a judicial decision. No private property can be expropriated except for the general good and in return for fair compensation, while guaranteeing the right of inheritance thereof. Nationalization is only allowed for considerations of public interest in accordance with the law and against compensation. General confiscation of property is prohibited and partial confiscation is only allowed by a judicial decision. The system of taxation is based on social justice.

10. Public rights and freedoms are stipulated in Part 3 of the Constitution. The principle of equality, for example, is seen as a foundation of all rights and freedoms. Personal freedom is considered a natural right that cannot be infringed or limited without a judicial order necessitated by investigation requirements and by the need to protect the security of society. Persons arrested or detained are to be treated with dignity and nothing a person says as a result of physical or moral harm shall be held against him/her. The Constitution imposed respect for the sanctity of the home, which can neither be entered nor searched without a grounded judicial warrant as prescribed by the law. The right to the sanctity and secrecy of correspondence and means of communication is also guaranteed, along with freedom of creed, freedom to practice religious rites, freedom of expression and, particularly, freedom of the press. The Constitution makes it incumbent on the state to encourage scientific research, literary, artistic and cultural creativity. It stipulates freedom of movement and emigration, the right to assembly and to freedom of association, democracy in the setting up of trade unions and the latter's participation in implementing social plans and programs. Defense of the motherland, safeguarding national unity and keeping state secrets are considered national duties. A citizen is guaranteed his/her political rights and it is a duty to exercise them. He or she also has the right of complaint to public authorities.

11. The Constitution establishes the principle of the legality of crime and penalty, and prohibits any retroactive penal law. The accused must be considered innocent until proven guilty and is entitled to the help of a counsel and to a fair trial. The right to litigation – which is, per se, a fundamental guarantee of all other rights and freedoms – is a sacred right for all. Moreover, no administrative decision or action shall be immune from judicial review. Refusal by civil servants to execute court decisions is criminalized, and so is obstruction in so doing.

12. The Constitution recognizes a system of local administration. It guarantees the people's participation in administering their local affairs through directly elected Local People's Councils. The competence of these councils, their financial resources, the guarantees for their members, their relations with the People's Assembly and with the government, their role in preparing and implementing the development plan and in controlling various activities all are to be regulated by law.

13. The independence of the judiciary is constitutionally guaranteed. Judges are independent and subject to no other authority but the law. Judges are immune and cannot be discharged. None of the state's powers is permitted to intervene in lawsuits or in justice. The law alone determines the judicial bodies, their competence and composition. A supreme council of judicial bodies was set up to supervise the administrative matters related to judges and to give its opinion on draft laws organizing the affairs of judicial bodies.

The current Constitution is the first Egyptian Constitution to recognize the State Council as an independent judicial body, vesting in it a general jurisdiction in administrative disputes and disciplinary cases.

It is also the first Egyptian Constitution to recognize the power of judicial review in constitutional issues and consequently the Supreme Constitutional Court.

14. The Constitution considers the Armed Forces to belong to the people, their task being to protect the country and its territorial safety. No authority or group is allowed to set up military or semi-military formations. The Constitution provides that law shall organize military courts and their competence. As for the police, it is considered by the Constitution to be an organizational civil authority, at the service of the people, entrusted with security and the safeguarding of public order, security and morality.

15. The principle of separation of powers has been established by the Constitution, which defines the attributions of each. The legislative power legislates, supervises the executive and approves the general policy of the state as well as the general development plan. The executive power is headed by the President of the Republic. The President, in collaboration with the government (Cabinet), sets up the public policy of the state and ensures its implementation. The President of the Republic issues all the necessary regulations to ensure the application of the law; he may delegate such a task to others. The law may also decide who will be competent to take those decisions. The President issues all regulations and all decisions related to setting up public utilities and departments. The government is the supreme executive and administrative organ of the State. The judicial power oversees the application and enforcement of the law and justice in society, while safeguarding legality.

To achieve a balance between the three powers without affecting their co-operation, the Constitution permits executive legislation in emergency cases. In the absence of the People's Assembly, or upon a delegation from a special majority of the parliament members, the Constitution allows the President of the Republic, in exceptional cases, to issue decrees having the force of the law. Such decrees, however, must subsequently be submitted to and adopted by the People's Assembly.

The 1980 amendment to the Constitution has ordained the Press to be one of the public powers of the state. This does not exist in many other constitutions, and many scholars perceive this to be an unjustified situation. Their argument is that the Press should not be linked to state powers, since its role should mainly be confined to that of reflecting the conditions prevailing in a given society, during a specific period of time. Therefore, the Press should not stand as a fourth power beside the executive, the parliament and the judiciary.

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A. Sherif

17. CONSTITUTIONAL ADJUDICATION*

1. A SHORT HISTORICAL SURVEY

When researching the topic of 'constitutional adjudication' throughout its history, a primary starting point would be to find a proper definition of this term. This, in fact, would help us in linking such an important subject to its historical developments and to better grasp its significance. There is, actually, more than one way of defining 'constitutional adjudication'. On the one hand, it has an organic and formal meaning, according to which by constitutional adjudication we mean 'the court or courts of law within the framework of the regular judiciary of a given state which have exclusive power to exercise judicial review of legislation'. On the other hand, there is an objective meaning, according to which 'constitutional adjudication' means 'judicial settlement of constitutional issues, i.e. issues that raise a question as to the legislation's conformity with the Constitution'.

Needless to say, the first definition links constitutional adjudication to an organized mechanism of judicial review, so that there cannot be constitutional adjudication in the absence of specialized courts that are competent to exercise such a review. As to the objective definition, it expands the scope of the term to include adjudication in constitutional matters in general, regardless of whether the decisions are handed down by a specialized constitutional court or by any other court, so long as they relate to the settlement of constitutional matters.

Finally, constitutional adjudication may be understood from both these aspects, formal and objective together; a particularly useful approach in states where there is an organized mechanism of judicial review. In the absence of the latter, the concept of constitutional adjudication will be based on the objective view and lead to an understanding of the principles laid down by the judiciary, in general, to govern the constitutionality of legislation.

In Egypt, the objective interpretation came to be known first. The concept of judicial review was known even before the legislature entrusted the exclusive power of that review to one specialized court. Egypt has known and adopted the concept of a modern constitution, which is superior to ordinary legislation, since the first quarter of the 20th century. The process started with the promulgation of the 1923 Constitution which was followed

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by many other constitutions (the Constitution of 1930, the Constitutional Declaration of 1953, the Constitutions of 1956, 1958 and 1964, and, finally, the permanent Constitution of 1971).

The fact that judicial review of legislation is logically linked to the existence of a written and rigid Constitution has historically helped the Egyptian judiciary to establish its power of judicial review. In the absence of an organized mechanism of such power during the Constitution of 1923 and that of 1930 the judiciary attempted to exercise a kind of review which led to the non-application of any law it considered to be unconstitutional without, however, abrogating it. Any decision regarding the unconstitutionality of a given law did not have a determinative effect outside the scope of whatever dispute it was related to. This meant that the very same law could be applied in another dispute, either by another court, or by the very same one who declared it to be unconstitutional before. At that stage, there was no agreement among the ordinary judiciary at to the principle of judicial review, and the tendencies of the courts remained contradictory in that regard. In 1948, however, the State Council supported the idea of judicial review and considered it a natural outcome of the principle of supremacy of the Constitution. Soon, in 1952, the ordinary judiciary declared itself in favor of judicial review as well, and it became an established principle since then that judicial authorities were competent to review the constitutionality of legislation.

As from 1953, there have been several legislative attempts to organize such a judicial review of the constitutionality of legislation in Egypt. Several bills were drafted on different occasions without success, until Law Decree No. 81 of 1969 established the Supreme Court as the highest judicial body in the country and entrusted it with an exclusive power of judicial review in constitutional issues. Subsequently, no other judicial body was allowed to exercise judicial review of legislation. The decisions of the Supreme Court regarding the constitutionality or unconstitutionality of a law were given general and absolute determinative effect, prohibiting any new petition on the same issue.

In 1971, when the permanent Constitution was adopted, it established for the first time in Egypt's constitutional history a Supreme Constitutional Court, exercising an exclusive power of judicial review of laws and regulations. In implementation thereof, Law No. 48 of 1979 was issued, organizing the status and competence of the Supreme Constitutional Court.

2. The Competence of the Supreme Constitutional Court

Logically, constitutional courts should ensure the constitutionality of legislation. Nevertheless, in countries where an organized system of constitutional adjudication exists, we often find that the legislature entrusts the concerned judicial body, in addition to the power of judicial review, with matters that are not strictly related to judicial review. This is true of the Egyptian experience, where the legislature, when setting up the Supreme Court in 1969, did not confine its role to judicial review, but also granted it other competence such as the interpretation of legal texts, the settlement of cases where a request has been filed for a stay of execution of decisions handed down by arbitration boards in disputes involving the government and the public sector, as well as decision-making in matters of conflict of jurisdiction.

When the 1971 Constitution was promulgated, it stipulated that the Supreme Constitutional Court was entrusted with judicial review and statutory interpretation, and that the legislature could add some other competences. Thus, when Law No. 48 of 1979 establishing the Supreme Constitutional Court was issued, it entrusted the court with judicial review of laws and regulations and with interpretation of the laws promulgated by the legislative authority and of the presidential decree-laws. It added that the court was also responsible for ruling in matters of conflicts of jurisdiction and execution of contradictory court decisions. The Supreme Constitutional Court is also responsible for settling all matters related to financial and administrative affairs of its members and commissioners or their beneficiaries.

The most important competence of this court is that of judicial review. This power covers parliamentary laws, presidential decree-laws and administrative regulations. The court ruled that the scope of the power of judicial review: 'applies to law in its wider objective sense, that of legislative texts creating general and abstract legal status, whether such texts are enshrined in the statutes adopted by the legislative power, or in subsidiary statutes adopted by the executive power within its competence as defined by the Constitution. All such texts are characterized by their vast scope of application and the unlimited number of those subject to them. Consequently, if they were to be declared null and void by the Supreme Constitutional Court, the effects would be also far-reaching ... That is why it was necessary for such a judicial review to be entrusted to one single court' (Constitutional Case No. 26, Year 15, 2 December 1995).

It is noteworthy that the court's power of judicial review does not include individual administrative decisions or non-administrative organizational decisions. In addition, the court is not competent to examine acts of sovereignty or political acts, even though it has limited the scope of these two concepts very much, in some of its rulings.

In a considerable number of its rulings, the court clarified that the objective of judicial review is to safeguard the standing Constitution and to prevent any violation of its provisions, considering it as the base and foundation of the entire system of government and, consequently, having precedence over all the other binding rules in the country. Any conflicting legislation is to be disregarded, since the Constitution is the supreme law. Hence, judicial review is to be based on the provisions of the standing Constitution and not on those of the Constitution within the framework of which the challenged legislation was issued. Formal defects in the challenged text are excepted from the above rule, such as those related to proposal and approval of laws, the majority required for their approval and the procedure of promulgation. In all those matters, review will be based on the Constitution prevailing at the time the law was adopted. Such exceptions are logically necessary and required for stability of the legal order.

3. The Composition of the Supreme Constitutional Court and its Independence

The Supreme Constitutional Court is an independent, unique judicial body headed by a Chief Justice and made of two separate, yet interdependent judicial bodies, that of the court itself, and that of the Commissioners' Body. Besides the general conditions required in any

member of the judiciary and which the court's members and commissioners have to fulfill as well, all of the court's members and the Head of the Commissioners' Body are submitted to a minimum age requirement (45 years). The President of the Republic appoints the Chief Justice, members of the court and commissioners. The nomination of the Chief Justice of the court is left, to a large degree, to the discretion of the President of the Republic who is not bound to consult any given authorities before appointing him. This is not the case with regard to the court's members and commissioners. Before members of the court are appointed, the Supreme Council of Judicial Bodies has to be consulted. Their appointment will be based on candidacies submitted by the court's general assembly and its Chief Justice. As for the commissioners, their appointment will be based on the candidacies submitted by the Chief Justice of the court after consultation with the court's general assembly.

Administrative staff are also attached to the court and perform their duties within the court's general secretariat, which is composed of a great number of administrative and financial officers, headed by the court's secretary general. The administrative staff act under the supervision of the Chief Justice of the court, who is vested with ministerial responsibility upon them, as specified by laws and regulations.

Like any other judicial body, the Supreme Constitutional Court is an independent organ. Several legal texts, both in the Constitution itself and in the statute regulating the court, provide for such independence.

Among the provisions of the Constitution dealing with the independence of the judiciary and of the judges – and therefore of the court itself – are the provisions of Article 65 stating that the independence and immunity of the judiciary are two basic guarantees to safeguard rights and liberties, and Article 166 stipulating that judges are independent and subject to no other authority but the law and that no authority may intervene in cases before courts or in the affairs of justice. Article 168 stipulates that the status of judges is irrevocable and that the law shall regulate disciplinary actions with regard to them. There are also provisions pertaining directly to the Supreme Constitutional Court. For example, Article 174 defines it as an independent and autonomous judiciary body. Article 176 of the Constitution stipulates that the law shall prescribe the conditions to be fulfilled by the members of the court as well as their rights and immunity. Article 177 stipulates that the status of the members of the Supreme Constitutional Court shall be irrevocable and that they are accountable to the court itself, in the manner prescribed by law.

As for the statute of the court itself, it also contains many provisions underlining the court's independence, for example, Article 11 stipulates that members of the court cannot be discharged, nor can they be transferred to other positions without their consent. Article 12 deals with the members' salaries and allowances, entrusting them to the court itself without interference from any other body. There are also other provisions pertaining to competence, disciplinary measures, pensions, grants and retirement, in addition to the preparation of the court's budget.

That statute has also made it mandatory to consult the general assembly of the court with regard to any draft law relevant to the court. It has also stipulated the setting up of a fund, which has a legal personality, to provide medical and social services to members of the court, its Commissioners' Body and their families.

4. Proceedings in Constitutional Actions

4.1. Procedures before the Supreme Constitutional Court

Procedures before the Supreme Constitutional Court vary in light of the competence exercised. In general, actions and requests submitted to the court are all subject to some unified procedures. There are, however, special procedures applicable, exclusively, to each type of action examined by the court.

4.1.1. General Procedures

The basic rules of procedures followed before the court are spelled out in Article 28 of the court's statute. This Article provides that: 'unless otherwise set forth in this chapter (Chapter 2 of section 2 related to procedures), committal decisions, applications and requests to the Supreme Constitutional Court shall abide by the rules of the Code of Civil and Commercial Procedure, provided that these rules do not contradict the nature of the court's competence or its own established procedures'. Other general procedures before the court may be summed up as follows:

- Except for requests submitted by members of the court and requests for statutory interpretation, the initiatory pleading must be signed by a lawyer admitted to plead before the Court of Cassation or the Supreme Administrative Court. The requesting member should sign requests of the court's members, while the Minister of Justice can introduce a request for statutory interpretation.
- Committal decisions, applications and requests are to be registered with the court Clerks' Department on the day of their reception.
- Except for a request for statutory interpretation, the office of the court Clerks' Department, through the bailiffs' department, shall inform the parties concerned with the committal decision, application or request within 15 days of their reception.
- Whoever receives a notification related to a committal decision or a case may, within 15 days of being summoned, submit a memorandum of his/her arguments together with supporting documentary evidence. His/her respondent is entitled to reply by presenting a counter-memorandum together with supporting documents within 15 days following the expiry of the previous time limit. If he/she does, the first party may comment by presenting a memorandum within a subsequent period of 15 days.
- Upon the expiration of the deadlines indicated above, the Clerks' Department must forward the file of the application or request to the Commissioners' Body.
- The Commissioners' Body will then prepare the case, by:
  (a) Requesting all relevant information and documents from the concerned authorities;
  (b) Summoning the interested parties in order to obtain further clarification concerning facts or request the submission of further documents and memoranda;
  (c) The commissioner may decide to fine, by an amount not exceeding 20 pounds, whoever causes undue delay to the progress of proceedings. His decision is final, but he may withdraw it entirely or partly if the concerned party submits an acceptable excuse;

(d) Upon completing the preparation of the case, the Commissioners' Body shall submit a report wherein it determines the constitutional and legal points involved in the case, and sets out the qualified opinion which has been reached by the Body.
(e) The interested parties may view this report in the clerks' department. They may also request a copy thereof, at their own expense.
(f) The file is then submitted to the Chief Justice of the court who shall, within one week, assign a date for a session to proceed on the case. The Clerks' Department shall, by registered letter with acknowledgment of receipt, inform the interested parties of the date for the hearing. This date shall be no less than 15 days later, unless the Chief Justice of the court, if necessary and at the request of one of the parties, decides the reduction of this period to not less than three days.

- A member of the Commissioners' Body who holds at least the rank of counselor must attend all sessions of the court.
- Lawyers authorized to practice before the Court of Cassation and the Supreme Administrative Court are admitted to appear before the court. Those appearing as lawyers of the government must hold at least the rank of a counselor at the State Litigation Authority.
- Rules of appearance and absence as stated in the Code of Civil and Commercial Procedure are not applicable to the cases submitted to the court.
- Parties who have not submitted a memorandum to the Clerks' Department shall not have the right to be represented by a lawyer at the session.
- The court shall settle the applications and requests brought before it without pleading. If the court considers that oral pleadings are necessary, it may hear the counsels of the parties and the representative of the Commissioners' Body. In this case, the parties concerned are not allowed to appear before the court without their counsel. The court may invite the counsels of the parties and the Commissioners' Body to present supplementary memoranda within a specified time.
- The court shall settle ex officio all related issues.
- The court's rulings and decisions are final and cannot be challenged.
- The rulings and decisions are issued in the name of the people.

4.1.2. Special Procedures

There are special procedures applied to each type of case before the court:

4.1.2.1. Constitutional Issues

The government (the Prime Minister) is considered to be a party in all constitutional issues.

4.1.2.2. Requests regarding Conflicts of Jurisdiction

- The request must specify the subject-matter of the dispute, the judicial bodies who have examined it and their rulings thereon.
- For the request to be deemed admissible, an official copy of the two conflicting judgments must accompany it.

4.1.2.3. Requests regarding Contradictory Judgments
- The request must indicate the existing conflict related to execution, and the contradiction between the two rulings.
- For the request to be deemed admissible, an official copy of the two conflicting rulings must accompany it.

4.1.2.4. Request for Statutory Interpretation
- The Minister of Justice must submit the request to the court.
- It shall be submitted upon the request of the Prime Minister, the Speaker of the People's Assembly or the Supreme Council of Judicial Bodies.
- The request must indicate:
  (a) the legislative provision to be interpreted;
  (b) the divergent points of view which surrounded its application;
  (c) the degree of importance that requires interpreting the provision, and hence secures its uniform implementation.

4.1.3. Conditions of Admissibility

4.1.3.1. Admissibility of a Request for Settlement of a Conflict of Jurisdiction

In order for the request for settlement of a conflict of jurisdiction to be admissible, the following conditions must be fulfilled:

- The conflict of jurisdiction (be it positive or negative) must arise between two judicial bodies or bodies vested with judicial power. As for a conflict between two courts attached to one and the same judicial body, it is not a matter for the Supreme Constitutional Court, but shall be settled in accordance with the challenge procedures pertaining to the former;
- The cases must relate to the same subject matter: a case related to one single matter is submitted to two conflicting judicial bodies, and both claim or disclaim jurisdiction;
- Neither of the two conflicting judicial bodies must have issued a final ruling on the case.

4.1.3.2. Admissibility of a Request regarding Contradictory Judgments

In order for the request regarding contradictory judgments to be admissible, the following conditions must be fulfilled:

- Two final judgments must have been handed down by two different judicial bodies or bodies vested with judicial power. The Supreme Constitutional Court shall not examine conflicting rulings issued by two courts attached to one and the same judicial branch.
- The two rulings must be contradictory, each having reached a conclusion that contradicts the other on the same matter. If they are not on the same subject matter, or if they are different in scope, there will be no contradiction.
- They cannot be both executed.

  It is noteworthy in this regard that Article 32 of the law of the Supreme Constitutional Court empowers the Chief Justice of the court, at the request of an interested party, to

suspend the execution of either or both of the conflicting judgments, pending final settlement of the request. Such a measure is considered a temporary judicial measure and has no effect on the outcome of the court's final decision on the conflict at issue.

4.2. The Constitutional Case

We will now discuss how a constitutional case is dealt with before the Supreme Constitutional Court and the different procedures involved.

4.2.1. Bringing Constitutional Cases before the Court

According to the statute of the Supreme Constitutional Court, there are three ways of raising constitutional issues:

1. Referral by the court of merits for a ruling on a constitutional matter;
2. Initiation of action following a claim of unconstitutionality deemed relevant by the court of merits, which allows the challenger to resort to the Supreme Constitutional Court;
3. Ex officio jurisdiction of the Supreme Constitutional Court.

4.2.1.1. The Referral Method

According to Article 29(a) of the statute of the Supreme Constitutional Court: if it appears to any court of law, or any other body vested with judicial power, in the course of examining a case on the merits, that a law or a regulation which has a bearing on the subject-matter of the case is unconstitutional, the proceedings can be suspended by the court of merits and the file is referred, without judicial fees, to the Supreme Constitutional Court for adjudication on the constitutional issue.[1]

Referral must therefore come exclusively from a court of law or a body vested with judicial power who, in the course of the examination of a case, suspects that a provision of the law or regulation, which has a bearing on the settlement of the dispute, is contrary to constitutional provisions. The Supreme Constitutional Court shall rule on the constitutionality of such a provision, but shall not rule on the subject-matter of the initial dispute on the merits, which will be left to the court of merits to decide upon after the constitutional issue is decided by the Supreme Constitutional Court.

4.2.1.2. Claim of Unconstitutionality

Article 29(b) of the statute of the Supreme Constitutional Court stipulates that if the constitutionality of a provision of a law or regulation has been contested by a party before a court of law or a body vested with judicial power, and that latter deems the claim relevant, the examination of the case on the merits shall be postponed, and a period of time

[1] The above method is the only channel of referral to the Supreme Constitutional Court. As for referral pursuant to the Code of Civil and Commercial Procedure, art. 110, it does not apply before the Supreme Constitutional Court.

not exceeding three months shall be granted to the claiming party to bring the constitutional issue to the Supreme Constitutional Court. Failing to do so, the claim will be regarded null and void.

The conditions governing the submission of such a constitutional case to the Supreme Constitutional Court are as follows:

- That during the examination of a dispute before a court of merits, one party raises a claim of unconstitutionality of a legislative text relevant to the litigation;
- That the court of merits deems the claim relevant and allows that party to challenge the constitutionality of the text;
- That the court of merits sets a time limit no later than three months, to introduce the constitutional case, after which date the claim becomes null and void.

In this regard, it has to be noted that if any of the parties to the case on the merits raises a claim of unconstitutionality of certain legislative provisions, the court of merits allows that party to introduce a constitutional case with regard to only one or two of them, and the scope of this constitutional case will be limited to those provisions only. If other provisions are subsequently added, the claim will be deemed inadmissible as far as they are concerned, since the scope of the constitutional issue is defined within the limits fixed by the court of merits.

What also has to be noticed is that the challenging process of a legislative provision, in view of the court, cannot be repeated when the claim considered is null and void as a result of falling to raise the constitutional issue before the court within the prescribed time limit.

Out of so many other observations that have to be made in this respect are the following:

1. The court of merits shall determine the time limit to file the constitutional case before the Supreme Constitutional Court. This time limit must not exceed three months. If it does set a later date, the action must, however, be initiated within three months, otherwise it would be inadmissible.
2. The court of merits, however, may extend the time limit only before the expiration of the deadline so long as the extension period does not exceed the three-month limit.

Once the constitutional issue has been initiated, it enters into the realm of the Supreme Constitutional Court. The trial court that deemed the claim of unconstitutionality relevant and allowed it to be filed must wait for the ruling of the Supreme Constitutional Court on the constitutional validity of the provisions. There are, however, exceptions: such as (1) the withdrawal of the case on the merits; or (2) a declaration by the party concerned that he/she is withdrawing his/her claim; or (3) a decision by the trial court not to allow the claim, after having deemed it relevant, to enforce a decision of the Supreme Constitutional Court, which decided whether the challenged text was constitutional or not. In all such cases, the court of merits may decide to resume the examination of the merits of the case and proceed to settle it.

If none of the above three situations applies, the trial court can continue to examine the merits of the case and to rule thereon, in one of two situations:

(a) The first situation appears when the challenged provision is a criminal text and the final ruling in the case declares the innocence of the accused (who challenged the constitutionality of this provision). In this case, the accused will no longer have a personal and direct stake in initiating a constitutional case and, therefore, his/her claim will be deemed inadmissible. But, if the trial court rules that the accused is guilty, the Supreme Constitutional Court continues to examine the constitutional case. If it rules that the challenged provision, according to which the accused was found guilty, is indeed unconstitutional, then, as a consequence, the ruling incriminating the accused, even if final, will be null and void. In accordance with Article 49 of the statute of the Supreme Constitutional Court, the Head of the Commissioners' Body, in such cases, shall inform the Attorney General of the court's decision immediately after its pronouncement, so that it is given full effect.

(b) The second situation takes place when the challenged provision does not pertain to criminal law, and the trial court continues to examine the case. It does so despite having already estimated the claim for unconstitutionality relevant and permitted the party who raised it to file a constitutional case before the Supreme Constitutional Court, which he/she did within the prescribed time.

Here, the history of the court reveals a similar situation in which the court deemed a case inadmissible on the basis that a final ruling by the trial court entailed the petitioner's loss of interest in the constitutional issue, which was closely related to his/her interest in the original case. At a later stage, however, the court adapted a new understanding of this issue by stating that the trial court should abide by its decision on the constitutional issue.

In any event, the calculation of the deadline should be considered in light of the rules set forth in the Code of Civil and Commercial Procedure.

When comparing the method of referral of the constitutional issue by the court of merits to the method of permitting the challenged party to raise the constitutional issue before the Supreme Constitutional Court, it is clear, in fact, that there is no difference, as to the effect, between the suspension of the trial in the case of referral and the postponement thereof in the case of a claim of unconstitutionality.

The Supreme Constitutional Court does not consider the claim of unconstitutionality as being of a formal or a procedural nature. This is because the aim of this claim is to ascertain that the challenged provision does comply with the provisions of the Constitution which have precedence over all other statutes, being closely connected to public order and the sovereignty of the law. Consequently, such a claim, in the opinion of the court, can be made at any stage of the case, and before any court of law. A claim of unconstitutionality can, then, be raised for the first time before the Court of Cassation, being directly related to the proper application of the law, and it will be up to the court to assess the seriousness thereof.

4.2.1.3. Ex Officio Jurisdiction of the Supreme Constitutional Court

Article 27 of the statute of the Supreme Constitutional Court stipulates that whenever the court, in the exercise of its powers, faces a legislative provision linked to a dispute before

the court, that provision may be invalidated by the court after following the procedural rules prescribed for the examination of constitutional cases.

This provision is meant to provide more channels to challenge the constitutionality of the legislation by expanding the scope of the Supreme Constitutional Court's review. Previously, the only way to bring a constitutional case to the court was through a claim of constitutionality. The above provision states 'in all cases' and 'in the course of exercising its jurisdiction', without any restriction. It adds, however, that the challenged text must be related to the dispute under its consideration. For this ex officio claim to be acceptable there must, therefore, be a dispute being examined by the court and a legal text related to such litigation. Consequently, such claim is admissible in the course of examination of constitutional cases, requests regarding conflicts of jurisdiction or settlement of conflicting rulings, requests by members and requests regarding conflicts of execution, since each of these involve a dispute. Because no judicial controversy is brought before the court while it exercises its competence to interpret legislative texts, the ex officio procedure cannot apply in that case.

Since this ex officio procedure stems from a case or request before the court, it can only be exercised if the case or the request itself has been considered admissible (Constitutional Case No. 12, Year 13, session of 7 November 1992).

Whenever the court decides to exercise its ex officio power, it must refer the case to the Commissioners' Body to prepare it insofar as to conformity of the suspected text with the Constitution is concerned. The Commissioners' Body then submits its report and the case shall be referred to the court.

4.2.2. Fees and Costs

There are several statutory provisions governing the fees and costs of filing cases and requests before the Supreme Constitutional Court. In accordance with Article 52 of the statute of the court, no fees are due in case of requests of the members, requests concerning conflicts of jurisdiction, contradictory rulings or requests for statutory interpretation. The same rule applies to cases referred by the trial court in order to decide constitutional issues.

As for a constitutional case initiated by way of a claim of unconstitutionality, a fixed fee of only 25 Egyptian pounds is due, which shall cover all judicial proceedings regarding the case, including the notification of papers and judgments. The petitioner shall also deposit in the treasury of the court a bail of 25 Egyptian pounds upon the submission of the case. The payment of one single bail is sufficient in situations where more than one petitioner has jointly introduced a case. The bail shall not be returned if the case is deemed inadmissible or if it is rejected.

Article 54 of this statute allows for both total and partial exemptions from fees and bail for individuals who can prove their inability to pay, provided that the case has a possibility of success. The Head of the Commissioners' Body shall decide on applications for exemption, and his decision shall be final. An application for exemption shall interrupt the deadlines set for presenting the case.

According to Article 55 of this statute, all other issues regarding fees and costs which are not regulated by the court's statute, will be subject to the fees and costs rules provided

for in Law No. 90 of 1944 on Judicial Fees in Civil and Commercial Issues and in the Code of Civil and Commercial Procedure.

4.2.3. The Scope of the Constitutional Case and its Parties

The scope of the constitutional case is to be determined in light of the method followed in filing this case before the Supreme Constitutional Court. In the case of referral, the scope of the constitutional case is determined by the legislative provisions mentioned in the decision of referral. In the case of a claim of unconstitutionality, it is determined by the provisions whose constitutionality has been challenged and which the court of merits has permitted the petitioner to challenge.

While the case is being prepared by the Commissioners' Body, no new challenged provisions may be added to those stated in the referral decision or to those admitted by the trial court. This, however, does not prevent the court, in its final ruling, from adding new grounds for the unconstitutionality, different from the ones stated in the concerned parties' claims.

As far as the parties are concerned, the last paragraph of Article 35 of the statute of the Supreme Constitutional Court considers the government to be one of the parties having a stake in all constitutional cases. It is, consequently, duly notified in the person of the Prime Minister, and in the manner stipulated in the Code of Civil and Commercial Procedure.

Any party to the substantive case, be it an initiatory or a joint party accepted as such by the court of merits, might become a joint party to the constitutional case. Nobody else is allowed to do so.

4.2.4. Conditions for Admissibility of a Constitutional Case

These include some formal conditions in addition to the standing requirements:

4.2.4.1. Formal Conditions

In addition to the conditions related to having an application form signed by an attorney admitted to plead before the Court of Cassation, and to having the request filed in the Supreme Constitutional Court's Clerks' Department within the prescribed time limit, in case of a claim of unconstitutionality deemed relevant by the trial court, Article 30 of the statute of the Supreme Constitutional Court requires the referral or the claim to contain essential information, other than that which is required by the Code of Civil and Commercial Procedure. These include the legislative provision whose constitutionality is challenged, the constitutional provision alleged to have been contravened and the aspects of the alleged contravention.

The court has always considered the formal proceedings related to the initiation of a constitutional case to be constitutive forms by which the legislature aimed to regulate disputes of a constitutional nature within a prescribed time limit. The non-compliance of such forms entails the inadmissibility of the case. In the past, and for a brief period of time, the court was rather firm and insistent with regard to those essential data. It reverted, however, to a more balanced attitude, devoid of excessive formality. Accordingly, the court decided that, even though the referral decision or the claim should contain the essential data which explain the nature of the constitutional issue submitted to the court and its

scope, it is not necessary that they contain a direct or explicit definition of the legislative provision alleged to be unconstitutional, nor the constitutional provision allegedly contravened and the aspects of such contravention. It is sufficient for the constitutional issue to be identifiable by the facts of the case contained in the referral itself, or in the initiatory pleading, providing that the said facts are clear in revealing it (Constitutional Case No. 68, Year 13, session of 7 November 1992).

As for the aspects of the alleged contravention, they only need to be included in the referral decision or the initiatory pleading, with the view of the referring court or the petitioner. When ruling on the constitutional issue, the Supreme Constitutional Court is not to be bound by these arguments, but will have to check whether the challenged text is indeed incompatible with some of the constitutional provisions or if it is in agreement with them all. The court may end up rejecting all the arguments contained in either the referral decision or the initiatory pleading, while ruling the challenged provision unconstitutional on grounds other than the ones proposed.

4.2.4.2. The Standing in the Constitutional Case

The existence of a personal and direct interest (standing) of the petitioner is a basic requirement of admissibility in constitutional cases. This requirement extends to cases referred to the Supreme Constitutional Court from the court of merits as well as cases filed upon permission from the latter court. Such a standing must be related to the standing involved in the substantive case, i.e. the ruling in the constitutional case must be determining to rule on the substantive claims submitted to the court of merits.

A constitutional case, therefore, is only admissible if initiated by a person who suffers damage from the application of the challenged provision, whether this damage has actually occurred or is imminent.

The damage, in all cases, must be distinct from the mere contravention by the challenged text to the Constitution. It must have its own independent elements which can be defined, grasped and countered by means of judicial settlement, and must stem from the challenged text. If the latter has not been applied to the petitioner, or if the petitioner is not governed by its provisions or has benefited from its content, or if the rights he/she claims have not been breached as a result of that particular text, then he/she has no standing in challenging it.

The standing element must be present when the action is initiated and must remain present until a ruling has been handed down. To deal with cases where the challenged provisions have been replaced, the Supreme Constitutional Court decided that if the repealed text has been applied to the petitioner when it was still in force, entailing legal effects as to his/her rights, then the petitioner does have a direct and personal stake in challenging the constitutionality thereof.

The standing condition requires that the ruling on the constitutionality be linked to the ruling on the substantive claims submitted to the trial court. Once the Supreme Constitutional Court has ruled on the validity or invalidity of a certain legislative provision, the trial court must still have a substantive case in which to apply the ruling of the Supreme Constitutional Court. If both the substantive and constitutional actions are oriented towards

the same objective, namely to challenge the constitutionality of certain legislative provisions, then the condition of standing no longer stands. In this case, the substantive action becomes a dispute over challenged provisions with a view to having them repealed. The constitutional action, in such a case, becomes a direct action, which has reached the court by a means other than those stipulated by the law and, therefore, becomes inadmissible (Constitutional Case No. 3, Year 13, session of 2 January 1993).

On the basis of the criteria it has laid down, only the Supreme Constitutional Court can decide whether the condition of standing has been fulfilled or not in a constitutional action. In so doing, the court is not bound by the trial court's decision of referral or by its assessment of the constitutional claim submitted to it. The court is also not bound – in this regard – by the trial court's decision to suspend its examination of the substantive case until a ruling on the constitutional issue has been handed down (Constitutional Case No. 10, Year 13, session of 7 May 1994).

5. Examples of Cases Decided by the Supreme Constitutional Court

Day after day, the role of the Supreme Constitutional Court in protecting constitutional rules is becoming increasingly noticeable. The court views constitutional commands as fundamental values that all public powers must abide by. The court also gives its jurisprudence an international dimension by consulting the prevailing international trends in the constitutional law area. It often makes reference to the international instruments related to the protection of rights and freedoms, as well as to the guarantees of such rights provided in democratic states. The idea is to interpret the constitutional provisions in light of international law on human rights, so that maximum, effective guarantees may be given to those rights.

Herein are some examples of the court's rulings. They, undoubtedly, demonstrate the liberal tendency of the court and its clear comprehension of the need to preserve constitutional values and to protect human rights in democratic societies.

5.1. In the Field of Civil and Political Rights

5.1.1. Personal Freedom

The court established real protection for personal freedom by declaring that the Constitution, in keeping with contemporary systems of government and their progressive trends, stipulated in its Article 66 that there shall be no crime or penalty except by virtue of the law, and that penalty shall be inflicted only for acts committed subsequent to the promulgation of the law prescribing them. Within this Article, the Constitution makes it clear that every crime requires a material element, represented by an act or an omission committed in violation of a criminal statute. Thus, criminal law is based on the punishable material act, be it positive or negative. If there is no act committed by the will of its perpetrator and expressed in an unmistakable, material and visible form, there is no crime. The Constitution also requires that penal statutes have a degree of clarity and certainty

beyond that required of other statutes given the fact that those penal statutes carry the most serious and dangerous restrictions on personal freedom. If that liberty is to be duly protected, the proscribed acts must be unequivocally defined to avoid any confusion with other acts. The ambiguity or elusiveness of the penal statute will deprive the persons concerned with those provisions from identifying the proscribed acts. Vagueness of the content of those statutes will also prevent the trial court from applying precise rules defining the material element of any crime and stating its punishment unequivocally (Constitutional Case No. 3, Year 10, session of 2 January 1993).

The court also stipulated that the basic rules for a fair trial, even though they are procedural in nature, are applicable in all phases of the criminal trial and necessarily affect its final outcome. Among those fundamental rules is the principle of the presumption of innocence, which proceeds from Nature and the state of facts. This presumption, adopted by all penal systems, extends to all individuals, whether suspects or accused. It shall remain valid until the criminal court, after hearing, examining and evaluating all the evidence and ascertaining, beyond a reasonable doubt, that the defendant committed the alleged crime, renders a final judgment of conviction.

On the basis of this principle and also on other grounds, the court ruled that Article 5 of Decree-Law No. 98 of 1945 on vagabonds and suspects was unconstitutional as well as Articles 6, 13 and 15 which were related to it (Constitutional Case No. 3, Year 10, session of 2 January 1993).

Paragraph 2 of Article 15 of Law No. 40 of 1977, as amended by Decree-Law No. 36 of 1979 governing Political Parties, was also ruled unconstitutional because it had stipulated that the head of the party was responsible, along with the editor-in-chief of the party newspaper, for everything published therein (Constitutional Case No. 25, Year 16, session of 3 July 1995).

5.1.2. The Right to Litigation

The court ruled that the right to litigation is the means of safeguarding the rights and freedoms stipulated by the Constitution. Such a right is explicitly guaranteed by the Constitution to allow ways of effectively protecting rights and freedoms. Moreover, the state cannot deprive non-citizens from the right to resort to its courts in order to defend their rights as guaranteed by its national laws. If the state were to refrain or neglect to provide such a safeguard, that would be a miscarriage of justice which would entail its international responsibility, as well as a violation of the Constitution (Constitutional Case No. 57, Year 4, session of 6 February 1993).

The court also ruled that the right to litigation first implies the right of any litigant to easy access to the courts, unhampered by financial burden or procedural obstacles. The right of access is only one constituent element of the right to litigation, and would be incomplete if either lack of money or procedural obstacles prevented access to such right. The intermediate link in the chain of its constituent elements is the neutrality of the court and the independence and immunity of the judges, the level of objective guarantees attached thereto and their practical application. Finally, the right to litigation would not be complete if the state did not provide an equitable judicial relief to the litigant who is claiming

his/her rights. Denial of the right to a court settlement, either by initially preventing litigation, or by placing obstacles in the way thereof, delaying it or imposing defective procedural rules are all a violation of the guarantees provided by the Constitution and by the law, of the rights that have been usurped. They are also a miscarriage of justice. Unless the judicial settlement is linked to the means of enforcing it, it loses its practical value and entails, necessarily, a violation of the safeguards granted by the Constitution and by the legislature and, in particular, Article 65 of the Constitution. Consequently, the court ruled that Article 15(a) of the law governing the Sports and Youth Authorities (Law No. 77 of 1975) was unconstitutional in that it prevented sequestration of their property (Constitutional Case No. 2, Year 14, session of 19 March 1994).

5.1.3. The Sanctity of the Home

The court invalidated Article 47 of the Code of Criminal Procedure (Law No. 150 of 1950), which stipulated that if a person was caught in *flagrante delicto* while committing a felony or misdemeanor, the investigation officer could search his/her home to seize objects and documents that might reveal the truth, if there were strong indications that he/she might find them therein. Whereas Article 44 of the Constitution stipulates that: 'Homes shall have their sanctity and they may not be entered or searched without a grounded judicial warrant as prescribed by the law' (Constitutional Case No. 5, Year 4, session of 2 June 1984).

5.1.4. Freedom of Expression

The Supreme Constitutional Court has very much supported freedom of expression and the right to criticism. The court ruled that the right to criticize those who perform public functions, through the press or other means of expression, is guaranteed to every citizen. To enable people to freely express and exchange opinions without impediments or prior restraints is a freedom required by any democratic system. Consequently, the law cannot be a tool to hamper freedom of expression and prevent it from revealing aspects of malpractice in the performance of public functions or the abuses thereof. Central to the Constitution is the principle that the electorate selects its government to serve its interests and that the latter is accountable to its citizens. Whenever public officials, for any unlawful reason, fail to fulfil their duties correctly and thus breach the faith placed in them, the correction of their deviation is both a right and a duty profoundly linked to the exercise of the rights based on the concept of a democratic regime. It is, consequently, logical and inevitable for the Constitution to defend freedom of discussion of all public matters, even though it may entail a sharp criticism of those in charge of public office. Thus, criticism of public servants, even serious criticism, shall enjoy the constitutional protection granted to freedom of expression, without prejudice to the true essence of such freedom or to the purpose thereof (Constitutional Case No. 42, Year 16, 20 May 1995).

5.1.5. The Right to Defense

The right to defense is constitutionally guaranteed as a basic and primary requirement for personal freedom and for the safeguard of all other rights and freedoms stipulated in the Constitution and in the legislation. A conclusive provision to this effect is to be found in

paragraph one of Article 69 of the Constitution guaranteeing the right to defense, either in person or by power of attorney. Paragraph two of the same Article goes further by stipulating that the state shall provide means of defending their rights before the courts to those who cannot financially afford them, and that this right should be organized by a law. The right to defense is a basic guarantee by which the Constitution ensures the effectiveness of its provisions preventing any violation of individual rights and freedoms. Thus, it provides equal protection before the law to every citizen. Such a guarantee of the right to defense is not, necessarily, confined to the trial itself, even though the latter represents the most important stage thereof.

Defense by proxy refers to the assistance provided by the attorney to the person he/she represents. Such a guarantee is negated if a person is compelled to choose a less experienced attorney. Thus, the Law on the Bar which had, in its Article 15, excluded all persons who have served as Ministers, judicial counselors of the judicial branch, or university professors, from practicing the legal profession before the courts of first instance or their equivalent, was decided unconstitutional by the Supreme Constitutional Court for having violated the right to defense (Constitutional Case No. 6, Year 13, session of 16 May 1992).

5.1.6. Protection of Private Property

Private property in Egyptian law is not an absolute right, but rather a right that implies a social function. The Supreme Constitutional Court pays a great attention to the protection of private property and its social function. Rulings of the court define the scope of the right to property and its restraints, and revoke many legislative texts in violation thereof. The Constitution has made it a point to protect private property and to ensure its integrity unless in very exceptional cases and within the limitations and requirements therein specified. Such property, in general, is the result of an individual's personal effort to acquire it and represents an incentive for constructive progress and development. Such an individual is, alone, entitled to his/her property, to benefit from it and from the proceeds which it yields. In addition, private property constitutes a source of national wealth, which must be preserved. Such property may not be used in a manner that impedes growth or harms the public interest. However, within contemporary legal systems which balance individualism again legitimate state intervention, the right to property has been recognized as a qualified right which is subject to certain enforceable restrictions justified by its social function (Constitutional Case No. 22, Year 12, session of 1 January 1994).

The court also ruled that 'All constraints imposed on private property by the legislature to ensure the performance of its social function must remain linked to its objectives, that being the cause of its legitimacy and the scope of its maintenance' (Constitutional Case No. 2, Year 14, session of 19 March 1994).

Moreover, the court added that: 'the protection provided by the Constitution to private property to protect it from aggression, pursuant to Article 34, is not confined to individual property as a right in kind, an original right from whence all rights in kind have stemmed. This protection extends to all kinds of properties of financial value, be it a personal right, a right in kind, or a right to intellectual, artistic or industrial property' (Constitutional Case No. 34, Year 13, session of 20 June 1994).

5.1.7. The Principle of Equality

The jurisprudence of the Supreme Constitutional Court with regard to equality is very progressive.

The court stated that equality is realized when the conditions of generality and abstraction are fulfilled in a legal rule; and that the legislature can, within the limits of his discretionary power and in the public interest, establish the conditions defining the legal status, ensuring the equality of individuals before the law.

The court did, nevertheless, make it clear that the principle of equality does not mean that different categories of individuals are to receive equal legal treatment. This principle does not mean that all kinds of discrimination are forbidden. Some kinds of discrimination are based on objective criteria and are, therefore, in conformity with Article 40 of the Constitution. Only arbitrary discrimination is prohibited. Statutory provisions are not ends in themselves; rather their purpose is to achieve certain goals for the public interest which the legislature tries to advance. If a legislative provision establishes a distinction that goes against such goals, then it will constitute an arbitrary discrimination which lacks objective basis, and thus will be a violation of Article 40 of the Constitution (Constitutional Case No. 3, Year 8, session of 1 February 1992).

The court clarified that, on the one hand, the principle of equality is not limited to the rights and freedoms explicitly spelled out in the Constitution, but also encompasses those secured by the legislature to the citizens under its discretionary power. On the other hand, the list of grounds of discrimination expressly prohibited by Article 40 of the Constitution (race, origin, language, religion or belief) is not exhaustive. Those factors were mentioned only because they are the most frequent in practical life. There are other kinds of discrimination that are no less serious as to their contents and consequences than the ones mentioned in Article 40, such as discrimination between citizens as to their rights and freedoms for reason of birth, social status, class or attitude vis-à-vis the authorities in power. Though there can be no exhaustive list of forms of unconstitutional discrimination, yet they all stem from differentiation, limitation, preferential treatment or exclusion that may arbitrarily affect the rights and liberties guaranteed by the Constitution and by the law, thus preventing the exercise of such rights and freedoms on an equal footing.

The court also clarified that Article 8 of the Constitution, which also establishes the principle of equal opportunity, has a well-defined scope, i.e. opportunities provided by the state, where no priority is to be given to one citizen over another, save on the basis of objective criteria. This principle presupposes that the missing opportunity is one which the state has undertaken to provide. Failing this, the question of inequality in the enjoyment of that opportunity will never arise (Constitutional Case No. 41, Year 7, session of 1 February 1992).

5.1.8. Political Rights

The Supreme Constitutional Court has established the right to vote and the right to run for election as two complementary rights that represent the foundations of a democratic system in some of its landmark decisions. Some of these rulings led to declaring the unconstitutionality of various consecutive legislative provisions governing the elections to the

People's Assembly, to the Consultative Council and to Local People's Councils (See: Case No. 131, Year 6, session of 16 May 1987; Case No. 37, Year 9, session of 19 May 1990; Case No. 23, Year 8, session of 15 April 1989; and Case No. 14, Year 8, session of 15 April 1989).

5.2. Economic, Social and Cultural Rights

5.2.1. The Right to Education

The court has established the foundations of the right to education, guaranteed by the Constitution, and considers education to be one of the most important assignments undertaken by the state. Education instills moral, educational and cultural values in the younger generation and prepares them for a better life, in harmony with their environment. Consequently, every citizen is entitled to a degree of education compatible with his/her talents, capabilities and potential, in accordance with the rules established by the legislature, provided such rules do not diminish that right nor prejudice the principles of equality and of that of equal opportunity (Constitutional Case No. 41, Year 7, session of 1 February 1992).

5.2.2. The Right to Work

The court ruled that the Constitution stipulates that work is neither a luxury nor a grant from the state, it is a right, a duty and an honor. As such, and considering its importance in providing for the needs of the community and in ensuring its progress, the state undertakes to express its satisfaction to distinguished workers. In principle, work shall be voluntary, except by virtue of the law for the performance of a public service and in return for a fair remuneration (Constitutional Case No. 27, Year 8, session of 4 September 1992).

5.2.3. The Right to a Fair Remuneration

The court ruled that Article 13/2 of the Constitution stipulates the right to a fair remuneration in return of work imposed by the state on its citizens. Thus, this constitutional protection extends to all work performed within the framework of a contractual or regulatory relation in which remuneration for the work performed was agreed upon by the parties (Constitutional Case No. 27, Year 8, session of 4 September 1992).

5.2.4. The Right to Receive a Pension

The court decided that the right to a pension, if the conditions stated by the law to be entitled thereto are fulfilled, is an obligation for the concerned authority. The successive laws on social security confirm this. In its Article 17, the Constitution has gone further in support of social security by making it incumbent on the state to provide social and health insurance services for its citizens, including a pension in case of incapacity, unemployment and old age, within the limits defined by the law. The umbrella of social insurance guarantees for every citizen a minimum human treatment that ensures respect for his/her humanity, personal freedom, right to life and all rights dictated by solidarity among the members of the community to which he/she belongs and without which no society can

survive, as stated in Article 7 of the Constitution ('social solidarity is the basis of society') (Constitutional Case No. 16, Year 15, session of 14 January 1995).

5.2.5. The Right to Form Trade Unions and Syndical Democracy

Two rulings of the Supreme Constitutional Court established the concept of the right to form trade unions on a democratic basis, pursuant to Article 56 of the Constitution.

5.3. In the Field of Taxation

The Supreme Constitutional Court has given the taxation system its substantive and social contexts by deciding, explicitly, that there is no legitimate interest in imposing a legal system aimed merely at increasing the resources of the state by imposing a tax which lacks the objective basis to justify it. Tax imposition by the state, as such, is not a goal protected by the Constitution and should be organized within the recognized constitutional limits (Constitutional Case No. 43, Year 13, session of 6 December 1993).

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18. PRESS LAW

Egypt has known the press early, as the first Egyptian 'newspaper, *Egyptian Events* (*al-waqa'i' al-misriyya*) was issued in 1828, during the reign of Mohammed Ali. This gazette is still issued today as an official gazette confined to the publication of the laws. Egypt has four other centennial newspapers, which still appear after a hundred years: *Al-Ahram* (since 1875), *The Egyptian Gazette* (since 1880), *Al-Hilal Magazine* (since 1892) and *Le Progrès égyptien* (since 1893).

1. INTRODUCTION

1.1. Evolution of the Legal Organization of the Press in Egypt

The first law organizing the press in Egypt was Khatti Umayun, issued on 20 Shabaan 1281 H (circa January 1865 AD). It was applied in Egypt, taken as one of the Ottoman States. Mohammed Ali then issued the High Decree on 13 July 1823 to put this statute into force. It stated:

'Boulak press shall not print any book even if it belongs to a governmental body or institute without his permission'. The restrictions it imposed on freedom of the press, and the obstacles it laid in its way characterized this statute. Edit No. 95 of 1831 was enacted in the same spirit, and this was followed by the Publication Law of 26 November 1881, which carried the same restrictions and stayed in force until the Constitution of 1923.

The national movement and the appearance of the national newspapers made Egypt witness the first Constitution – the 1923 Constitution – which asserted freedom of the press, Article 15 of which states that: 'the press is free and press censorship is banned'.

Nevertheless, this freedom was shackled by restrictions once again, under the 1930 Constitution and during the Second World War.

The Penal Code sets aside a special part for crimes of publication and the press, Part 14 of Book III, Articles 171–201.

The Revolution called for the necessity of liberating the press from the control of capital. To accomplish this objective, Press Organization Law No. 156 of 1960 was issued, transferring the ownership of the major newspaper houses and their management to the state and making the issuance of newspapers subject to a permit from the National Union, which had the effect of eliminating the freedom of the press in that era.

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Freedom of the press remained restricted until the 1971 Constitution, which reinstated this freedom. Article 48 thereof asserted the freedom of the press, printing and publication. It banned censorship on the press. This freedom was confirmed in 1980 with the amendment of the Constitution, adding a new chapter under the title of 'The Press Authority', including provisions organizing that freedom.

This was followed by Law No. 48 of 1980 regarding the organization of the press in Egypt, which was first amended by Law No. 93 of 1995, then by Law No. 96 of 1996, which confirmed most of the provisions of the 1980 law.

1.2. Evolution of the Press Union in Egypt

Egypt adopted the system of one union per profession. The Press Union, on behalf of the state, authorizes the practice of the profession. It is the only organization that accompanies the journalist all through his/her career and pension.

The first attempts at forming a press union started in 1899. They were renewed in 1909, 1919 and 1925. The first general law of organization was issued in 1936 but was not put into force because of the fall of the Ali Maher Pasha Cabinet. The first union law was adopted in 1941, with provisions applying to both journalists and owners of newspapers. After the 1954 crisis, the Press Union became in 1955 a union for journalists alone. Today, Law No. 69 of 1970 organizes the Press Union in Egypt.

The Union has called, since 1980, for the application of a *clause de conscience*. It also rejected the idea of including advertising staff and pressing machine workers in the union.

Before we present the organization of the press in Egypt, we shall first identify the most important principles that the current Constitution sets forth in this respect; then we will determine the competent courts in the field of crimes of publication.

1.3. Current Constitutional Organization of Freedom of the Press

The 1971 Constitution adopted the principle of freedom of the press and secured it as one of the rights and liberties stated in its Chapter 3. It rejected the idea of censorship on the press or its suspension through administrative decisions (Article 48). The constitutional amendment of 1980 added a new chapter to the Constitution, entitled 'The Press Authority', organizing its general provisions in Articles 206–211.

The press is considered to be one of the powers of the state, as an independent popular authority practising its mission as set forth in the Constitution and the law (Article 206). Thus, it is considered as a fourth power in addition to the executive, legislative and judicial ones.

It shall practice its mission in the service of society and express the current trends of public opinion within the framework of the basic components of society and the safeguard of public rights and liberties (Article 207).

The freedom of issuing papers is guaranteed and press censorship is forbidden (Article 208).

A limited censorship may be imposed on newspapers in a state of emergency or in time of war in matters related to public security or for purposes of national security (Article 48/2).

Public or private legal persons and political parties may own newspapers (Article 209/1).

The ownership and financing of newspapers is subject to public supervision (Article 209/2).

Journalists have the right to obtain news and information (Article 210).

1.4. Jurisdiction of the Courts in Crimes of Publication

According to the Criminal Code, offenses committed by the press are misdemeanors. Summary courts should therefore be competent to judge them. However, the legislature stated in Article 216 of the Code of Criminal Procedure that the Criminal Courts shall rule on misdemeanors related to publication in the press.

The legislature has given jurisdiction to the Criminal Courts to rule in such cases in order to secure adequate justice in these lawsuits, as the judges of such courts enjoy greater experience than those of the summary courts.

We shall investigate the organization of the press in Egypt under the current law in first chapter. Then we shall deal with the crimes of publication stated in the Egyptian Penal Code.

2. Organization of the Press Under Law No. 96 of 1996

2.1. Publishing a Newspaper

Article 209 of the 1971 Constitution states that: 'the freedom of legal persons whether public or private, or political parties to publish or own newspapers is safeguarded according to the law'. The same provision was repeated in Article 45 of the Press Law No. 96 of 1996. The legislature, therefore, has deprived individuals of the right to issue newspapers, confining this right to political parties and public juristic persons (unions, syndicates, etc.) as well as private ones.

The law stipulated that the private juristic persons that have the right to publish newspapers should be in the form of a cooperative society or a joint stock company. In the latter case the shares should be nominal and owned by Egyptians only with a paid-up capital of no less than one million Egyptian pounds for a daily newspaper and a quarter of a million for a weekly one and one hundred thousand pounds if it is monthly. The whole capital should be deposited in one of the Egyptian banks before issuing the newspaper (Article 52).

The law also permitted the private juristic persons to take the form of a partnership limited by shares if they are to issue monthly magazines or regional newspapers (Article 52). The law banned those who are deprived of the right to practice political activities from the right to publish newspapers (Article 50).

The procedures for publishing a newspaper can be summed up as specified by Articles 46–49 of the current Press Law in a written notification presented by those who intend to issue a newspaper to the Supreme Press Council signed by the legal representative of the newspaper. Certain information should be included in this notification concerning the owner, the name of the newspaper as well as other data (Article 46). The Supreme Press Council shall give its decision within 40 days of the submission of the notice. If no decision is given within the time limit, approval of the license is taken for granted. A decision of refusal shall give the reason of rejection and the interested persons may contest it before the Court of Administrative Justice within 30 days (Article 47).

Exempted from the previously mentioned license are the newspapers issued by the political parties according to the provisions of Article 15 of Law No. 40 of 1977 on political parties. The Supreme Administrative Court confirmed this when it rejected a request to stop the publication of the *Misr* newspaper of the Egyptian Socialist Party on the grounds that the newspaper did not fulfill the measures stated in the Press Law. The court stated that issuing a newspaper is a right guaranteed to the political parties by the Constitution (Challenge No. 591/25, of 16 January 1982).

The newspaper must be issued in the three months following the delivery of the license, otherwise the license is considered void. The license can also be withdrawn if the newspaper is not issued regularly for a period of six months. It will be considered non-regular if less than 50 per cent of the issues is published during that period.

Decree-Law No. 30 of 1936 concerning publications stated that publications issued abroad could be prevented from circulation in Egypt to protect public order (Article 9). This also applies to publications that tackle religions in a way that can disturb the public peace (Article 10). It also authorized the Minister of the Interior to ban a certain issue of a foreign newspaper from circulation in Egypt (Article 21).

The Supreme Administrative Court stated that the decree issued by the administration rescinding a license of a newspaper or suspending it should be considered an ordinary administrative decree and not an act of sovereignty. Thus it can be challenged if it breaches the laws or the Constitution. The Court of Administrative Justice is competent in judging whether it is valid or null.

It also ruled that the decrees issued by the administration suspending newspapers or confiscating their issues at the time of martial laws are subject to judiciary control and may be challenged (Challenge No. 694/6, session of 10 July 1952).

2.2. Editors-in-Chief of Newspapers

Article 54 of the Press Law No. 96 of 1996 stipulated that every newspaper shall have an editor-in-chief that exercises real supervision over everything that is published. This Article requires that the editor be registered in the Press Union, exempting from this requirement periodicals and magazines issued by scientific institutions as well as those determined by the Supreme Press Council. In case of violation of this provision, the newspaper will be suspended for six months, then the license will be withdrawn.

This was also stated in Decree-Law No. 30 of 1936 on publications, which also determined the conditions for appointing a newspaper editor. The editor has to be an Egyptian citizen if the newspaper is published in Arabic wholly or partially. He shall not be less than 25 years of age and must enjoy full capacity and good reputation with no criminal record of felonies or misdemeanors compromising his/her honor or honesty (Article 12).

2.3. Rights of Journalists

The Press Law No. 96 of 1996 set out the rights of the journalists in Articles 6–17. These Articles guarantee the independence of the journalists and the prohibition of any imposed authority over them (Article 6). The opinion expressed by the journalists may not be a cause for endangering their safety and the journalists shall not be forced to reveal their sources (Article 7). They further confirmed the journalists' right to obtain information from the source (Article 8) and that no restrictions shall be imposed to hamper their ability to get the information and their right to get answers to their inquiries (Article 9).

The legislature considered journalists to be public servants, giving them the same protection in case of exposure to attack because of their jobs (as stated in Articles 133, 136, 137/1 of the Penal Code). The law states that anyone insulting a journalist or attacking him because of his job shall be liable to the same penalties set forth for insulting a public servant (Article 12 of the Press Law).

Article 42 of the law added that journalists should not be arrested with respect to publication crimes without an order of the public attorney. The documents and information in their possession cannot be taken against them in any criminal investigation.

Moreover, the Press Charter of Honor added some rights for the journalists: they may not be threatened or blackmailed in any way to force them to publish what conflicts with their professional conscience. The Press Union's quarters may not be searched without the knowledge of the public attorney and the presence of the head of the union. A journalist may not be questioned except through the public attorney's office and the union has to be notified so that a member of the union can be present at the questioning. A journalist may not be put in preventive detention except with respect to the crimes stated in Article 179 of the Penal Code, as asserted by Article 41 of the Press Law.

2.4. Duties of Journalists

Article 18 of Law No. 96 of 1996 states that journalists shall be committed to the principles and values of the Constitution and the provisions of the law and must adhere in their work to honor, honesty and the ethics of the profession. Further, Articles 19 to 34 expound the duties of journalists, most important of which are to avoid racial biases and to avoid violating the privacy of private citizens or public figures.

The law also bans newspapers from dealing with what is being investigated by the investigation or court authorities in a manner that can affect an investigation or a trial.

The newspaper is allowed to publish a sentence of acquittal or a judgment closing the case and a summary of the grounds (Article 23).

A journalist shall publish a correction of any misreporting within three days of its publication (Article 24). If he abstains from this requirement, the journalist shall be imprisoned for a period not less than three months and/or a fine not less than 1,000 pounds and not exceeding 4,000 pounds (Article 28).

2.5. Disciplining Journalists

The Press Union has the exclusive right to adopt disciplinary sanctions against journalists regarding offenses breaching the provisions of the Press Law ascribed to them.

The head of the union shall transfer the offending journalist to an investigative committee made of the deputy head of the union, the secretary of the union or of the branch union and a State Council counselor.

If the committee finds grounds for the accusation ascribed to the journalist, it transfers him to a preliminary disciplinary body as stated in Article 81 of the Press Union Law. According to Article 37 of the Press Law, this body consists of three members chosen by the Press Union Council, a member of the Supreme Press Council, and a counselor of the State Council. The charges are made before this body by the head of the aforementioned investigative committee.

The journalist may challenge the decision of the disciplinary committee before the appeal disciplinary authority stated in Article 82 of the Press Union Law.

2.6. Ownership of Newspapers

Law No. 148 of 1980, amended by Law No. 96 of 1996, put an end to the monopoly of the state over the ownership of newspapers, which was put in place in the earlier law organizing the press issued in 1960. The new law opened the way for new categories, giving them the right to own newspapers. These categories were set forth in Article 52 of the law as the following:

- political parties;
- public juristic persons;
- private juristic persons.

Persons deprived of the right to practice political activities may not own newspapers (Article 50).

2.7. Management of Newspapers

The newspaper is under the supervision of an editor-in-chief who controls all published material, being seconded by a number of editors, each responsible for a particular section (Article 54).

According to Article 19 of Publication Law No. 30 of 1936, the name of the editor-in-chief must be indicated on the first page and on every issue of the newspaper.

The management of a newspaper that takes the form of a joint stock company is subject to the provisions of the joint stock company law.

As for national newspapers, they are under the supervision of a board of directors made up of 13 members: the chairman of the board, chosen by the *Shura* Council, six representatives of the personnel (made up of two journalists, two administrators and two workers, elected in a secret poll) and another six members who are selected by the *Shura* Council (four of whom are from the journalistic establishment) (Article 64).

In addition to the board of directors, the law requires the formation of an editorial council in every national newspaper, made of five members at least and presided over by the editor-in-chief chosen by the *Shura* Council. The other four are to be chosen by the board of directors.

Membership of the editorial council is for three years (Article 65). It sets the general policies of editing and follows them up (Article 66).

A general assembly is created, made of 15 members chosen by the *Shura* Council among writers or those interested in intellectual issues, four of whom at least should be from the same journalistic establishment. Added to them are members representing the journalists, the administrative staff and the workers of the establishment. The general assembly is presided over by the director of the board of directors of the newspaper (Article 62). The general assembly is concerned with several tasks. The most important of these are approving the estimated budget and the final balance sheet, setting the economic and financial policy of the establishment and considering the new projects, approving the wages regulations which the board of directors sets, discussing the board's reports and raising the proposal of dissolving the board of directors to the Supreme Press Council in case of its failure to accomplish its duties (Article 63).

2.8. The Supreme Press Council

On 11 February 1975, a presidential decree ordered the establishment of the Supreme Press Council. This was confirmed by Article 211/1 of the Constitution, added in 1980, which states that press matters shall be organized through a Supreme Press Council whose composition, mission and relationship with the state authorities will be defined by the law.

The Supreme Press Council was reorganized by Law No. 148 of 1980, which was recently amended by Law No. 96 of 1996.

Composition of the Council: According to Article 68 of Law No. 96 of 1996, the Press Supreme Council is formed as follows:

- Head of the *Shura* Council, as the head of the council;
- chairpersons of the boards of the national newspaper establishments;
- editors-in-chief of national newspapers;

- editors-in-chief of party newspapers;
- Head of the press union and four other deputies of the union chosen by the *Shura* Council;
- Head of the General Union of Press, Printing and Media Personnel as well as four other deputies, chosen by the *Shura* Council;
- two press professors in the Egyptian universities, chosen by the *Shura* Council;
- two lawyers chosen by the *Shura* Council;
- a number of public figures concerned with press issues, chosen by the *Shura* Council, provided this does not exceed the former number.

Tasks of the Council: Article 211/2 of the Constitution states that the council shall exercise its tasks in a manner that consolidates freedom and independence of the press, to uphold the basic foundations of society and secure national unity and social peace as stipulated in the Constitution and defined by law. Article 70 of Law No. 96 of 1996 detailed the tasks of the Supreme Press Council as follows:

- giving opinion on projects that have to do with the press;
- taking all the measures that support the Egyptian press;
- historical documentation of the press industry in Egypt;
- cooperation with similar establishments and councils around the world;
- coordination with the journalistic establishments in the economic, technological and administrative training fields;
- following up the economic performance of the journalistic establishments through studying the Central Accounting Body report, and taking all measures that secure improved performance;
- providing newspaper requirements and solving the problems faced by them and determining the paper quota and newspaper prices and the spaces allotted to advertisements of the government, the public sector and the business sector;
- protecting the rights of journalists and guaranteeing their performance of their duties and their respect to the right of reply and correction;
- issuing the Press Charter of Honor prepared by the Press Union;
- following up and assessing what the newspapers publish, and compiling periodical reports on the extent of commitment to the ethics of the profession. This is to be compiled in annual reports provided to the Republic's presidency;
- giving journalists work permits and determining minimum wages for journalistic work;
- investigating people's complaints against newspapers and journalists concerning their commitment to the ethics of the profession.

The supervision of the council over newspapers mainly aims at following up their commitment to the ethics of the profession, which does not conflict as such with freedom of the press.

The membership of the council lasts for four years and this can be renewed (Article 69). The council holds an ordinary meeting bimonthly at least.

3. Crimes of Press and Publication

The Egyptian legislature organized crimes of press and publication in Part XIV, Book 2 and Part VII, Book 3 of the Egyptian Penal Code.

3.1. Attack against Honor and Consideration (Defamation and Libel)

Defamation and libel are considered attacks against honor and consideration as they smear the reputation and status of the person in a society. Although they are similar, each one of them has different conditions and elements.

3.1.1. Defamation

According to Article 302/1, anyone who relates to another person a specific fact which, if true, would subject the person to legal penalties or disrespect among his peers, is considered to have committed defamation.

Defamation needs two material elements: expressing a specific fact and ascribing it to a certain person. It has to be a specific fact which, if true, entails punishment and disrespect for whomever committed it. Specifying a fact distinguishes defamation from slander. If there is no specification, the event is deemed slander.

Egyptian jurisprudence is based on the opinion that defamation can be committed against a juristic person, as long as it was directed to it independently from the individuals that make up that body.

Defamation through publishing is dealt with in Article 307, which considers defamation in newspapers as a circumstance making the crime more severe. It therefore doubles the minimum and maximum limits of the penalty defined for the simple defamation stated in Article 303 – as amended in 1996 – which is imprisonment for a period not exceeding one year or a fine not less than 2,500 pounds and not exceeding 7,500 pounds.

The law does not punish defamation through publishing in the following cases:

- criticism of the work of a public servant, government representative or person appointed to perform a public service, if it is done with good intent, i.e., for the public interest (Article 302/2);
- the right to criticism that is expressly recognized in the Constitution where Article 47 states that self-criticism and constructive criticism are a guarantee for the safety of the national structure. The condition of the allowed criticism, as defined by the Court of Cassation, is that the event criticized should be true and of social importance without malicious intent, i.e., in the public interest.

The public attorney's office closed a case on 30 December 1999 with respect to a complaint filed by the former chairman of the Egyptian Railways Authority versus the Egyptian newspaper *Al Akhbar*. He accused three journalists of defamation against him for the cartoons and articles they published in relation to the death of a woman who fell through the flooring of a coach of one of the trains. The public attorney's office justified

closing the case, saying the cartoons and articles had been done within the limits of allowed criticism. They were directed against the chairman of the Egyptian Railways Authority in his capacity as public servant, in relation to issues and events that were proven to be true and were related to the responsibilities of his job; they were targeting the public interest with good intent.

3.1.2. Crime of Public Libel

Article 306 of the Penal Code defines public libel as an act that smears the honor or consideration of a person without ascribing a particular fact to him/her.

The penalty is imprisonment for a period not exceeding one year and/or a fine not less than 1,000 pounds and not more than 5,000 pounds. Article 307 doubles the minimum and maximum limits of the penalty in case of libel in a newspaper.

The criminal suit in the crimes of defamation and libel through publishing is processed only if the offended party files a complaint (Article 3/1 of the Code of Criminal Procedure).

3.1.3. Important Rulings of the Court of Cassation in Crimes of Defamation and Libel

Authority of the courts of merits in determining whether defamation and libel have occurred: The determination of the factuality of defamation and libel is at the judge's discretion according to his/her understanding of the circumstances of the case. The judge is not under the control of the Court of Cassation unless he commits an error in the application of the law (Challenge No. 33/35, of 2 November 1965). The court has also ruled that in a case where a publisher intended to ascribe facts to the plaintiff, saying he practiced espionage, he was not justified by the fact that he took the information from a foreign newspaper. It is defamation even if the statement is expressed in a hesitant or doubting way, if it creates a belief, even temporary or probable, that the claims are authentic (Challenge No. 1028/30, of 17 January 1961).

Intent in the crime of defamation: The court has ruled that the law does not require a special intent in defamation. General intent is sufficient, which is achieved by publishing the material containing the defamation. Defamation against an ordinary citizen is not affected by the good intent of the offender, i.e., his/her belief that facts were true (Challenge No. 1363/28, of 30 March 1959).

The court ruled that allowed criticism means expressing an opinion with respect to a thing or work without smearing the persons to whom it belongs, without the intent to defame them or debase their dignity. If criticism goes beyond that limit, it entails punishment, as it will be considered a component of a crime of defamation or libel according to the circumstances (Challenge No. 248/8, of 10 January 1938).

3.2. Ban Imposed on Certain Information

Crimes may occur by publishing news that is banned by the legislature despite its authenticity since publishing it may endanger the general interest of the nation.

The Penal Code includes a listing of some types of news whose publishing and broadcasting, in any form, is considered a crime by the law (e.g. defense secrets).

The legislature allowed courts to hold trials in camera for reasons connected with public order and ethics, in such cases as adultery, disclosure of secrets and personal status lawsuits (Article 189). Disclosure of information regarding those trials is considered a crime.

The Court of Cassation rulings have settled that the incrimination is confined to court procedures and what goes on in the court and does not include the investigation or the sentences passed or the subject of the complaint or other procedures (Challenge No. 621/31, of 16 January 1962).

The court, while examining a case in open session, may also prohibit the publication of the judicial pleadings and/or the rulings, in order to maintain public order and morality. The offender is punishable by imprisonment and a fine (Article 190).

Publishing the secret deliberations that take place before the judges pass their sentences may affect the position of the opponents and is forbidden by Article 191 of the Penal Code.

Penalties shall also affect whoever publishes news of an open session without due accuracy and in a manner not corresponding with the true facts (Article 191).

Related to the aforementioned crime is the crime of publishing information that may influence the judges responsible for ruling on a case, the prosecution office staff or other officials responsible for investigation, the witnesses, or prevent a person from disclosing information that may be of use to the suit. The offender will be penalized by imprisonment and/or a fine (Article 187).

The legislature also banned the publication of information relating to a criminal investigation when the investigative authority ordered that it be carried out in camera.

The People's Assembly sessions are generally open; however, for reasons of security or the policy of the state, the assembly may decide to discuss these issues in secret session. In this case, the law bans the publication of what is deliberated in them and imposes on the publisher of any such news the same penalty stated for the publisher of secret deliberations of the courts (Article 192).

3.3. Publication of False News

This crime does not occur simply by publishing a false item of news. Other conditions related to the subject of the false news are also required, as follows:

1. publishing a false piece of news in time of war with the intent of doing harm to the military effort of the country (Article 80/c);
2. publishing a false piece of news abroad about the internal conditions of the country if this publication may weaken the financial trust of the state or diminish its good status, whether the news take the form of stories, information, or rumor (Article 80/d);
3. publishing a false piece of news that is apt to disturb public security, create panic or do harm to the public interest (Article 102 bis).

Assessing the effect of the news on security and public interest is up to the discretion of the judge.

3.4. Insults through Publishing

Crimes of insult through newspapers are defined as publishing what may diminish the respect and appreciation due to a person not only as a human but also with regard to his/her professional capacity. This may be done through words, act or writing. Crimes of insult are different from those of defamation and libel in that they only occur against public employees because of their jobs.

The persons whom the law incriminates insulting are:

The President of the Republic: Article 179 of the Penal Code states that a sentence of imprisonment shall be imposed on whoever insults the President of the Republic by means of broadcasting or publishing. The same protection is bestowed on kings and heads of states of foreign countries as Article 181 sets out the penalties of imprisonment of the offender in such cases. The punishment applies even if the published material has nothing to do with the offended party in his capacity as a head of state. This protection is extended to accredited representatives in Egypt of foreign nations, differing only in the fact that the incriminated act has to do with their official capacity (Article 182).

Public bodies: Article 184 defines these bodies as the People's Assembly, the army, the courts, the public authorities in the country, the public departments or other official bodies. The crime is characterized in this case by the fact that the insult happens without specifying certain persons; it should also affect the body as such, otherwise it will be classified as defamation or libel.

The court considered the sentence 'Down with the Egyptian government!' as an insult to the government (28 February 1929). In the same ruling, the court said an insult is an affront against honor and dignity.

Public servants, government representatives and persons appointed to perform a public service: For a crime of insult through publishing to occur in such a case, there has to be use of abusive language against one of those figures in a newspaper because of his performance of his job or representation or public service (Article 185/1).

Judges: Article 186 of the Penal Code sets out a penalty of imprisonment and/or a fine for whoever compromises in a newspaper the reputation of a judge in relation to a court case, while the case is still in progress.

The Code of Criminal Procedure (Articles 3, 8, 9) states that, in order to begin criminal proceedings, a complaint filed by the offended party or by the body or the head of the offended authority, according to the case, is required, or a written application submitted by the Minister of Justice in case of insult against a foreign king or head of state or his representative.

3.5. Incitement through Publishing

According to Article 171 of the Penal Code, whoever publicly incites a person to commit a felony or misdemeanor shall be subject to a penalty. This Article did not specify

inclusively the forms of publicity. However, jurisprudence has confirmed the necessity of two components: the first is publishing through publications or the press or advertising; the second is the offender's intent to publish.

Article 172 states that whoever directly incites the commission of a murder, pillage, arson or felony against the security of the government in the media is to be punished by imprisonment, even if the incitement did not result in any of the felonies being committed.

In addition, the legislature imposes a penalty of imprisonment and a fine on whoever incites the overthrowal of the government in Egypt or encourages doctrines aimed at changing the basic principles of the Constitution or the basic systems of the social structure (Article 174) or incites soldiers to disobey or neglect their military duties (Article 175).

Lastly, Articles 176 and 177 imposed a penalty on whoever incites in the ways previously mentioned to hatred or contempt of a particular group of people if this incitement results in disturbing public peace. This also applies if there is an incitement to disobey the laws or to represent as lawful an act that is considered a felony or a misdemeanor by the law.

The Court of Cassation ruled that writing an essay including provocation and sensationalism and presenting it for publishing proves the criminal intent, as a general intent is considered sufficient by the law for the crimes punishable under Article 176 (Challenge No. 43/17, of 21 January 1947).

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A. Seif el-Islam

19. EXCEPTIONAL LAWS AND EXCEPTIONAL COURTS

1. INTRODUCTION

1.1. Definition of Exceptional Circumstances

Exceptional circumstances are those risks and crises that befall any country. They imply the existence of a danger threatening the state, which inevitably leads it to evade the legal rules that are applied in ordinary circumstances, or not to abide by them temporarily so as to face that exceptional situation and maintain its right of survival.

In other words, exceptional circumstances mean exceptional cases where the laws applicable in ordinary circumstances cannot apply, in order to protect the general interest from hazards overcoming it. Three fundamental conditions must exist in order for exceptional circumstances to apply:

- the existence of an unfamiliar exceptional situation;
- the government's resort to non-commitment to those laws applicable in ordinary circumstances;
- having the public interest exposed to danger.

1.2. Principle of Legality and Exceptional Circumstances

Legality means the commitment of all people – rulers and subjects – to law. The emergence of exceptional circumstances may bring the state and its public authorities to absolve themselves, temporarily, of the established legality applied in ordinary circumstances. That shall be done with the purpose of facing the crisis and evading the risks that may befall the country.

Society may be exposed to exceptional circumstances that threaten the security and safety of the country or its public order. To maintain its survival, society will then have to resort to special procedures. It goes without saying that such exceptional laws will be more detrimental to personal rights and freedoms than ordinary laws. Therefore, those procedures shall be followed in consistence with the law and within the scope of the rules established for such exceptional circumstances, to avoid any arbitrary action taken by the public authorities and any ambiguity concerning the rights and duties of individuals. The

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exercise by public authorities of such privileges shall not go beyond the limitations set by the Constitution and relevant laws. They shall be supervised by the judiciary so that those public authorities abide by those obligations and the objectives set by the legislature. The authorities empowered with the application of such legislation, though enjoying great exceptional privileges, are subject to parliamentary and judicial supervision and thereby are subject to the fundamentals of the principle of legality.

According to one point of view, exceptional circumstances entail giving priority to the integrity of the state above all other considerations. Hence, all measures aiming at the achievement of such integrity will be legal.

According to the second point of view it is not logical, after having adopted a Constitution and ratified conventions protecting individual rights and freedoms, to authorize a government to proclaim a state of emergency, suspend constitutional guarantees and restrict individual rights and freedoms without reason.

The matter has been settled by stating that the exceptional status, through exceptional circumstances, shall not be legal unless it is deemed necessary. Therefore, the exercise of freedom cannot be suspended unless it is necessary and limited to the extent that allows the authorities to face the very current risks and disasters. Also, these measures shall be subject to the supervision of both the legislative and judicial authorities, so that the exercise of freedom will not be unjustifiably restricted.

1.3. Definition of Exceptional Laws

Exceptional laws are temporary laws that are passed to face exceptional circumstances. They differ from ordinary laws passed to rule ordinary circumstances in that they allow the government to enjoy privileges and powers to which they are not entitled in ordinary circumstances. Such restrictions are deemed necessary since the government has to face severe risks. They may strengthen the executive power or even restrict individual rights and freedoms.

The provisions regulating exceptional circumstances may be constitutional or legislative. We shall deal with them in two separate sections.

2. Constitutional Provisions

The current Egyptian Constitution stated four solutions to face four different degrees of exceptional circumstances. In each case, the executive power is given the right to issue legislative measures.

2.1. Petty Danger and Rules of Delegation

In exceptional circumstances and under certain conditions, the Parliament may adopt a 'law of delegation' or 'law of full powers' that delegates to the executive authority the power to issue regulations in certain fields and for a certain period of time. These regulations will have the force of law.

No constitutional power shall be allowed to delegate its authority except in the cases and within the limits set forth by the Constitution. Otherwise such delegation of authority is null and void since it is an indirect amendment of the Constitution.

The regulations issued by the executive power following such a delegation of authority are administrative as far as their form is concerned, but legislative as to their content. They enjoy the force of law and may regulate issues that can only be regulated by law.

The Constitutions of 1923, 1930 and 1958 did not contain any text regarding such delegation of authority.

According to Article 136 of the Constitution of 1956 and Article 120 of the Constitution of 1964, the National Assembly, in exceptional circumstances, could authorize the President to issue decrees having the force of law. The law of delegation had to confine this delegation to a limited period of time and to specify the fields subject to such delegation.

The National Assembly made use of this power on 31 May 1967, when Law No. 15 authorized the President, after the war, to issue law decrees in all matters related to the security and safety of the country, the mobilization of all its human and material resources, the reinforcement of military efforts and of the national economy and in whatever aspect deemed necessary to face such exceptional circumstances.

The President used the right given to him to issue law decrees dealing with matters outside the delegation of power passed by the National Assembly. This was the case with Law Decree No. 61 of 1968 regarding the bar and Law Decree No. 83 of 1969 regarding the reorganization of the judicial bodies.

The Supreme Court decided that it was competent to examine the constitutionality of law decrees and stated that the above-mentioned law did not contravene the provisions of the Constitution.[1]

Article 108 of the Constitution of 1971 stated that: 'The President of the Republic shall have the right, in case of necessity or in exceptional cases and with the authorization of two-thirds of the members of the People's Assembly, to issue decrees that have the force of law. Such authorization must be for a limited period of time and must point out the subjects of such regulations and the grounds upon which they are based. The regulations must be submitted to the People's Assembly at its first meeting after the end of the authorization period. If they are not submitted or if they are submitted and not approved by the Assembly, they shall cease to have the force of law'.

According to that provision, the law of delegation must be approved by a majority of two-thirds of the members of the People's Assembly. The law decrees must be submitted to the Assembly in the first session following the end of the period of delegation. If the Assembly approves them, they become laws. If it does not approve them, they lose their force of law for the future but not retrospectively.

If the President's decrees are not submitted to the Assembly after the end of the term of delegation or are submitted but not approved, they shall remain administrative acts

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[1] Supreme Court, No. 8/5, 6 March 1976.

subject to the supervision of the administrative judge, who may declare them null and void if they are proved illegal.

The Supreme Constitutional Court supervises the constitutionality of the law of delegation. It has stated that the People's Assembly shall not delegate its entire legislative authority to the executive power. The President shall be bound by the narrow limitations imposed by the exceptional nature of the authority given to him otherwise he will be in violation of the Constitution.[2]

2.2. Regulations in Case of Necessity

In case of necessity, the executive power may be allowed to adopt law decrees under certain conditions.

According to Article 147 of the Constitution of 1971: 'If there is a necessity for taking urgent measures when the People's Assembly is not in session, the President of the Republic shall issue decrees in this respect that have the force of law.

Such decrees must be submitted to the People's Assembly within 15 days from the date of their issuance if the Assembly is in session or at the first meeting in case of the dissolution or recess of the Assembly. If they are not submitted, their force of law disappears with retroactive effect without having to take a decision to this effect. If they are submitted to the Assembly and are not ratified, their force of law disappears with retroactive effect, unless the Assembly has ratified their validity in the previous period or settled their effects in another way'.

If they are not ratified by the Assembly, these decrees remain administrative acts, subject to the review of the administrative judge.

A similar provision was previously included in Article 41 of the 1923 and 1930 Constitutions (which gave this right to the King), Article 135 of the 1956 Constitution, Article 135 of the 1956 Constitution, Article 53 of the 1958 Constitution and Article 119 of the 1964 Constitution (which gave this right to the President).

Article 147 of the 1971 Constitution, like Article 135 of the Constitution of 1956, authorizes the Assembly to approve the execution of a law decree retroactively, while not approving it for the future.

The Supreme Constitutional Court decided that it was competent to review whether the conditions of necessity for adopting these law decrees were really fulfilled. It ruled also that the fact that the Assembly approved a law decree does not absolve it if it contravenes the Constitution.[3]

2.3. Emergency Regulations

Emergency regulations are regulations issued by the administrative authority in case of emergency. They shall enjoy the force of law even if they violate individual rights and

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2 Supreme Constitutional Court, No. 18/8, 3 February 1996.

3 Supreme Constitutional Court, No. 28/2, 4 May 1985.

freedoms. A case of emergency may be declared temporarily because of a sudden danger imminent to the country, resulting from an outer or inner attack.

Article 148 of the 1971 Constitution states: 'the President of the Republic shall proclaim a state of emergency in the manner prescribed by the law. Such proclamation must be submitted to the People's Assembly within the subsequent 15 days to take a decision upon it.

In a case where the People's Assembly is dissolved, the matter shall be submitted to the new assembly at its first meeting.

The state of emergency, in all cases, shall be for a limited period, which may not be extended unless by approval of the Assembly'.

The declaration of a state of emergency shall last for a temporary period and shall not be extended unless with the approval of the Assembly. The President shall thereby specify the period of the declaration's validity, but is free to state whatever period.

The state of emergency is regulated by Law No. 162 of 1958, which determines the conditions to be fulfilled to declare a state of emergency, under the control of the Parliament.

The Supreme Court decided that the declaration by the President of a state of emergency is a political act that shall not be subject to judicial supervision.[4]

The presidential decrees taken following this declaration, however, will be subject to judicial supervision and shall not violate the provisions of the Constitution.

2.4. Regulations in Case of Serious Danger

According to Article 74 of the 1971 Constitution: 'If any danger threatens the national unity or the safety of the motherland, or obstructs the constitutional role of the State institutions, the President of the Republic shall take urgent measures to face this danger, direct a statement to the people and conduct a referendum on those measures within 60 days of their adoption'.

This provision, which may derive from Article 16 of the French Constitution of 1958, was not included in the previous Egyptian Constitutions.

The application of Article 74 is subject to a serious danger that threatens the national unity or the safety of the State, or obstructs the functioning of the state authorities.

The President of the Republic shall address a statement to the people so as to explain the reasons that made him exercise such power, and a referendum shall be organized.

The Supreme Court decided that the President is not allowed to violate the constitutional provisions.[5]

3. Ordinary Laws

Different laws can be considered as exceptional.

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4 Supreme Court, No. 5/5, 3 April 1976.

5 *Ibid.*

3.1. Emergency Law

Martial law was declared for the first time by the authorities of the British Occupation in November 1914 until 1922 (period of the First World War). Then it was declared again from 1 September 1939 until 7 October 1945 (Second World War) and from May 1948 until 28 April 1950. As a consequence of the 1948 war, it was also declared in the regions bordering Palestine of the governorates of Sinai and the Red Sea. Then it was in force from 26 January 1952 until June 1956. After the tripartite aggression against Egypt, it was declared again on 1 November 1956 by the President of the Republic, then in 1958 following the Syrian Egyptian Unity, until 1964. On the occasion of the Israeli aggression, it was declared on 5 June 1967 until 15 May 1980. It was declared once more on 6 October 1981, on the occasion of the assassination of Sadat and has been in force since then. The country has therefore been subject to martial law for more than 60 years in the period from 1914 until 2000, which means that the Egyptian people spent nearly 75 per cent of those years in a state of exception. In other words, the burden of martial law imposed on Egyptian society has been removed for only 25 intermittent years. So a period of sustainable 17 years, from 1922 to 1939 was the longest period in which such martial law was not in force. Whereas the shortest period was four months, from June 1956 to 1 November 1956.

3.1.1. Why, How and When a State of Emergency is Declared

Article 2 of Law No. 162 of 1958 states that a state emergency can be declared or terminated by a President's decree. If the Parliament is not in session, it can be declared by a decree provided that the Parliament resume work within two days of its declaration to decide whatever it deems necessary in this regard.

The decree declaring a state of emergency shall give the reasons why it is declared. It shall also determine the areas where it shall apply and the date of its entry into force.

Article 1 of this law provides that: 'a state of emergency may be declared whenever public security or public order in the territories of the Republic or one of its regions are endangered, whether by an outbreak of war or by the threat of such an outbreak, or by internal disturbances, or by natural disasters or by the outbreak of an epidemic'.

The first Martial Law No. 15 of 1923 included only two cases: invasion of the country; and internal disturbances. Another case was added by Law No. 73 of 1948, namely safeguarding the Egyptian armies and their network of transportation outside the territory, in response to the prerequisites of the Palestinian war.

Law No. 162 of 1958 therefore widened the scope of cases for which a state of emergency can be declared.

3.1.2. Authority in Charge of Emergency Regulations

The declaration of a state of emergency shall result, in accordance with Article 3 of Law No. 162, in empowering the President of the Republic to take steps to maintain public security and order. This is different from the two previous laws on the state of emergency (Law No. 15 of 1923 and Law No. 533 of 1954), which gave that power to the general military governor.

The general military governor was to be nominated by the Prime Minister.

It is impossible, however, for the President of the Republic to exercise all such powers himself. Therefore, Article 17 of Law No. 162 stated that he shall appoint a representative partly or wholly in charge of exercising his privileges.

According to Article 3 of Law No. 162 of 1958, the President may, inter alia:

- impose restrictions on individual freedom as regards to meetings, residence or transport to certain places and times. He may arrest and detain suspected persons or those who endanger public order or security and search persons or places without warrants;
- censure the press and all means of expression and confiscate, suspend or close them;
- determine the opening and closing hours of commercial houses and decide to close down all or some of such places;
- seize any movables or real estate and put companies and establishments under sequestration;
- withdraw arms licenses, seize ammunition or flammable substances or explosives and close down weapon stores;
- evacuate or isolate some areas and organize means of transport connecting different areas.

The President of the Republic may widen the scope of those powers, providing that he submits this decision to the People's Assembly at its first meeting.

Other privileges are included in other Articles of the law, particularly regarding the functioning of courts of state security.

Law No. 162 of 1958 did not give any deadline for the meeting of the People's Assembly and did not state what would happen if those decrees are not submitted to it, while the previous law of 1954 gave a week to the cabinet to submit them, otherwise they were declared null and void.

The two previous laws on the state of emergency also gave those privileges to the cabinet, and not to the President.

3.1.3. Legal System

Presidential decrees taken according to a state of emergency remain administrative decrees, subject as such to judicial supervision. They shall respect the provisions of the Law of 1958, i.e. be confined to achieving the objective for which the state of emergency was declared. It follows that any decision taken by the President, or his representative, shall aim at retaining security or the public order in the Republic.

Military governors, in the past, used to disregard this restriction by adopting military orders irrelevant to the objectives upon which the state of emergency had been declared.

In 1941, for instance, a military order stopped the execution of two decisions taken by the Mixed Court of Appeal, compelling the Suez Canal Company and the Land Bank to pay the interests on their bonds on gold price base. The military order decided that the interests were to be paid according to the rate it determined, because the execution of the judgments would have lead to the suspension of the Suez Canal Company and to its inability to maintain the continuity of the public utility it was exercising. The liquidity shortage of the Egyptian Land Bank would have had grave consequences on the public

interest. Many deputies of the Parliament declared that such a military order went beyond the law.

According to the government, it was necessary to give a wide interpretation to the concept of 'order and public security' so as to include state security and the safeguarding of its vital interests, such as the working of the public state utilities, the logistics needed by the military as well as the protection of the monetary system of the state and its economy.

This wide interpretation was adopted. Thereby the concept of public order turned into being tantamount to public interest.

The Supreme Court decided that the notion of 'public order' mentioned in Article 3 of the law on the state of emergency, as amended by Law No. 37 of 1972, should be defined in the light of the reasons that led to the declaration of the state of emergency and the objectives sought by that declaration.[6]

The President of the Republic or his representative is allowed to take any measure deemed necessary, even if it is not included among those stated in Article 3, provided that such a measure was inevitable and necessary for the maintenance of security and public order.

Such decrees shall not include penalties exceeding temporary hard labor and fine of more than 4,000 pounds (Article 5 of Law No. 162 of 1958). If no penalty is fixed for the violation of their provisions, the penalties imposed for such a violation shall be imprisonment for a period not exceeding six months and a fine of not more than 50 pounds, or one of the two penalties.

Emergency decrees are not permanent. They shall cease as soon as the state of emergency is terminated.

3.2. Law on Civil Defense

Civil defense is organized by Law No. 148 of 1959, as amended by Law No. 10 of 1965 and Law No. 20 of 1974.

According to Article 1 of this law, civil defense means protecting the citizens and ensuring the safety of transportation and communication, ensuring the regular and uninterrupted sustainability of work in public facilities, keeping national works of art and monuments safe and safeguarding premises of establishments, bodies, public and private projects from air raids attacks or any other military acts.

Measures of civil defense shall not be taken unless there is a threat of war or actual breaking out of a war.

Pursuant to Article 21, the Minister of War is empowered to assume the authorities of the Minister of Interior in the military zones.

Individuals' rights and freedoms may be encroached upon by several provisions of this law. Article 16 entrusted the Minister of Interior to issue decrees by which buildings and properties deemed necessary for the preparation of shelters shall be seized to house

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[6] Supreme Court, No. 2/6, 15 May 1976.

emigrants and homeless. He was also given power to compel owners of educational institutes, charitable institutions, public shops, night-clubs, commercial and industrial shops and houses which include more than one dwelling to put these properties at his disposal.

This provision contravenes Article 36 of the Constitution, which states that private confiscation shall not be allowed except by a judicial decision.

Civil defense law (Article 20) may also restrict individuals' freedom of work in that civil servants, doctors, pharmacists and nurses working in public utilities as well as transport workers and workers in manufacturing or dealing with foodstuffs, shall be prohibited, in case of mobilization, from quitting the premises of their work without a written permit from the civil defense authority. The Minister of the Interior, along with the Minister of War, may prohibit any other category of workers from leaving their premises of work in the interest of civil defense.

Compensation shall be given to owners whose buildings are devalued due to compelling them to prepare special places that can be used as public shelters for sheltering emigrants and the homeless.

Measures of civil defense were imposed from May 1967 because of the threat of war which broke out with Israel on 5 June 1967.

3.3. Law of General Mobilization

Public mobilization is organized by Law Decree No. 87 of 1960 as amended by Law No. 54 of 1961 and Law Decrees No. 131 for 1962, No. 96 of 1963, No. 35 of 1968 and Law No. 18 of 1972.

Pursuant to Article 1 of that law, public mobilization shall be declared by a presidential decree in case of strained international relations, outbreak of war or threat of such an outbreak. The President shall declare the termination of mobilization by issuing a presidential decree once the reasons calling for such a declaration of public mobilization no longer exist.

Pursuant to Article 2 of that law, some categories of workers in public utilities shall then carry on their work under the supervision of the Ministers of War and Defense.

Factories, building sites and labs will be submitted to the authorities assigned by the Minister of War, for the supervision, administration and following up of their production.

According to Article 4, citizens of hostile countries shall enroll their names to the competent administrative authority within three days from the declaration of public mobilization. In case of war, the Minister of Interior may arrest them and the Minister of Economy may put their properties under sequestration (Article 5).

Article 6 prohibits residents on Egyptian territory from dealing with hostile countries or with their citizens during the period of mobilization.

Workers whose assignment is vital for the military effort may be recruited by a presidential decree (Article 9) and the Minister of War may summon any employee or worker to work for the military effort for a maximum period of two years. Whoever is recruited can object to such an assignment, within seven days, by submitting an application to the organ he is to work for (Article 12).

Pursuant to Article 24, the President or his representative may take any measure necessary for the military effort, such as seizing raw material, flats, industrial or commercial shops, etc.

Those people whose properties or flats have been seized shall have the right to ask for compensation.

In the aftermath of the Israeli aggression against the Egyptian territories on 5 June 1967, the President of the Republic issued decree No. 1338 of 1967 declaring general mobilization all over the country.

4. Exceptional Courts

4.1. Division

4.1.1. Definition

Special courts or 'courts of special jurisdiction' (e.g. permanent courts of state security set up by Law No. 105 of 1980 or juvenile courts) are competent to rule on specific categories of crimes or criminals. They are different from ordinary courts with general jurisdiction, which are competent to judge crimes irrespective of the personality of the perpetrator.

There are also exceptional courts, besides special courts. They too examine certain types of crimes, but are temporary and bound to certain circumstances. Normally, such courts do not abide by the procedures of investigation, accusations and trial established by the rules of criminal law, which bind the other courts. This is the case for instance with the courts of state security (emergency), which are formed during a state of emergency.

4.1.2. Basic Features

There are different kinds of exceptional courts in Egypt. First, we have the courts of state security (emergency) according to the Law on the State of Emergency No. 162 of 1958. There are also military courts, organized by Military Law No. 25 of 1966 as amended. Other courts can be set up on certain occasions, such as the Court of Treason and the Court of Revolution.

Courts of state security (emergency) are temporary courts that do no belong to the ordinary criminal judiciary. They shall disappear as soon as the state of emergency ends. The procedural guarantees offered to the accused are restricted.

Those courts shall not encroach upon the jurisdiction of ordinary courts in examining the crimes within their competence.

Those temporary courts of state security are set up by Article 7 of Law No. 162 of 1958 as amended. However, there is no constitutional provision regarding them, similar to Article 171 regarding permanent state security courts.

According to Article 9 of that law, the President or whoever represents him shall refer crimes to courts of state security.

Any sentence outside the jurisdiction of those courts shall be null and void. The decisions of those courts shall not be subject to appeal or to a challenge before the Court of Cassation.

The procedural organization of exceptional courts is different from that of ordinary and special courts. The accused does not enjoy the same guarantees. He has no right to challenge their sentences, the prosecution has more power than in ordinary circumstances and the executive power plays an important role in the ratification of the judgments, in the composition of the courts and in distribution of jurisdiction.

4.2. Courts of State Security (Emergency)

4.2.1. Types and Composition

Courts of state security are of two kinds: summary courts and high courts.

Each category enjoys a special field of competence according to the severity of the crime on trial. Their composition may be one of the three following ones:

- ordinary judges only;
- judges and military officers;
- military officers only.

4.2.1.1. Summary State Security Courts (Emergency)

Summary state security courts comprise one district or more inside the court of first instance and consist of one judge of the court. The complaint shall be introduced by a member of the public prosecution. As an exception, the President of the Republic may order that such a court be formed of a judge and two officers. He may also decide that the court be formed of officers, in which case the court will follow the procedure stated in the decree issued by the President of the Republic. Such courts are competent to examine crimes whose penalties are imprisonment or fines or both.

4.2.1.2. High State Security Courts (Emergency)

High state security courts consist of three counselors of the Court of Appeal. The complaint shall be introduced by a member of the public prosecution. As an exception, the President of the Republic may order that it be formed of three counselors and two officers. He may also decide that it be formed of three officers.

Those courts shall examine felonies as well as any crime assigned to it by the President of the Republic.

The person in charge of the application of the state of emergency may introduce modifications to the jurisdiction of those courts. Thereupon, they may be entitled to consider crimes whose penalties is imprisonment or fines, while according to Article 7 of the law on the state of emergency their jurisdiction is limited to those crimes which contravene the provisions of the decrees issued by the President of the Republic.

The President of the Republic shall appoint members of courts of state security (Summary or High) after having taken the opinion of the Minister of Justice as far as

judges and counselors are concerned and the opinion of the Minister of War as far as officers are concerned.

The law entrusted state security courts (emergency) with original competence, namely ruling on crimes perpetrated in violation of decrees issued by the President of the Republic pursuant to the emergency law. However, the legislature added that those courts may be empowered with other competence, mainly deciding on crimes penalized by the public law.

The Supreme Administrative Court decided on 23 May 1987 that only contraventions to orders issued by the President in accordance with the provisions of the emergency law can be referred to courts composed of officers only. So ordinary crimes shall not be referred to them.

4.2.2. Competence

Ordinary courts examine ordinary criminal cases. Even though the law on the state of emergency decided that state security courts may examine ordinary criminal cases, this did not deprive ordinary courts of their competence in hearing ordinary crimes. Thereupon, those two judicial authorities may be entitled to examine such crimes.

4.2.2.1. Multiplicity and Connexity of Crimes

According to Article 214/4 of the Code of Criminal Procedure, if there is a connexity between different crimes that can be heard by courts of different degrees, all of them shall be referred to the court of the higher degree. If some of them are within the competence of ordinary courts and others within the competence of special courts, then all the crimes shall be referred to the ordinary courts, unless otherwise stated by law.

According to Article 2 of the presidential order No. 1 of 1981, however, if one act constitutes various crimes, or if different crimes are committed for one purpose, and if one of those crimes falls within the competence of a state security court (emergency), then the public prosecution shall transfer the whole case to the state security court (emergency).

The Court of Cassation decided on 12 November 1984 that if a person is accused of two crimes and if one falls within the competence of a state security court and the other one within the competence of an ordinary criminal court, then the general principle of criminal law shall apply, i.e. the lighter penalty shall follow the crimes with the severer penalties as far as investigation, transfer and trial are concerned. In the case under review, an ordinary criminal court was considered higher than a summary state security one.

4.2.2.2. Competence Regarding Crimes Penalized by Ordinary Law

Since the competence of the state security courts is an exceptional one, it follows that such competence shall be interpreted strictly and limited to meeting the objectives of the declaration of the state of emergency. However Article 9 of the law on the state of emergency authorized the President of the Republic to ask them to decide on ordinary crimes, at his discretion.

On 14 May 1980, Presidential Decree No. 207 put an end to the state of emergency. But in the aftermath of the assassination of Sadat on 6 October 1981, a new declaration of a state of emergency all over the country was issued by the new President. It was followed on

22 October 1981 by Presidential Order No. 1 referring some crimes to the state security court (emergency). This order is still in force. Among the crimes referred to state security courts (emergency) are crimes regarding weapons and ammunition, interruption of means of transportation or public meetings and demonstrations.

It follows then that the President may refer at his discretion to state security courts any of those criminal acts, whether felonies, misdemeanors or contravention, be they prosecuted in the Penal Code or in any other law. He does not even have to give justifications for his decision, and the grounds may have no relation with the reasons for which the state of emergency was declared.

In our opinion, such dual competence between ordinary and state security courts (emergency) violates basic principles of procedural law.

The competence of the courts shall be predetermined by the law according to objective standards, and shall not be left to the discretion of a certain authority.

This dual competence implies a breach of the principle of equality of citizens before law as prescribed by Article 40 of the Constitution of 1971.

4.2.2.3. After the Termination of the State of Emergency

According to Article 19 of the law on the state of emergency, after the termination of the state of emergency, the state security courts shall be entitled to hear and proceed with the law suits referred to them. Where the defendants have not yet stood for trial the proceedings shall be referred to the ordinary judiciary and be subject to the same set of procedures applied before such courts.

Although the state of emergency will be terminated, emergency state security courts may continue to judge the cases before them. Moreover, ordinary courts may have to hear cases that were incriminated by military orders under the state of emergency but which are not punishable anymore since the state of emergency ended. Penalties issued pursuant to exceptional legislation under the state of emergency should be invalidated with the termination of that state of emergency.

4.2.2.4. Complaint against Arrest or Detention

Article 3 bis of the law on the state of emergency entitled the detainee to lodge a complaint in respect of the order issued for his arrest, to the high security court (emergency). However, the court's sentence of release shall be effective only if the Minister of the Interior does not object, within 15 days from the date of its issuance. Where there is an objection to the sentence of release within the fixed period, the complaint shall be heard by another district of the court, provided that the decision is made within 15 days of the date of objection, or the detainee shall be promptly released and the sentence pronounced by the court thereby effective.

According to Article 6 of the law on the state of emergency, violators of orders issued in accordance with the provisions of that law shall be arrested promptly. They shall have the right to complain against the order putting them in custody before the competent state security court. The complain shall be decided within 30 days from its date of submission or the person in custody shall be set free promptly. The Minister of the Interior may object to

the court's decision to release the person within 15 days from the date of its issuance. In that case, the challenged decision shall be referred to another district of the court within 15 days.

4.2.3. Procedure

4.2.3.1. Accusation, Investigation and Trial

According to Article 10 of law on the state of emergency No. 162 of 1958, the procedural provisions in force before state security courts apply to state security courts (emergency) too, except when stated otherwise in the law on the state of emergency itself or in orders issued by the President of the Republic. The public prosecution herein shall have the right of accusation and preparatory investigation in the crimes within the competence of state security courts (emergency). In addition to the competencies entrusted to him by the penal laws, the public prosecution shall for instance be entitled to search a non-accused person and may search his home if there is strong evidence for his possession of anything relative to the crimes. He may also sieze letters at post offices or cables at telegram offices and may record phone calls if this is in the interest of the truth and provided that the order is grounded and does not exceed a period of 30 days, renewable for one or other similar periods. He may put the accused in preventive detention for 15 days if this is deemed necessary for the investigation and may extend the term of imprisonment provided he does not exceed 45 days. It is clear, therefore, that the defendant has been given hardly any of the privileges stipulated in the criminal procedures law.

The procedure before state security courts (emergency) is organized by ordinary laws, unless stated otherwise in the law on the state of emergency or in presidential orders.

4.2.3.2. Challenge

According to Article 12 of the law on the state of emergency, once approved by the President of the Republic, provisions of state security courts (emergency) are not challengeable before any court.

Only decisions on the merits of the case have to be approved by the President. Decisions of state security courts declaring their lack of competence do not have to be submitted to him.

In accordance with Article 14 of the law, the President may commute the pronounced sentence, change it for a sentence of a lighter penalty, cancel some or all the penalties or suspend their execution. He may also order the retrial of the case before another judicial district, by a grounded order. If the sentence following retrial, is 'innocence', it shall be approved in all conditions, i.e. even if the first sentence issued was for guilt. If the sentence issued for the second time is for 'condemnation', the President may commute the penalty or suspend its execution or annul the sentence while retaining the allegation.

4.3. Military Courts

4.3.1. Competence

In Egypt, military courts have competence over the military but also in certain cases over civilians. Article 6 of Military Law No. 25 of 1966 as amended by Law No. 5 of 1970 did not confine their jurisdiction to pure military crimes nor to those perpetrated within the

premise of the armed forces or that constitute an infringement on their equipment or secrets only. Rather, the military jurisdiction extends to ordinary crimes referred by the President of the Republic in the course of the state of emergency.

4.3.2. Classification

Article 43 of the Military Law of 1966 divides military courts as follows:

- a Supreme Military Court;
- a Central Military Court with supreme authority;
- a Central Military Court.

4.3.2.1. The Supreme Military Court

According to Article 44 of the military law, the Supreme Military Court consists of three judge officers and is presided by the senior one, provided that his rank is not inferior to that of lieutenant colonel. There shall be a representative of the military prosecution and a clerk at the court to take charge of writing down the minutes of the session. In certain cases, the Supreme Military Courts may consist of five officers (Article 47). That court shall be entitled to consider the following crimes (Article 50):

- all the crimes committed by officers or in which they take part;
- felonies included in the competence of military jurisdiction.

Therefore, all crimes, be they felonies, misdemeanors or petty offenses, whether military, mixed or ordinary, perpetrated by armed forces officers fall within the competence of the Supreme Military Court.

That court is also entitled to decide felonies that fall within the competence of the military judiciary, whether they are prescribed by the military law or by the Penal Code and whether its perpetrator is civilian or military. According to Article 51, however, the competence of the Supreme Military Court is restricted to examining felonies penalized by the death penalty or hard labor. Felonies punishable by imprisonment or lesser punishments fall within the competence of the Central Military Court, which enjoys supreme authority.

4.3.2.2. The Central Military Court with Supreme Authority

In accordance with Article 45 of the military law, the Central Military Court with supreme authority is formed of an individual judge, whose rank is not lower than major. The court shall include a representative of the military prosecution and a clerk in charge of writing down the minutes of the session. In certain cases, the court may consist of three officers (Article 47).

According to Article 51, the Central Military Court with supreme authority is entitled to consider all the felonies within the competence of the military judiciary whose maximum punishment does not exceed imprisonment, whether its perpetrator belongs to the armed forces or is a civilian. Officers do not fall within its competence, since they are judged by the Supreme Military Court.

4.3.2.3. The Central Military Court

According to Article 46 of the military law, the Central Military Court shall consist of one individual judge whose rank shall not be inferior to captain. The court shall also include a representative of the military prosecution and a clerk in charge of writing down the minutes of the session. In certain cases, it may consist of three officers at the request of the presiding officer (Article 47). Article 52 of that law specifies the competence of the Central Military Court. It is entitled to consider misdemeanors and petty offenses, whether this is stipulated in the military law or in ordinary laws and whether its perpetrator belongs to the armed forces or the civilians. Misdemeanors and petty offenses perpetrated by officers, however, are not within the competence of that court since they fall within the competence of the Supreme Military Court.

4.3.3. Military Courts and Ordinary Crimes

4.3.3.1. Felonies and Misdemeanors Violating State Security

According to Article 6.1 of the military law, as amended by Law No. 5 of 1970, the military provisions shall apply to crimes stipulated in the two first chapters of the second book of the Penal Code and whatever related crimes, referred to the military jurisdiction by a presidential decree.

This means that such authority is not exercised automatically, as is the case with the other crimes included within the competence of military courts. The exercise of such authority is contingent on a decree being issued by the President of the Republic, referring such crimes to the military jurisdiction, whether in ordinary or exceptional conditions, or whether their perpetrators are civilians or military, and whether such crimes are committed at home or abroad.

Therefore, it is within the discretionary power of the President of the Republic to decide to refer state security crimes to state security courts (emergency), pursuant to Article 9 of the law on the state of emergency, or to the military jurisdiction in accordance with Article 6.1 of the military law or to leave the whole matter to permanent state security courts which are also entitled to consider felonies detrimental to state security, pursuant to Article 3 of Law No. 105 of 1980 on the establishment of state security.

4.3.3.2. During a State of Emergency

Article 6.2 of the military Law No. 25 of 1966, completed by Presidential Decree No. 5 of 1970 stipulates that during a state of emergency, the President of the Republic may refer whatever crimes are penalized by the Penal Code or any other law to the military jurisdiction.

Pursuant to that statutory provision, the President of the Republic issued various decrees referring ordinary crimes to military courts. One of them, which was referring specific crimes after their actual perpetration by individuals, was criticized by the Court of Administrative Justice while the military judge found himself competent to rule on the case.

The Minister of Justice decided to submit the dispute to the Supreme Constitutional Court, so that it could give its opinion as to the interpretation of Article 6 of the military

law. On 30 January 1993,[7] the court decided that Article 6 of the military law shall be interpreted as meaning that any crime, whether a whole category or an individual and specific one, may be referred to the military judge.

4.4. Special Courts

Exceptional courts were established in Egypt to face emergency circumstances, namely the outbreak of the revolution on 23 July 1952. Special procedures were set up for these courts as far as accusation, investigation and trial are concerned. The principle of legality of crimes and penalties was infringed by these courts too.

4.4.1. Treason Courts

A treason court was established pursuant to Law Decree No. 344 of 1952 issued on 22 December 1952 for the trial of governmental civil servants, whether Ministers, members of the parliament or of local councils or persons entitled to perform a public service, who committed an act deemed detrimental to political life, or abused their privileges or interfered in the work of the judicial power, or who engaged in raising or lowering prices for their own interest.

The court consisted of a counselor from the Court of Cassation, two counselors from Cairo Court of Appeal assigned by the Minister of Justice and four high officers whose rank was not lower than major, assigned by the Higher Commandant of Armed Forces.

Its decisions were not subject to challenge.

4.4.2. Revolution Court

The Revolution Court was created by a decree issued from the Council of the Command of the Revolution on 13 September 1953, followed by another order on 16 September of the same year. The court was to consider whoever was accused of acting against the interests of the country and the sustainability of the revolution, even if such acts had been committed before the entry into force of that decree and even if the case was pending before an ordinary court, as long as no sentence had yet been passed.

It was made up of three members of the Council of the Command of the Revolution. Its decisions could not be challenged but had to be ratified by the Council of the Command of the Revolution.

In 1967, the Court of the Revolution was reestablished in accordance with Law Decree No. 48 of 1967 to decide whatever matters were referred to it by the President of the Republic regarding crimes stipulated in the second book of the Penal Code or the military law, or any crime detrimental to the security of the state whether inside or abroad or hostile to the principles of the Revolution. It consisted of three members nominated by the President of the Republic.

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[7] Supreme Constitutional Court, 1/15 (interpretation), 30 January 1993, Official Gazette, Vol. 4 (bis), 30 January 1993.

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20. PUBLIC INTERNATIONAL LAW

1. DEFINITION AND CLASSIFICATION

1.1. Definition

Before venturing to address Egypt's relationship with public international law, it is necessary to define what is meant by the term 'public international law'. Its meaning might appear to require a great degree of precision if we consider the huge number of definitions that jurists in the field of public international law have come forward with. It would serve no great purpose here to list these many definitions in sequence; instead, we shall focus on the fact that all are informed by two main trends which emerged early on. The dominant theme of one trend is that public international law is the law of relations between states, while the other trend emphasizes that public law is the law of the international community.

Favoring the second trend, we can say that contemporary public international law is 'the body of legal rules which govern and regulate the international community and the relationships between its legal persons'.

The above definition takes into account the massive growth and tremendous ramification of international relations which led contemporary public international law to come forward with the legal umbrella and regulatory framework for many relations and situations that had no parallel in traditional international law; which led it, in other words, to adapt to the realities of the important transformation undergone by public international law. Accordingly, it expanded its scope to become not merely a law to regulate relations between states, but the law of the international community.

1.2. The Branches of Public International Law

Traditional international law jurists divided public international law into two main branches, the law of war and the law of peace, while many of them devoted independent sections of their works to the rules of neutrality. Thus rules of public international law existed in times of peace, of war and of neutrality. It was not too long, however, before successive developments placed wars outside the domain of law and led to a growing interest in dealing with international law in peacetime conditions and not in times of war or neutrality. This was the case especially in the wake of the Second World War and the creation of the United Nations.

N. Bernard-Maugiron and B. Dupret (eds.), Egypt and Its Laws, 377–391.
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There is no doubt that the tremendous expansion in international relations and the evolution and huge increase in the rules of public international law led to the emergence of new branches of international law. Still, this statement must be treated with a degree of caution because we need to be aware, when talking about the new branches of public international law, of the significant differences between the subjects of public international law and those of its branches. The rules of public international law were initially laid down as parts of one whole. When public international law became the law of the international community, some of these subjects began to acquire their independence as distinct branches having their own identity, philosophy and specific objectives. Among the examples of public international law branches are International Institutional Law, International Labor Law, International Environment Law, International Human Rights Law, International Humanitarian Law, the Law of Treaties, the Law of the Sea and International River Law.

In the context of the situation now prevailing, as outlined above, determining Egypt's relationship with public international law on the basis of the above definition and of the developments that led to this extensive branching out entails dividing the present paper into consecutive points. We shall begin by casting light on the historical background of Egypt's relationship with public international law. We shall then move on to discuss the principal international treaties and conventions to which Egypt has adhered or now adheres, and related matters that can help determine the relationship between public international law and Egyptian national law. Finally, we shall study Egypt's role within the framework of international organizations.

2. Historical Background

Rather than delve into the historical background of public international law in general, we shall make the point of departure for our review of Egypt's relationship with public international law the treaty concluded in 1280 BC between the king of Egypt, Ramses II, and the king of the Hittites, Khattushilish III, by which they concluded an alliance after a war fought between Ramses II and the Hittite king preceding Khattushilish. The treaty restored peace between the two countries and renewed the friendship that had previously existed between them. The preamble to the treaty reads as follows:

> On the twenty-first day of the month of Toubah in the year twenty-one of the reign of the King of Upper and Lower Egypt, Ramses, son of the Sun and Lord of Justice, emissary of the God Ra … A royal envoy came from the great Prince Khattushilish, Prince of the Hittites, and was received in audience by the great Pharaoh of Egypt to whom he presented a silver tablet on which the following Treaty was inscribed […]. Then came the text of the treaty, which concluded with the following words: 'Let these covenants be protected by the Gods of the land of the Hittites and the Gods of the land of Egypt, let those Gods be witness to these covenants and may whoever does not abide by the covenants inscribed on this tablet in the name of the land of the Hittites and the land of Egypt be struck down by the curses of the

thousands of Gods from the land of the Hittites and the land of Egypt and he, his family, land and servants be exterminated'.[1]

Thus, since the dawn of time, Egypt has been dealing with international law in its relations with other international entities. Over the ages, because of Egypt's unique geographical location, which made it a point of convergence for various civilizations, international law came to play an effective role in the life of Egypt as a people, a territory and a state.

When its modern Enlightenment began in the early years of the nineteenth century, Egypt made a determined effort to enter the circle of modern international law and was the first country in the region to establish a foreign ministry. The origin of the Egyptian foreign ministry dates back to 1826 (1242H.), which saw the creation of *diwan al-tijara wa'l-umur al-afrankiyya* (roughly translated as the Office of Trade and Foreign Affairs) in the reign of Mohamed Ali Pasha. The establishment of this *diwan* reflected Egypt's need to deal in many spheres with foreign states. The *diwan al-tijara wa'l-umur al-afrankiyya* continued to administer foreign affairs until the first foreign ministry was created in 1878.[2]

3. Main International Treaties and Agreements Ratified by Egypt

Egypt is committed to a large number of international treaties, some of which devolved to it from the time it was subject to the suzerainty of the Ottoman State, others from the years of British occupation and others still which it concluded after regaining its international personality in the wake of the First World War and the declaration abolishing the British protectorate. A close examination of the international treaties to which Egypt once adhered or now adheres shows that they can be classified into a number of distinct categories. The first category comprises treaties and agreements related to Egypt's international status as regards borders and sovereignty, the second comprises treaties and agreements related to the codification of public international law, while the third comprises treaties and agreements concluded within the framework of international organizations, universal or regional, and of the charters under which such organizations were created. We shall address each of these categories separately below.

3.1. Treaties on Borders and Sovereignty

As the oldest state in the world and the site of the first human community to adopt and integrate as a state having a civilization and an administrative and political structure, Egypt defeated all attempts to obliterate its identity as a state and absorb it into larger regional entities. Thus it remained an independent international entity in defiance of all these

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[1] The complete text of the treaty is inscribed in hieroglyphics on the southern wall of the great Hall of Columns in the Temple of Amon in Karnak. Hence, its designation as the Karnak Charter by historians. It was customary at the time for treaties to be displayed on the walls of the main temple in the capital of each of the parties to such treaties. From 'Ali Sadiq Abu Hayf's, *Diplomatic Law* (Dar al-ma'arif, Alexandria, undated) pp. 73–74.

[2] See Dr. Yunan Labib Rizq, *The Egyptian Foreign Ministry, 1826–1937* (Egyptian General Book Organization, Cairo, 1989) pp. 22–23; see in general Chapter 1 entitled 'Egypt and Lands Beyond the Sea, 1826–1878'.

attempts, regaining its international capacity and independent status however long it remained under foreign domination.

Since an exhaustive review of Egypt's history lies outside the province of this chapter, we shall focus here simply on modern-day Egypt, which succeeded in shaking off Ottoman domination, the British occupation which accompanied it and the British protectorate which succeeded it, thereby regaining its complete political independence and emerging on the world stage as an international legal person enjoying the attributes of the international legal personality with all the effects arising therefrom.

Among the most important of the international treaties and agreements related to Egypt's international borders and sovereign prerogatives are:

1. The Agreement signed in 1899 between 'The Government of Her Majesty the Queen of England and the Government of His Supreme Highness the Khedive of Egypt' in regard to the future administration of the Sudan.

   Article 1 of the Agreement provides that: 'The term "Sudan" in this Agreement shall refer to all the territory lying south of the twenty-second degree latitude ...'. With that, the said Agreement conclusively determined Egypt's southern borders.
2. The Frontier Agreement of 1906 determining the lines of demarcation between Egypt and other parts of the Ottoman state.

   On 1 October 1906 an agreement was signed between the Egyptian government and the Turkish government determining the borders between Egypt and other parts of the Ottoman state. Although at the time Egypt was considered part of the Ottoman state, it had become, since the time of Mohamed Ali Pasha, a province enjoying a special status. Accordingly, this agreement (over which opinions differed as to whether it could be legally characterized as an international agreement or merely as an administrative agreement concluded within the framework of a single international entity) set down the final demarcation of Egypt's eastern border which was marked and recognized there-after by Great Britain when it was the Mandatory Power over the province of Palestine. It became the borderline between Egypt and Israel when Egypt recognized Israel under the peace treaty concluded between the two parties in Washington on 26 March 1979. Article 1 of the 1906 Agreement gave a detailed description of the trajectory of Egypt's eastern border.[3]

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[3] The said art. 1 reads as follows:

'The administrative line of demarcation as delineated in the map attached hereto begins from the point of the Taba promontory located on the western coast of the Gulf of Aqaba and runs to the summit of Fort mountain passing through the peaks of the eastern Taba mountains overlooking the Taba Valley. Then from the summit of Fort mountain the demarcation line proceeds on a straight course: from Fort mountain to a point not exceeding two hundred metres eastwards from the summit of Fathi Pasha mountain and from there to the point of intersection of the extension of this line with the perpendicular line drawn from a point lying two hundred meters from the summit of Fathi Pasha mountain on the line linking the centre of this summit with the point of junction [being the intersection of the Gaza-Aqaba road with the Nakhl-Aqaba road] and from the said junction point to the hill located to the east of a waterway known as the *al-Raddadi* gully and overlooking

3. The Egyptian–Italian Agreement of 6 December 1925 which defined the border separating Egypt from Cyrenaica.

   In the aftermath of the First World War and following the abolishment of the British protectorate over Egypt in 1922, this Agreement was drawn up between Egypt and Italy after tough negotiations. Article 1 of the Agreement defined the border between Egypt and Libya.[4]

4. International agreements related to the Nile River and Egypt's rights over its waters.

   Rightly described by Herodotus as 'the gift of the Nile', Egypt has been keen from early times to conclude international agreements that would guarantee the uninterrupted flow of Nile waters and ensure that the country would not be affected by any drop in the quantity of water flowing towards it by reason of any engineering works or structures undertaken by the countries in which the sources of the Nile are located or those lying along its course. Most of these agreements were signed by the United Kingdom on

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Cont.

such gully [so that it remains west of the line] and from there to the peak of *al-Raddadi* promontory indicated on the above-mentioned map as A.5 and from there to the summit of Safra mountain indicated as A.4 then on to the eastern peak of Om mountain in A.5 and from there to a point indicated as A.7 to the north of *Suwaylma* gully and from there to a point indicated as A.8 northwest of *Samawi* mountain then on to the peak of the hill lying west of northwest of *maghara* well [a well in the northern fork of *Ma'yin* Valley so that the well is east of the demarcation line] and from there to A.9 then A.9 bis west of Mofrah mountain then on to Ra's al-'ayn indicated as A.10 bis and from there to a point on Umm Hawawit mountain indicated as A.11 then on to the halfway point between two perpendicular lines under a tree standing at a distance of three hundred and ninety meters to the southwest of the Rafah well indicated as A.13 and from there to the sand dunes in the direction of two hundred and eighty [280] degrees from the magnetic north [eighty to the west] for a distance of four hundred and twenty meters in a straight line from the two above-mentioned perpendicular lines and from that point the line extends on a straight course in a direction of three hundred and thirty-four [334] degrees from the magnetic north [twenty-six to the west] to the shore of the Mediterranean sea passing through the Khara'ib hill on the coastline'.

4 The said art. 1 reads as follows:

'The border line between the Italian territory of Cyrenaica and Egyptian territory begins from a point on the Sallum coast at a distance of ten kilometers from Beacon Point [*'Uzlat al-qattara*] and heads from there in the form of a circle with Beacon Point [*'Uzlat al-qattara*] at its centre and its radius at ten kilometres from the said point until it meets the *Shafarzan* stream. There the line leaves the *Shafarzan* stream and bears straight west on the old caravan route that heads towards the place known as *Malaz Sidi Ibrahim* then follows the *Ikhwan* stream in a westerly direction until it meets the *al-Qarn* stream at a point known as *al-Qarn wa'l-Qarnayn* then bears straight west along *al-Qarn* stream until it meets the *al-'Ajzum* stream. From the point of intersection between the *al-Qarn* and *al-'Ajzum* streams, the line bears straight west of the *al-'Ajzum* stream until the edge of the Malka oasis. The line moves on from there starting at the point of intersection of *al-'Ajzum* stream north of Malka oasis in a general southeasterly direction passing through the oases of Malka and Agab until longitude 25° east of Greenwich so that after it leaves Gallo stream it does not pass through any point less than ten kilometers west of the straits of *al-Manasib* and Williams. The line continues along the 25° longitude east of Greenwich until the said line meets the 22° latitude north of the Equator'. See *Egypt's Western Borders: The Italian–Egyptian Agreement* dated 6 December 1925, Egyptian Foreign Ministry [Special documents 1926-1] (Cairo, al-Amiriyya, 1926).

Egypt's behalf. Among the most important such agreements are the following:

(a) The Protocol signed in Roma on 15 April 1891 between Great Britain and Italy delineating the borders separating Eritrea and the Sudan, Article 3 of which contains an undertaking by the Italian government not to establish any works on the Atbara River liable to affect the quantity of the waters of that river to any significant degree.
(b) The Agreement signed in Addis Abeba on 15 May 1902 between Great Britain and Ethiopia, in which the Emperor of Abyssinia undertakes as towards the British government not to construct any works on the Blue Nile, Lake Tana or the Sobat river liable to affect the Nile waters and not to permit any such works to be constructed except with the agreement of the British government and the government of the Sudan.
(c) The Agreement signed in London on 9 May 1906 between Great Britain and the Congo Free State, Article 3 of which provides that the independent government of the Congo undertakes not to construct or allow the construction of any works on or near the Semliki river liable to decrease the volume of water flowing into Lake Albert without the consent of the Sudanese government.
(d) The Agreement concluded between Great Britain, France and Italy on 13 December 1906 pledging to preserve the unity of Ethiopia and the interests of Great Britain and Egypt in the Nile Basin, in particular with regard to regulating the waters of the river and its tributaries.
(e) The Treaty concluded on 21 January 1924 between Belgium and Great Britain concerning Belgian expansion into 'Rwanda-Urundi', Article 1 of which provides that: 'the border shall follow the navigation course in the Kagera river'.
(f) The Agreement concluded between the United States of America and Great Britain on 10 February 1925 concerning the limits of British expansion in East Africa, which were set as the navigation course in the Kagera river.
(g) The Exchange of Memoranda between Great Britain and Italy in the period between 14 and 20 December 1925, which record Italy's recognition of the priority water rights of Egypt and the Sudan to the Blue Nile, the White Nile and their tributaries, and in which Italy pledged to refrain from any act liable to modify the volume of water in these rivers to a significant degree.
(h) The Exchange of Letters on 7 May 1929 between the Egyptian Prime Minister and the British High Commissioner, which included the recognition by Britain of Egypt's natural and historic rights to the waters of the Nile. The final paragraph in Lord Lloyd's letter reads as follows: 'In conclusion, I would remind Your Excellency that His Majesty's Government has previously recognized Egypt's natural and historic rights to the waters of the Nile and reiterate that His Majesty's Government considers the protection of such rights to be a fundamental principle of British policy. I would like, further, to assure Your Excellency that this principle and the details of this agreement shall be enforced at all times, whatever new circumstances may arise in future'. This international agreement – as represented in the letters exchanged between the parties – also stipulated that, in the absence of an

agreement with the Egyptian government, no works may be undertaken in connection with irrigation or with generating electricity on the Nile, its tributaries or the lakes from which it originates if such works are liable to reduce the quantity of water reaching Egypt, to change the date of its arrival or to decrease the water level in a manner detrimental to Egypt's interests. The agreement upheld Egypt's right to monitor the course of the Nile from the source to the mouth and to study this course for the purpose of establishing projects dictated by Egypt's requirements. It should be noted in this respect that Britain signed the agreement in its capacity as the representative of the Sudan, Kenya, Uganda and Tanzania.

(i) The 1932 Agreement between Egypt and the Sudan concerning the construction of the *Jabal al-awliyya* reservoir with a capacity of 3.5 billion cubic metres of water.

(j) The Agreement signed in London on 22 November 1934 between Great Britain and Belgium to regulate the use of water along the border between Tanganyika and 'Rwanda-Uru', Article 1 of which provides that water diverted from any of the tributaries of the Nile flowing between the two provinces (Tanganyika and 'Rwanda-Urundi') must be restored, in the same quantity, to the natural course of the tributary before it flows into the other province, and that if either of the two countries wishes to use the water crossing the borders between them, it must notify the other of this six months in advance.

(k) The Exchange of Memoranda between the Kingdom of Egypt and the United Kingdom on 20 February 1950 concerning the cooperation between the authorities of the two countries in respect of meteorological and water observatories in the Nile basin.

(l) The Exchange of Memoranda between Egypt and the United Kingdom on 16 July 1953 and 5 January 1953 concerning Egypt's participation in the construction of a dam over the Owen Falls to generate energy to be used by a portion of Uganda's inhabitants. The United Kingdom was acting here in Uganda's name. It was agreed in the memoranda that the Owen Falls dam would be heightened to raise the level of water in Lake Victoria to the exclusive benefit of Egypt, which could use the high level of lake water in times of low river levels. Under this agreement, Egypt undertook to pay to the government of Uganda the costs incurred to modify the dam projects so as to raise the water level in the lake, as well as to compensate the inhabitants of Uganda whose lands were inundated as a result of the flooding caused by the rise in the water level of Lake Victoria. Egypt also undertook to pay damages of 980,000 Egyptian pounds to the Uganda Electricity Board to compensate it for the drop in its capacity to supply energy in the period it was unable to use the water.

(m) The November 1959 Agreement: In the period following Sudan's independence, successive rounds of negotiations were held between representatives of the Egyptian and Sudanese governments in connection with regulating the use of the Nile water by the two countries. When Egypt decided to build the High Dam, the negotiations centered on making use of the surplus water to be produced by the dam. The Sudanese government wanted to amend the provisions of the 1929 Agreement,

which it considered as prejudicial to Sudan's rights, and an agreement was eventually concluded between the United Arab Republic (Egypt) and the Sudan on 8 November 1959. Among the most important provisions of this agreement was that Egypt's acquired rights to the waters of the Nile amounted to 48 billion cubic meters per annum measured at Aswan, while Sudan's acquired rights to these waters amounted to 4 billion cubic meters per annum measured at Aswan, and that the waters accruing from the construction of the High Dam, expected to amount to 22 billion cubic meters annually, would be divided between the two countries at the rate of 14.5 billion cubic meters annually to Sudan measured at Aswan and 7.5 billion cubic meters annually to Egypt measured at Aswan. With that, Egypt's annual share in the waters of the Nile became 55.5 billion cubic meters.

(n) Finally, the agreement of 21 May 1991 was concluded between the Arab Republic of Egypt and Uganda – in the form of an exchange of letters between the Foreign Ministers of the two countries – after intensive negotiations between them in connection with the construction of an electricity generating station on Lake Victoria for which Uganda had applied for World Bank financing. The agreement provided for the following:
   (1) A commitment by Uganda to allow the passage of normal effluence in accordance with the rates prevailing at the time of the signing of the agreement.
   (2) In Article 2 of the agreement, Uganda reaffirmed its commitment to the previous agreement concluded between the parties when the Owen Reservoir was built in 1953 to preserve the extent of the stored water amounting to three meters for the benefit of Egypt.
   (3) Article 3 stipulates that these rates may be amended in favor of Uganda to generate electricity, on the basis of discussions and subject to agreement between the two parties, and without prejudice to the estuarine countries.
   (4) Article 4 stipulates that the effluence used for electric power must be compatible with normal effluence.

(o) The international agreement on the Suez Canal (the Constantinople Agreement of 1888 guaranteeing freedom of navigation in the Suez Canal): This agreement was signed in Constantinople on 29 October 1888 between Great Britain, Austria, Hungary, Spain, Italy, Holland, Russia and Turkey, and devolved to Egypt pursuant to the rules of international succession.

The agreement governs freedom of navigation through the Suez Canal, and in 1957 (after the Suez crisis of 1956 and the end of the tripartite aggression), Egypt declared itself bound by its provisions.

Article 1 of the agreement stipulates that: 'The Suez Canal shall remain permanently free and open, in time of peace as in time of war, for all commercial and military vessels, without discrimination between the nationalities of such vessels. Accordingly, the Great Power signatories hereto have agreed not to interfere in any way with the free use of the Canal, whether in time of peace or in time of war, and that the Canal shall never be subject to a naval blockade'.

3.2. Treaties and Agreements Related to the Arab–Israeli Conflict

It is impossible to ignore the effects of the Arab–Israeli conflict on Egyptian politics over a period extending for four decades during which Egypt fought four wars. In the context of the conflict, Egypt concluded a number of international agreements, beginning with the Armistice Agreement of 1949 and ending with the Peace Treaty it concluded with Israel, which was signed on 26 March 1979 and came into force on 26 April 1979, ending the state of war between Egypt and Israel. We shall address here only the latter treaty, in as much as it marked the end of the state of war between its two parties and the beginning of peaceful relations, including the exchange of diplomatic relations.

Article I of the Treaty provides that:

1. The state of war between the Parties will be terminated and peace will be established between them upon the exchange of instruments of ratification of this Treaty.
2. Israel will withdraw all its armed forced and civilians from the Sinai behind the international boundary between Egypt and mandated Palestine, as provided in the annexed protocol (Annex I), and Egypt will resume the exercise of its full sovereignty over the Sinai.
3. Upon completion of the interim withdrawal provided for in Annex I, the Parties will establish normal and friendly relations, in accordance with Article III (3).

Article II of the Treaty provides that: 'The permanent boundary between Egypt and Israel is the recognized international boundary between Egypt and the former mandated territory of Israel as shown on the map in Annex II, without prejudice to the issue of the status of the Gaza Strip. The Parties recognize this boundary as inviolable. Each will respect the territorial integrity of the other, including their territorial waters and airspace'.

3.3. Treaties Related to the Codification of International Law

The International Law Commission put together a not inconsiderable number of draft international agreements within the framework of its efforts to codify and develop public international law. Many of these draft agreements were presented at international conferences, as was the case with the Vienna Convention on Diplomatic Relations in 1961 and on Consular Relations in 1963, the Vienna Convention on the Law of Treaties (the Vienna Conference 1968–1969), or were tabled for adoption by the UN General Assembly, then immediately opened for signature, the latest such example being the UN Convention on the Law of the Non-Navigational Uses of International Watercourses (1997).

Egypt sought always to contribute effectively to the work of this commission. To that end, it maintained a near permanent presence on the commission (the late Dr. Abdullah el-Eryan, followed by Dr. Boutros Boutros Ghali and, finally, the current member, Ambassador Dr. Nabil al 'Arabi) and followed up the draft agreements when they were submitted to the Sixth Committee of the General Assembly. Egypt was prompt in signing most of these international agreements, ratifying and adhering to the 1961 Vienna Convention on Diplomatic Relations, the 1963 Vienna Convention on Consular Relations, the 1969 Vienna Convention on the Law of Treaties and many more.

Egypt was no less keen on adhering to international agreements codifying and developing international law concluded outside the framework of the International Law Commission. Thus it is a party to the 1949 Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field and to the 1949 Geneva Convention Relative to the Treatment of Prisoners of War and was one of the first countries to sign and ratify those conventions as well as the two Protocols additional to them, which were signed on 10 June 1977. It should also be noted that Egypt was one of the first countries to ratify the UN Convention on the Law of the Sea, signed on 10 December 1982 in Montego Bay, Jamaica, depositing its instruments of ratification of the said Convention in February 1983, the third country to do so.

An exhaustive list of the international treaties to which Egypt adhered being beyond the scope of this paper, it is enough to note in general that Egypt joined the vast majority of multilateral international agreements that fall in the category of lawmaking international treaties. Treaties of this nature to which Egypt has as yet not adhered are exceptions that in no way derogate from the rule which Egypt has always observed, namely, a commitment to be bound by public international law as laid down in the form of lawmaking international treaties.

3.4. Treaties Related to or Concluded within the Framework of International Organizations

Egypt was a founding member of the most important international organizations in modern times, both universal and regional. It was a founding member of the United Nations and its various specialized agencies. It led the call for the establishment of the Arab League and is a founding member of the organization. It played the same role in regard to both the Organization of African Unity and the Islamic Conference. Egypt's active posture in this regard did not end with its adoption of the charters establishing those organizations, but extended into participation in a large number of agreements concluded within the framework of the main international organizations, leading in some cases to the establishment of other specialized regional organizations. We shall return to the subject of Egypt's role in international organizations in the last section of this paper.

4. The Relationship between Egyptian Law and Public International Law

4.1. The Provisions of the Constitution

The Egyptian Constitution of 1971 organizes the relationship between international law and internal Egyptian law in Article 151, which provides as follows: 'The President of the Republic shall conclude treaties and communicate them to the People's Assembly accompanied with suitable clarifications. They have the force of law after their conclusion, ratification and publication according to the established procedure.

However, peace treaties, alliance pacts, commercial and maritime treaties and all other treaties involving modification in the territory of the State or having connection with the

rights of sovereignty, or which lay upon the State treasury certain charges not included in the budget must acquire the approval of the People's Assembly'.[5]

The above text subscribes to the principle of the unity of the law in respect of treaties concluded by the Arab Republic of Egypt, which become part of the internal legal system after their conclusion and publication. It should be noted that the distinction made by the text between the less important treaties, which require the ratification of the President alone, and the important treaties (designated preclusively as peace treaties, alliance pacts, commercial and maritime treaties, treaties involving modifications in the territory of the State or having connection with the rights of sovereignty or those which lay upon the treasury of the State certain charges not included in the budget), which require the approval of the People's Assembly prior to their ratification by the President, has no effect on the coming into force of all these treaties within the framework of the internal legal system as soon as they are ratified and published in the Official Gazette.

A school of jurisprudence holds that the expression 'shall have the force of law' as used in the text of Article 151 of the Egyptian Constitution (Article 125 of the 1964 Constitution) is somewhat ambiguous in that it creates the impression, at first reading, that once a treaty has been concluded and published it joins the ranks of the ordinary laws of the State and becomes subject to the general rule that the later law shall amend or repeal the prior one (*lex posterior derogat priori*). This prompted a number of jurists, commenting on the 1964 Constitution, to reflect that the provision required the application of a subsequent law that ran counter to the treaty, on the grounds that the promulgation of such a law indicated the intention of the national legislator to abandon the treaty and not remain bound by its terms.[6]

This view came in for a great deal of criticism because it proceeds from the principle of the duality of law, while Article 151 of the 1971 Constitution – like Article 125 of the March 1964 Constitution – does not adopt the principle of the duality of law but is very clear in its adoption of the principle of unity of law, in that it provides that treaties 'shall have the force of law after their conclusion, ratification and publication', thereby making the enforceability of treaties in internal law contingent only on the carrying out of the steps required for the enactment of laws. The proponents of this view noted that to endorse the interpretation of the provision in question adopted by certain international law jurists in Egypt in respect of the 1964 Constitution would be to 'expose the Arab Republic of Egypt to international liability, because the promulgation of a law running counter to an international treaty could be an unintentional act on the part of the legislature, and, moreover, such a measure is not deemed to be among the reasons for abrogating treaties except in rare cases (the unilateral abrogation of a treaty by one of the states party to such treaty when it cannot be amended or abrogated by agreement between the parties), such as Egypt's abrogation of the 1936 Treaty. In such case, the intention of the state to abandon a treaty binding on it is clear. However, when this is not the case,

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5 This text is taken verbatim from the text of art. 125 of the Constitution of March 1964.

6 See: 'Abd al-'Aziz Sarhan, 'The Rules of Public International Law in Court Rulings and Their Application in Egypt', *Egyptian International Law Review*, Vol. 28 (1972) p. 51.

the mere promulgation of a law inconsistent with a treaty that has become part of internal Egyptian law pursuant to Article 151 of the Constitution does not in itself justify the repudiation of the provisions of the treaty by the public authority, including the judiciary. The formula that should be followed is the one that prevailed in France prior to the 1946 Constitution in the context of constitutional provisions closely resembling the current constitutional setup in Egypt as can be inferred from Article 151 of the 1971 Constitution, when the French judiciary would apply the provisions of a treaty regardless of their inconsistency with the provisions of a law enacted at a later date, on the grounds that when the legislator issued such a law it was not in the intention of disengaging from or violating the treaty, as long as there was no express stipulation to the contrary in the travaux préparatoires of the said law'.[7]

4.2. The Position of the Judiciary

The great majority of internal legal systems regard the rules of international law derived from custom and usage through the prism of the unity of international and internal legal systems, seeing them as part of internal law. Credit for the adoption of the rules lies with the English judiciary, who, starting in the eighteenth century, were forced to consider the customary rules of international law as part of English law. The first application of this rule by the English judiciary was in connection with the rules of diplomatic immunity.

The American courts have upheld the rule since 1815, when the US Supreme Court issued a judgment confirming this principle.

It should be noted that the same rule is enforced in Egyptian law and is recognized in the rulings of Majlis al-ghana'im (Prize Council) after it was enshrined in the Law of Ghana'im (Prize Law) promulgated in 1950. It was also upheld by the Egyptian Court of Cassation (criminal circuit) in a judgment passed on 28 December 1953 in which the court applied the customary international law rule that foreign diplomats may not be forced to testify before national courts. It should be noted that the General Assembly of the Consultative and Legislative Departments of the Egyptian State Council concluded in its Opinion No. 583 dated 19 August 1961 that established international practice is enforceable in the territory of the State, whether or not internal legislation mandating its enforcement has been passed, on condition of reciprocity. The said opinion finds that: 'Whereas the established practice in international law grants diplomatic representatives and the seats of political agencies different privileges to empower political missions, protect their independence and observe the requirements of international courtesy in dealings between States, and whereas the seats of foreign missions are deemed an extension of the territory of their States, therefore they may not be attacked, forcibly entered or served with writs of execution. Among these privileges are those related to taxes. The seats of these missions are exempt from property and municipal taxes of all kinds save those as

[7] *Ibid.*, pp. 51–52.

are imposed in consideration of a specific service, such as water and electricity rates and the like, on condition of reciprocity.

This established practice is enforceable in the territory of the State whether or not internal legislation mandating its enforcement has been passed, on condition of reciprocity. In view whereof, Czechoslovakia must be exempted from paying the charges for the execution of the purchase contract for the above-mentioned plot of land which it purchased as a site for its embassy in Cairo, even though the legislature did not expressly provide for such exemption as he did for registration and filing fees, on condition of reciprocity'.

The Egyptian judiciary has also habitually ruled to enforce treaties ratified by Egypt and published in accordance with statutorily prescribed procedures, an established precedent confirmed by the Court of Cassation in a judgment passed on 8 March 1956 (Challenge No. 137 of judicial year 22) which ruled that: 'Whereas the Covenant entered into between the governments of Egypt and the Sudan was ratified by the Council of Nizars on 17 May 1902 and published in the Official Gazette as well as in the Digest of Laws and Decrees, therefore it is one of the laws of the State'.

The Court of Cassation further ruled that: 'With Egypt's adherence to the Vienna Convention on Diplomatic Relations of 1961, the said Convention becomes one of its laws' (Session of 17 January 1979, Challenge No. 450 of judicial year 45).

The Cairo Criminal Court (Emergency State Security) issued a famous judgment on 16 April 1987 on what came to be known as the Railway Workers' Strike case, in which it ruled that: 'In respect of the plea invoking the International Covenant on Economic, Social and Cultural Rights, Egypt has signed the said Covenant Article 8 of which provides that "The States Parties to the present Covenant undertake to ensure the right to strike, provided that it is exercised in conformity with the laws of the particular country". This text is categorical in requiring any State adhering to the Covenant to guarantee the right to strike, in the sense that it has come to be recognized as a legitimate right in principle, which may not be totally withheld or completely banned otherwise it would be deemed a confiscation of the right itself. All that the State adhering to the Covenant is entitled to do is to regulate such right'. The court went on to conclude: 'Whereas the Covenant is subsequent to the Penal Code, therefore Article 134 of the Code [which criminalizes refusal to work and, consequently, criminalizes strikes] was implicitly repealed by Article 8(d) of the International Covenant on Economic, Social and Cultural Rights of 1966 ... in view whereof, and given that the right to strike is sanctioned under the international Covenant, therefore what happened as a result of that strike cannot possibly come under the purview of the Penal Code' (Judgment issued on Felony No. 4190 of 1986 (*Azbakiyya Felonies*) High State Security-registered as No. 121 of 1986 North Cairo First Instance).

5. Egypt in International Organizations

Ever since it regained its political independence and freed itself from foreign domination, Egypt has sought to play an effective role in the movement of international organization

at the universal, regional and sub-regional levels. It wasted no time in joining the League of Nations immediately after concluding the 1936 Agreement with Great Britain, and was a founding member of the United Nations. The Egyptian delegation had a prominent role in the San Francisco Conference (which drafted and adopted the UN Charter, signed at the closing session of the Conference on 26 June 1945), coming forward with several constructive proposals, many of which were adopted.

The Egyptian delegation succeeded in convincing conference participants that Islamic Shari'a was one of the principal legal systems in the world and that it had to be permanently represented in the composition of the International Court of Justice when the judges of the said court were elected. A special study was presented in this regard by Abdel Hamid Badawi Pasha, who was later elected in the first composition of the International Court of Justice as the judge representing Islamic Shari'a and later still as the deputy president of the said court.

Nor was Egypt absent from the stage of international organization when it came to specialized agencies, participating in the efforts that came to fruition with the establishment of specialized agencies affiliated to the United Nations, like the United Nations Educational, Scientific and Cultural Organization (UNESCO), the Food and Agriculture Organization (FAO), the International Bank for Reconstruction and Development (World Bank), the International Monetary Fund (IMF), the World Health Organization (WHO), the International Nuclear Energy Agency and others.

It should be noted that Egypt is one of the countries that makes a point of ensuring a high quality of representation in international organizations. This is reflected in the sophisticated performance and distinguished contributions by its representatives in the deliberations and discussions of these organizations.

Meanwhile, the momentous events that convulsed the Arab region and the successive wars it witnessed, whether in the context of the Arab–Israeli conflict or outside its scope, led to the submission of these crises to the United Nations and its specialized agencies. Egyptian and Arab issues were frequently put to the Security Council, and on all these occasions Egypt played a prominent role in the discussions and negotiations that took place. Without going into too much detail, it is enough here to cite Security Council resolutions 242 (1967) and 338 (1973). Moreover, Egypt was elected to membership of the Security Council more than once, most recently in the period from the beginning of 1995 to the end of 1996.

Egypt played a no less prominent role in the UN General Assembly. Thus the General Assembly was invited to convene in October 1956 on the basis of the Unity for Peace Resolution of November 1950 (the first occasion since the Korean war that the General Assembly met on the basis of the said resolution), when it exercised the powers vested in the Security Council pursuant to Chapter VII of the UN Charter and adopted the resolutions which led to the termination of the tripartite aggression against Egypt and the withdrawal of the attacking forces from its territory.

At the regional level, Egypt was instrumental in establishing the Arab League, being the first party to call for the creation of a pan-Arab organization. Its initiative was successful: the Alexandria Protocol was signed in 1944 and the Pact of the Arab League on

22 March 1945, before the San Francisco conference convened in April that same year. The Pact entered into force and the Arab League was legally established on 10 May 1945 (after the required number of ratifications of the Pact had been deposited), while the San Francisco Conference was still in progress.

Within the Arab League itself, Egypt has always been a leading player. The fact that the organization's headquarters are located in Cairo has been instrumental in enhancing the influence of the Egyptian role in the various spheres of the Arab League's activities. Since the establishment of the Arab League, Egypt has attached a great deal of importance to these activities and has sought to expand and promote them by signing and ratifying many international agreements and treaties which have extended the role of the Arab League to incorporate various fields of cooperation between the Arab states, military, security, economic, cultural, social and humanitarian.

Last but not least, Egypt was one of the main African countries to lead the process of establishing the Organization of African Unity in 1961 and to participate in its various activities. To that end, it has hosted several summit conferences of African leaders in Cairo. It also played a prominent role in establishing the Islamic Conference Organization and in contributing effectively to its various agencies.

In a nutshell, Egypt has always been among the countries interested in pushing the wheel of international organization forward, participating in the membership of international organizations and contributing actively and constructively in their activities.

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GLOSSARY

abandonment	هجر
abide (to)	راعى
abrogation	إلغاء
absence	غياب, غيبة, عدم وجود
absent person	غائب
absolute	مطلق
abstract	مجرد
abstraction	تجريد
abuse	إساءة استعمال, استغلال
– abuse of power	- إساءة استعمال السلطة
– abuse of influence	- استغلال النفوذ
acceptance	قبول
accidental case	حادث فخائي
accomplice	شريك
account	حساب
– current account	- الحساب الجاري
accountability	مساءلة
accusation	اتهام, تهمة
accused	متهم
acquisition	اكتساب
acquittal	تبرئة
act	عمل (أعمال)
– act of a stranger	- عمل الغير
– acts of sovereignty	- أعمال السيادة
– bilateral act	- عمل من جانبين
– legal act	- عمل قانوني
– material act	- عمل مادي
– personal act	- العمل الشخصى
– political acts	- الأعمال السياسية
– preparatory act	- عمل تحضيري
– tort	- العمل غير المشروع
– unilateral act	- عمل من جانب واحد
action, act	فعل, تصرف

– act of a stranger	- فعل الغير
– wrongful act	- الفعل الضار
– public act of obscenity	- الفعل الفاضح العلني
– administrative act	- عمل إداري
action	دعوى
– admissibility of an action	- قبول الدعوى
– non-admissibility of an action	- عدم قبول الدعوى
– action for compensation	- دعوى التعويض
– action for damages	- دعوى التعويض
– action for distribution	- دعوى القسمة
– bankruptcy action	- دعوى الإفلاس
– civil action	- دعوى مدنية
– commercial action	- دعوى تجارية
– constitutional action	- دعوى دستورية
– criminal action	- دعوى جنائية
– full judicial action	- دعوى القضاء الكامل
– merits of an action	- موضوع الدعوى
– notice of action	- صحيفة دعوى
– public action	- دعوى عمومية
– to discontinue the action	- وقف الدعوى
– to initiate an action	- رفع دعوى
– to reserve an action for judgment	- حجز دعوى للحكم
– urgent action	- دعوى مستعجلة
– real estate action	- دعوى عقارية
activity	نشاط (أنشطة)
actual	محقق
added value	القيمة المضافة
adhere to (to)	انضم إلى
adherence	انضمام
adjudicate (to)	فصل فى
adjudication	فصل, حكم, قضاء
administration	إدارة
– central administration	- إدارة مركزية
– decentralized administration	- إدارة لامركزية
– government administration	- جهاز إداري للدولة
– local administration	- الإدارة المحلية
– public administration	- الإدارة العامة
administrative	إداري
admissibility	قبول
– non admissibility as to form	- عدم قبول شكلا
– plea of non-admissibility	- دفع بعدم قبول الدعوى
admissible	مقبول
admonition	إنذار

adopt (to)	أقر, اعتمد
adoption	تبنى
adultery	زنا
advantage	امتياز
adversary	خصم
advisory	استشاري
Afro-Asian Advisory Legal Committee	اللجنة القانونية الاستشارية الأفروأسوية
agency	جهاز (أجهزة), وكالة
– administrative agency	- جهاز إداري
– agency by commission	- الوكالة بالعمولة
– central agencies	- أجهزة مركزية
– commercial agency	- وكالة تجارية
– contract agency	- وكالة العقود
– decentralized regional agencies	- أجهزة لا مركزية إقليمية
– specialized agencies	- الوكالات المتخصصة
agent	تابع
aggression	اعتداء, عدوان
aggressor	معتد
agreement	تراضى, اتفاقية, اتفاق, وفاق
– bilateral international agreements	- الاتفاقات الدولية الثنائية
– multilateral international agreement	- الاتفاقات الدولية الجماعية, دولية متعددة الأطراف
alienation	تصرف في
alimony	نفقة
alliance	تحالف
amenability	قابلية
amendment	تعديل
amnesty	عفو
– general amnesty	- العفو الشامل
analogy	قياس
analysis	تحليل
annulment	إبطال
– open to annulment	- قابل بالإبطال
answerable	مؤاخذ
appeal	استئناف, طعن
appearance	حضور
appellant	مستأنف
appellee	المستأنف عليه
applicability	انطباق
application	تطبيق, طلب
– scope of application	- نطاق التطبيق
apply to (to)	سرى على
appointment	تعيين
approval	إقرار

approve (to)	أقر
Arab Labor Organization	منظمة العمل العربية
Arab Socialist Union	الاتحاد الاشتراكي العربي
arbitral	تحكيمى
– arbitral agreement	- اتفاق تحكيم
– arbitral award	- حكم التحكيم
– arbitral clause	- اتفاق التحكيم
– arbitral clause	- شرط التحكيم, مشارطة التحكيم
– arbitral tribunal	- هيئة التحكيم
arbitration	التحكيم
– optional arbitration	- التحكيم الاختياري
arbitrator	محكم
argument	حجة
armistice	هدنة
arrest	اعتقال, قبض
arrestation	اعتقال
arson	حريقه
article	مادة (مواد)
ascendants	أصل (أصول)
ascertained knowledge	علم يقينى
aspect	جانب (جوانب)
assault	هتك
– indecent assault	- هتك العرض
– assault and battery	- ضرب أو جرح
assembly	جمعية
– general assembly	- الجمعية العمومية
assert (to)	أكد
assessment	تقدير
assets	مال (أموال)
assignment	تنازل
assistance	مساعدة, معاونة
– judicial assistance	- مساعدة قضائية
assistant deputy of the Attorney General	نائب عام مساعد
association	جمعية
asylum	لجوء
– political asylum	- اللجوء السياسي
attempt	شروع
attempted murder	شروع في قتل
attorney	محام
– Attorney General	- النائب العام
– public attorney	- محام عام
– senior public attorney	- محام عام أول

auction	مزايدة
auditor	مراقب حسابات
authority	قوامة, سلطة, سلطان
– decentralized authority	- سلطة لامركزية
– executive authorities	- جهات تنفيذية
– legal authority	- ولاية
– police authority	- هيئة الشرطة
– public authority	- سلطة عامة, هيئة عامة
– usurpation of authority	- غصب السلطة
autonomous	قائم بذاته
auxiliaries of justice	أعوان القضاء
bail	كفالة
bailiff	محضر
bailing surety	كفالة
balance sheet	ميزانية, حساب
– final balance sheet	- حساب ختامي
ballot	اقتراع
bankruptcy	إفلاس
– declaration of bankruptcy	- شهر الإفلاس
based on (to be)	استند إلى
basic	مبدئي
bearer	حامل
behaviour	سلوك
beneficiary	مستفيد, مستحق
betrothal	خطبة
bid	عطاء
bill	قرار, لائحة
– bill of indictment	- قرار الاتهام
– instituting bill	- تأسيس
– bill of exchange	- كمبيالة
bind (to)	قيد
birth	ميلاد
– second generation birth	- الميلاد المضاعف
blame	لوم
blockade	حصار
– naval blockade	- حصار بحري
board	هيئة, مجلس
– arbitration board	- هيئة التحكيم
– board of directors	- مجلس إدارة
body	هيئة, جهة
– body vested with judicial power	- هيئة ذات اختصاص قضائي
– judicial body	- جهة القضاء
– public body	- هيئة عامة

bond	سند
– bearer bond	- سند لحامله
bonus	منحة
border	حد (حدود)
bound	رابطة
breach	فسخ, إخلال, مخالفة, خيانة
– breach of contract	- إخلال عقدي
– breach of the law	- مخالفة القانون
– breach of trust	- خيانة الأمانة
bribery	رشوة
bring an action (to)	رفع دعوى
brokerage	سمسرة
brother, full brother, brother-german	شقيق
budget	ميزانية, موازنة
– estimated budget	- موازنة تقديرية
– state's general budget	- الميزانية العامة للدولة, الموازنة العامة للدولة
business assets	محل تجارى
by-laws	لوائح
– police by-laws	- لوائح ضبط
cabinet	مجلس, ديوان
– cabinet	- مجلس الوزراء
– President's cabinet	- ديوان رئيس الجمهورية
candidacy	ترشيح
candidate	مرشح
capacity	أهلية, صفة
– capacity of competence (*capacité de jouissance*)	- أهلية الوجوب
– capacity of performance (*capacité d'exercice*)	- أهلية الأداء
– deficient capacity	- ناقص الأهلية
– devoid of capacity	- فاقد الأهلية
– to be without legal capacity	- ناقص الأهلية
capital	رأسمال, رأس مال
– authorized capital	- رأس مال مرخص
– capital issued	- رأس مال مصدر
capitalist	رأسمالى
Capitulations	امتيازات أجنبية
case	قضية, دعوى
– case file	- ملف القضية
– disciplinary case	- دعوى تأديبية
– dismissal of the case	- رفض الدعوى
– examination of the case	- نظر الدعوى
– facts of a case	- الواقع في الدعوى

– file a case (to)	- رفع دعوى
category	طائفة (طوائف)
cause	سبب
caution	كفالة
censor	رقيب
censorship	رقابة
center	مركز
challenge	طعن, رد
– challenge before the Court of cassation	- الطعن بالنقض
– means of challenge	- طريق الطعن
– not subject to challenge	- غير قابل للطعن قيه
– term of the challenge	- ميعاد الطعن
challenge (to)	طعن في
challenged	طعين
chamber of commerce	غرفة تجارية
characterization	تكييف, وصف
charge	تهمة, ادعاء, نفقة
charity society	الجمعية الخيرية
charter	ميثاق (مواثيق)
cheque	شيك
– flash cheque	- شيك بدون رصيد
– hand-written cheque	- شيك خطي
– post-dated cheque	- شيك أجل
chief of security	مدير الأمن
circuit	دائرة (دوائر)
– appeal circuit	- دائرة استئنافية
– civil circuit	- دائرة مدنية
– commercial circuit	- دائرة تجارية
– criminal circuit	- دائرة جنائية
– labour circuit	- دائرة العمال
– personal status circuit	- دائرة الأحوال الشخصية
– taxation circuit	- دائرة الضرائب
– tenancy circuit	- دائرة الإيجارات
– circuit for appeals examination	- دائرة فحص الطعون
circular	منشور
circumstance	ظرف (ظروف)
– exceptional circumstances	- ظروف استثنائية, ظروف طارئة
– unforeseen circumstance	- حادث مفاجئ
– aggravating circumstances	- ظروف مشددة
– extenuating circumstances	- ظروف مخففة
citizen	مواطن
civil	مدني
civil servant	موظف, موظف عام

claim	ادعاء, دعوى, دفع, مخاصمة
– claim of unconstitutionality	- دفع بعدم الدستورية
– claim for damages (against judges)	- مخاصمة القاضي
clerk	كاتب الجلسة
closed area	انحباس
closing	فض
– closing of the parliamentary sessions	- فض الدورة البرلمانية
code	مدونة, قانون
– Civil Code	- القانون المدنى
– Code of Civil and Commercial Procedure	- قانون المرافعات المدنية و التجارية
– Code of Criminal Investigation	- قانون تحقيق الجنايات
– Code of Procedure	- قانون المرافعات
– Criminal Code	- قانون العقوبات
– Code of Criminal Procedure	- قانون الإجراءات الجنائية
codification	تقنين
collect (to)	حصل
collection	تحصيل
come into force (to)	دخل حيز النفاذ
comments	ملاحظات
commission	عمل إيجابي, عمولة, لجنة, اقتراف
commissioner	مفوض
commit (to)	ارتكب
committee	لجنة (لجان)
– assessment committee	- لجنة التقييم
communist	شيوعي
company	شركة
– commercial company	- الشركة التجارية
– holding company	- شركة قابضة
– insurance company	- شركة تأمين
– investment company	- شركة الاستثمار
– public investment company	- الشركة العاملة فى مجال تلقى - الأموال
– joint stock company	- شركة المساهمة
– limited liability company	- شركة ذات مسؤولية محدودة
– limited partnership	- شركة التوصية البسيطة
– one man's company, *société unipersonnelle*	- شركة الشخص الواحد
– partnerships company	- شركة الأشخاص
– public sector company	- شركة القطاع العام
– subsidiary company	- شركة تابعة
comparison	مضاهاة
compensation	مقاصة, تعويض
– compensation in cash	- تعويض نقديا

– compensation in kind	- تعويض عينيا
– compensation in return	- تعويض بمقابل
– fair compensation	- تعويض عادل
competence	صلاحية, اختصاص
– plea of non-competence	- دفع بعدم اختصاص
– restricted competence	- اختصاص مقيد
complaint	شكوى, تظلم
– mandatory complaint	- تظلم إجباري
– voluntary complaint	- تظلم اختياري
complementary	تكميلي
complicity	اشتراك
component	مقومة
– the basic components of society	- المقومات الأساسية للمجتمع
concession	التزام
conciliation	توفيق, صلح
– preventive conciliation	- صلح واقي
conclude (to)	أبرم
conclusion	إبرام, طلب ختامي
conclusive	قاطع
conclusiveness	حجية
condition	شرط (شروط)
– condition of reciprocity	- شرط المعاملة بالمثل
conditional	مشروط
conference	مؤتمر
confession	إقرار, اعتراف
confidence	ثقة
– withdrawal of confidence	- سحب الثقة
confinement	حبس
confiscation	مصادرة
– general confiscation	- مصادرة عامة
– partial confiscation	- مصادرة خاصة
conflict	صراع, تناقض
– conflict of rulings	- تناقض الأحكام
conflicting	متنازع
conformity	توافق
confrontation	مواجهة
consecrate (to)	اعتمد
consensual	رضائي
constitution	دستور (دساتير)
– customary constitution	- دستور عرفي
– flexible constitution	- دستور مرن
– rigid constitution	- دستور جامد
– written constitution	- دستور مكتوب

constitutionality	دستورية
constraint	إكراه, قيد (قيود)
consultation	استشارة
Consultative Council	مجلس الشورى
contract	عقد
– administrative contract	- عقد إداري
– aleatory contract	- عقد احتمالي
– breach of contract	- إنهاء العقد, فسخ العقد
– concession contract	- عقد الامتياز
– consensual contract	- عقد رضائي
– contract of sale	- عقد البيع
– contracts of an international character	- العقود ذات الطابع الدولي
– employment contract	- عقد العمل
– fixed-term contract	- عقد العمل محدد المدة
– gratuitous contract	- عقد تبرع
– indefinite contract	- عقد العمل غير محدد المدة
– indefinite duration contract	- عقد غير محدد المدة
– individual employment contract	- عقد العمل الفردي
– law of the place where contracts are concluded	- قانون محل إبرام العقود
– lease contract	- عقد الإيجار
– mixed contract	- عقد مختلط
– model contract	- عقد نموذجي
– nominal contract	- عقد مسمى
– sale contract	- عقد البيع
– simple contract	- عقد بسيط
– substantive provisions of the contract	- الأحكام الموضوعية للعقد
– synallagmatical contract	- عقد ملزم الطرفين
– unfair termination of the contract	- الإنهاء التعسفي للعقد
– unilateral contract	- عقد ملزم لجانب واحد
– valuable contract	- عقد معاوضة
contracting party	عاقد, متعاقد
– common national law of the contracting parties	- القانون الوطني المشترك للمتعاقدين
– freedom of the contracting parties	- حرية المتعاقدين
– law of the domicile of the contracting parties	- قانون موطن المتعاقدين
– law of the intention of the contracting parties	- قانون إرادة المتعاقدين
contractor	مقاول
contractual	تعاقدي, عقدي
– contractual relation	- رابطة عقدية
contradictory	مصادم ل

contravene (to)	خالف
control	رقابة
– judicial control	- رقابة القضاء
convening	انعقاد
convention	اتفاقية, معاهدة
– international conventions	- معاهدة دولية
convicted person	محكوم عليه
conviction	إدانة
cooperation	تعاون
copy	صورة (صور)
– copy conform to the original	- طبق الأصل
– official copy	- صورة رسمية
copyright	حق المؤلف
costs	مصروفات, نفقة
– costs of litigation	- نفقات التقاضي
council	مجمع, مجلس
– church council	مجمع كنيسة
– disciplinary council	- مجلس تأديب
– editorial council	- مجلس التحرير
– high council	- المجلس العالي
– religious judicial council	- مجلس ملى
– specialized national council	- مجلس قومي متخصص
counselor	مستشار
– assistant counselor	- مستشار مساعد
country	دولة (دول)
– advanced industrial countries	- الدول الصناعية المتقدمة
– Third World countries	- دول العالم الثالث
court	محكمة (محاكم)
– administrative courts	- المحاكم الإدارية
– central military court	- محكمة عسكرية مركزية
– court of administrative justice	- محكمة القضاء الإداري
– court of appeal	- محكمة استئناف
– court of appeal for misdemeanour	- محكمة الجنح المستأنفة
– general board of the court of cassation	- الهيئة العامة لمحكمة النقض
– court of execution	- محكمة التنفيذ
– court of expeditious litigation	- محكمة مستعجلة
– court of first instance	- محكمة ابتدائية
– court of merits	- محكمة موضوع
– court of second instance	- محكمة الدرجة الثانية
– courts of special jurisdiction	- المحاكم ذات الولاية الخاصة
– criminal court	- محكمة الجنايات
– disciplinary court	- محكمة تأديبية

– judicial tribunals	- محاكم قضائية
– juveniles courts	- محاكم الأحداث
– military court	- محكمة عسكرية
– misdemeanour court	- محكمة الجنح
– mixed courts	- المحاكم المختلطة
– national courts	- المحاكم الأهلية
– ordinary courts	- المحاكم العادية
– state security court	- محكمة أمن الدولة
– emergency state security courts	- محكمة أمن الدولة الطوارئ
– ordinary state security courts	- محكمة أمن الدولة العادية
– summary court	- محكمة جزئية
– summary labour court	- محكمة شئون العمال
– sharî`a courts	- محكمة شرعية
– treason court	- محكمة الغدر
– trial court	- محكمة الموضوع
– court of general jurisdiction	- محكمة كلية
Court of Cassation	محكمة النقض
Court of Revolution	محكمة الثورة
Court of values	محكمة القيم
covenant	وفاق
creation	تشكيل
credit	اعتماد
creditor	دائن
– simple contract creditor	- دائن عادي
crime	جريمة (جرائم)
– continuous crime	- جريمة مستمرة
– crime of contempt of court	- جريمة الجلسات
– habitual crime	- جريمة الاعتياد
– material element of a crime	- الركن المادي للجريمة
– scene of the crime	- مسرح الجريمة, مكان ارتكاب الجريمة
– unintentional crime	- جريمة غير العمدية
criminal	جنائى
Criminal Investigation Department	الضبط القضائي الجنائي
criminalize (to)	جرم
criterion	معيار
criticism	نقد
cross examination	استجواب
custody	حضانة, حجز
– preventive custody	- الحجز التحفظي
custom	عرف (أعراف)
– internal custom	- العرف الداخلي
– international custom	- العرف الدولى
custom duties	ضريبة (ضرائب) جمركية

customs	جمرك (جمارك)
damage	ضرر (أضرار), إتلاف
– damage through negligence	- إتلاف بإهمال
damages	تعويض
danger	خطر
– serious danger	- خطر جسيم
data	بيانات
deal with (to)	تعرض ل
dean	عميد
death penalty	إعدام
debt	دين (ديون)
debtor	مدين
decision	قرار, حكم
– administrative decisions	- القرارات الإدارية
– committal decision	- قرار الإحالة
– decision having the force of law	- قرار له قوة القانون
– decision of assigning an expert	- حكم بندب خبير
– decision of referring the action for further investigation	- حكم بإحالة الدعوى إلى التحقيق
– individual administrative decision	- قرار إداري فردي
– individual decision	- قرار فردي
– organizational decision	- قرار تنظيمي
declaration	إقرار, إعلان
– constitutional declaration	- إعلان دستوري
decree	قرار, أمر
– governmental decree	- قرار مجلس الوزراء
– ministerial decree	- قرار وزاري
– presidential decree	- قرار رئيس الجمهورية
– Prime Minister decree	- قرار رئيس مجلس الوزراء
– royal decree	- أمر ملكي
deduct (to)	خصم
deduction	استنتاج
deed	محرر
– private deed	- محرر عرفي
defamation	قذف
defect	عيب (عيوب)
– defect of merits	- عيب موضوعي
– formal defect	- عيب شكلي
– latent defects	- العيوب الخفية
defective	معيب
defence	دفاع
– legitimate self-defence	- دفاع شرعي
– civil defence	- دفاع مدني

defendant	المدعي عليه
deficit	عجز
definitive	بات
degree	درجة
delay	مهلة
delegation	إنابة, ندب, تفويض, وفد
deliberations	مداولة
delimitation	حد (حدود)
– boundary delimitation	- تعيين الحدود
democracy	ديمقراطية
– direct democracy	- ديمقراطية مباشرة
– representative democracy	- ديمقراطية نيابية
democratic	ديمقراطي
denial	إنكار
– denial of justice	- إنكار العدالة
deny from (to)	جحد
department	مصلحة, قلم
– bailiffs department	- قلم المحضرين
– clerks department	- قلم كتاب
– taxation department	- مصلحة الضرائب
deposit	وديعة
deputy	نائب (نواب)
descendants	فرع (فروع)
description	وصف
– legal description	- الوصف القانوني
design	نموذج (نماذج)
– industrial designs	- النماذج الصناعية
detainee	معتقل
detention	حبس
– preventive detention	- حبس احتياطي
determinative effect	حجية
determine (to)	حدد
development	تنمية
difference	تباين
differentiation	تفرقة
Digest of Laws and Decrees	مجموعة القوانين و القرارات
dilatory ploy	ذريعة
diplomatic	دبلوماسي
directive	توجيه
director	مدير
discharge	مخالصة
disciplinary	تأديبي
disclosure of secrets	إفشاء الأسرار

discount	خصم
discretion	تقدير
discrimination	تفرقة, تمييز
discussion	مناقشة
dismiss (to)	رفض
dismissal	تنحية, فصل
disposal	تصرف
disposition	تصرف
dispute	خصومة, نزاع, منازعة
– administrative dispute	- منازعة إدارية
– dispute resolution	- فض المنازعات
– tenancy dispute	- منازعة ايجارية
disruption	عرقلة
dissolution	حل
distinct	منفصل عن
distribution	توزيع
district	مركز (مراكز)
divisibility	تجزئة
– indivisibility	- عدم قابلية للتجزئة
divorce, judicial divorce	تطليق, طلقة
– divorce for abandonment	- تطليق بهجر
– divorce for absence	- تطليق لغيبة
– divorce for harm	- تطليق لضرر
– final divorce	- طلقة بائنة
docket	حافظة
document	محرر, صحيفة, مستندات
domestic	داخلى
domicile	موطن
– common domicile of the contracting parties	- الموطن المشترك للمتعاقدين
domination	تسلط, سيطرة
donation	هبة
donee	موهوب له
donor	واهب
double jeopardy	إعادة المحاكمة
dowry	مهر, صداق
draft	حوالة, مشروع
drawee	مسحوب عليه
drawer	ساحب
drawing	رسم (رسوم)
– industrial drawings	- الرسوم الصناعية
drunkenness	سكر
duality	ازدواج

duress	إكراه
duty	واجب
easement	ارتفاق
economic	اقتصادي
economy	اقتصاد
editor	محرر
– editor in chief	- رئيس تحرير
effect	أثر (آثار)
– international effects of judgments	- الآثار الدولية للأحكام
– legal effect	- أثر قانونى
– retroactive effect	- أثر رجعى
effective	فعالى, فاعل
Egyptian General Federation of Trade-Unions	الاتحاد العام المصري لنقابات العمال
elect (to)	انتخب
election	انتخاب
elector	ناخب
embezzlement	اختلاس
– embezzlement of public money	- اختلاس المال العام
emergency	طوارئ, طارئ
Emperor	إمبراطور
employee	موظف
– public employee	- موظف عام
employer	صاحب العمل
employment	وظيفة (وظائف)
– public employment	- وظيفة عامة
empower (to)	خول
enacting terms	منطوق
enactment	صدور, إصدار
encroachment	اعتداء
endorsement	تظهير
endorser	مظهر
enforceability	نفاذ
enforceable	واجب التنفيذ
enforcement	تنفيذ
engagement	خطبة
enjoyment	منفعة
enquiry	تحر
ensure (to)	كفل
enter into force (to)	أصبح ساريا
entrust (to)	فوض, عهد إلى
entry into force	نفاذ, سريان
environment	بيئة

equality	مساواة
– equality of rights	- مساواة في الحقوق
equity	عدالة
equivalence	تكافؤ
error	خطأ
– error in the application of the law	- خطأ فى تطبيق القانون
– error in the interpretation of the law	- خطأ فى تأويل القانون
– professional error	- خطأ مهنى
– serious error	- خطأ جسيم
essential	جوهري
establish (to)	أرسى
establishment	مصلحة, منشأة, نشأة
event	أمر
– ordinary course of events	- المجري العادي للأمور
eventual	احتمالي
evidence	دليل (أدلة)
– direct evidence	- دليل مباشر
– evidence for the defence	- أدلة النفى
– evidence for the prosecution	- أدلة الثبوت
ex officio	من تلقاء ذاته
exceptional	استثنائي
exclusion	استبعاد
excuse	عذر, مسوغ
– acceptable excuse	- عذر مقبول
execution	تنفيذ
– impediments to the execution of a decision	- إشكال التنفيذ في الحكم
– initiation to the execution	- بدء فى التنفيذ
– mandatory execution	- تنفيذ جبري
– stay of execution	- وقف التنفيذ
executive	تنفيذي
exemption	إعفاء
expert	خبير (خبراء)
expiry	انقضاء, سقوط
exploit (to)	استثمر
exploitation	استغلال
expropriation	نزع
extend (to)	مدد
extension	امتداد
extinguishment	انقضاء
extradition	تسليم
fact	واقع (وقائع)
factor	ركن (أركان)

– factors of the crime	- أركان الجريمة
– material factor of the crime	- الركن المادي للجريمة
– moral factor	- الركن المعنوي
factual investigation	استدلال
failure to include	عدم شمول
fair	عادل
fait du prince	فعل الأمير
false news	أخبار كاذبة
falsification	تزييف
fault	خطأ
– fault on the part of a public utility	- خطأ مرفقى
– personal fault	- خطأ شخصي
federation	اتحاد
Federation of Chambers of Commerce	الاتحاد العام للغرف التجارية
fee	رسم (رسوم), أتعاب
– filing fees	- رسوم الحفظ
– fixed fee	- رسم ثابت
– judicial fees	- رسوم قضائية
– registration fees	- رسوم التسجيل
felony	جناية
feudalism	إقطاع
file	ملف
filiation	بنوة
final	نهائى, إنهائي, بات, قطعي
financing	تمويل
fine	غرامة
– fines for delay	- غرامة التأخير
fiscal law	القانون الضريبى
fixtures	عقار بالتخصيص
flagrante delicto	تلبس
– case of *flagrante delicto*	- حالة التلبس
flaw (to)	عاب
Food and Agriculture Organization (FAO)	منظمة الأغذية و الزراعة (الفاو)
force	حجية, قوة
– absolute force of *res judicata*	- حجية مطلقة للشىء المقضى به
– force of *res judicata*	- قوة الأمر المقضى, قوة الشىء المحكوم فيه
– relative force of *res judicata*	- حجية نسبية للشىء المقضي به
– *force majeure*	- القوة القاهرة, أسباب قهرية
forces, armed forces	القوات المسلحة
foreign	أجنبى
– foreign element	- عنصر أجنبى
foreigner	أجنبى (أجانب)
– entry of foreigners	- دخول الأجانب

– residence of foreigners	- إقامة الأجانب
– status of foreigners	- حالة الأجانب, مركز الأجانب
forgery	تزوير
form	شكل
formal	شكلي
formation	تشكيل
fraud	تدليس, غش, نصب
fraudulent	احتيالي
freedom	حرية
– freedom of association	- حق تكوين الجمعيات
– freedom of creed	- حرية العقيدة
– freedom of emigration	- حق الهجرة
– freedom of expression	- حرية التعبير عن الرأي
– freedom of movement	- حق التنقل
– freedom of practicing religious rites	- حرية ممارسة الشعائر الدينية
– freedom of the press	- حرية الصحافة
– freedoms of individuals	- حريات الأفراد
– individual freedoms	- الحريات الفردية
– personal freedom	- الحرية الشخصية
– public freedoms	- حريات عامة
fruit	غلة
function	وظيفة
fund	صندوق
fundamental	أساسي
General Board on Penal Affairs	الهيئة العامة للمواد الجزائية
General Parquet	النيابة العامة
generalization	عموم
good	منفعة, نفع
– general good	- المنفعة العامة
– public good	- النفع العام
government	حكومة, حكم
– system of government	- نظام الحكم
governmental	حكومي
governor	محافظ
governorate	محافظة
grade level	درجة وظيفية
gradual taxation	التدرج الضريبي
grant	منحة
grant (to)	خول
gratuitousness	مجانية
gross negligence	خطأ جسيم
ground	سبب (أسباب), مبرر
– factual grounds	- أسباب واقعية

– legal grounds	- أسباب قانونية
grounded	مسبب
grounding	تسبيب
– grounding insufficiency	- القصور في التسبيب
guarantee (to)	ضمن
guarantee	ضمانة, تأمين
– material guarantee	- تأمين عينى
– personal guarantee	- تأمين شخصي
guarantor	كفيل
guard	حارس
guardian	ولى
– nurturing guardian	- حاضنة
guardianship	ولاية
guidance	توجيه
habit	اعتياد
hamper (to)	عاق
hand down (to)	فصل
harm	ضرر
– severe harm	- ضرر جسيم
headquarters	مقر
health	صحة
– public health	- الصحة العامة
– health security	- التأمين الصحي
hear (to)	نظر
hearing	نظر
heir	وارث
High Commissioner	مندوب سام
High State Security Court	محكمة أمن الدولة العليا
holder	حائز
honor	عرض
House of Representatives	مجلس النواب
humanitarian	إنسانى
illegal	غير مشروع
ill-treatment	إساءة العشرة
immovable	عقار
immunity	حصانة, تحصين
– diplomatic immunity	- حصانة دبلوماسية
– judicial immunity	- حصانة قضائية
impartiality	حيدة
impediment	إعاقة
implementation	تطبيق
implicitly	ضمنيا
imposition	جباية

imprisonment	سجن
in abstentia	فى غيبة المتهم
in kind	عينى
in rem	عينى
inadmissible	غير مقبول
incapacity	عجز
incentive	حافز (حوافز)
incitement	تحريض
income	دخول, دخل
– national income	- الدخل القومى
– income redistribution	- إعادة توزيع الدخل
– income tax	- الضريبة على الدخل
incompetence of the judge	عدم صلاحية القضاة
increment	علاوة
incrimination	تجريم
indecent assault	هتك العرض
indemnity	تعويض
independence	استقلال
independent	مستقل
indirect taxation	الضريبة غير المباشرة
inexistent	منعدم
infliction	توقيع
infringe (to)	مس
infringement	اعتداء, مخالفة
– infringement of the law	- مخالفة القانون
inheritance	ميراث, تركة, إرث, ورثة
– administrators of the inheritance	- مديرو التركات
– declaration of inheritance	- بيان الورثة
initiate an action (to)	رفع دعوى
injunction	أمر
– *ex-parte* injunction	- أمر على العرائض
injured party	مضرور
injury	ضرر, إصابة, جرح
– injury through negligence	- إصابة خطأ
– unintentional injury	- إصابة خطأ
– willful injury	- جرح عمد
innocence	براءة
– presumption of innocence	- قرينة البراءة
insanity	جنون
insolvency	شهر الإعسار
inspection	معاينة
instigation	تحريض
institution	مؤسسة

– private sector institution	- مؤسسة حرة
instruction	توجيه, تعليم
instrument	صك
insult	إهانة
insurance	تأمين
– social insurance	- التأمين الاجتماعي
insured person	مؤمن عليه
intent	قصد, نية
– criminal intent	- القصد الجنائى
– special intent	- القصد الخاص
intention	إرادة
– tacit intention	- الإرادة الضمنية
intercession	وساطة
interest	مصلحة, صالح
– extinguishment of the interest	- انتفاء المصلحة
– personal and direct interest	- مصلحة شخصية مباشرة
– public interest	- المصلحة العامة, الصالح العام
interference	تصدي
internal	داخلي
international	دولى
International Bank for Reconstruction and Development	البنك الدولي للإنشاء و التعمير
International Court of Justice	محكمة العدل الدولية
International Labor Organization	منظمة العمل الدولية
International Law Commission	لجنة القانون الدولى
International Monetary Fund	صندوق النقد الدولى
International Nuclear Energy Agency	الوكالة الدولية للطاقة الذرية
interpellation	استجو اب
interpretation	تأويل, تفسير
– extensive interpretation	- تفسير توسع
– restrictive interpretation	- تفسير ضيق
interrogation	استجو اب
intervention	تدخل
– joint intervention	- تدخل انضمامي
invalid	باطل
invalidity	بطلان
inventory book	دفتر الجرد
investigation	تفتيش, تحقيق
investigator	محقق
investment	استثمار, توظيف المال
Investment Authority	هيئة الاستثمار
inviolable	مصون
irrevocable	غير قابل للعزل

issue	مادة, مسألة (مسائل)
– preliminary issues	- مسائل أولية
joint venture	شركة المحاصة
judge	قاضي (قضاة)
– inquiry judge (*juge d'instruction*)	- قاضي التحقيق
– judge of interlocutory injunctions	- قاضي الأمر الوقتية
– ordinary judge	- القاضي العادي
– single judge	- القاضي الفردي
judgment	حكم (أحكام)
– interlocutory judgment	- حكم تمهيدي
– judgment *in absentia*	- حكم غيابي
– provisional judgment	- حكم وقتي
– record of a judgment	- مدونات الحكم
Judicial Committee for Military Officers	لجنة قضائية لضباط القوات المسلحة
judiciary	قضاء
– administrative judiciary	- القضاء الإداري
– independence of the judiciary	- استقلال القضاء
– ordinary judiciary	- القضاء العادي
jurisconsult	فقيه (فقهاء)
jurisdiction	اختصاص, ولاية
– conflict of jurisdiction	- تنازع الاختصاص
– full judicial jurisdiction	- ولاية القضاء الكامل
– general jurisdiction	- الاختصاص العام
– international jurisdiction	- الاختصاص القضائي الدولي
– jurisdiction in kind	- اختصاص نوعي
– jurisdiction in value	- اختصاص قيمي
– jurisdiction to abrogate	- ولاية قضاء الإلغاء
– lack of jurisdiction	- عدم اختصاص
– personal jurisdiction	- اختصاص شخصي
– territorial jurisdiction	- اختصاص محلي
jurisprudence	فقه
– comparative jurisprudence	- الفقه المقارن
jurist	فقيه (فقهاء)
jurists	رجال القانون, رجال الفقه
juryman	محلف
jus sanguinis	حق الدم
jus soli	حق الإقليم
justice	عدالة, قضاء
– civil justice	- القضاء المدنى
– constitutional justice	- القضاء الدستوري
– consular justice	- قضاء قنصلي
– criminal justice	- قضاء جنائى
– exceptional justice	- القضاء الاستثنائي

– military justice	- القضاء العسكري
– miscarriage of justice	- إنكار للعدالة
– proper administration of justice	- حسن إبداء العدالة
justification	إباحة, مبرر, مسوغ
justify (to)	برر
Khedive	خديوي
khul`	خلع
king	ملك
kinship	نسب
labour	(شغل) أشغال
– life hard labour	- الأشغال الشاقة المؤبدة
– temporary hard labour	- الأشغال الشاقة المؤقتة
landlord	مؤجر, مالك
law	قانون (قوانين)
– administrative law	- القانون الإداري
– branch of the law	- فرع من القانون
– conflict of laws	- تنازع القوانين
– constitutional law	- القانون الدستوري
– criminal law	- القانون الجنائي
– draft law	- مشروع قانون
– duality of law	- ثنائية القانون
– internal law	- القانون الداخلي
– international environment law	- القانون الدولي للبيئة
– international humanitarian law	- القانون الدولي الإنسان
– international labor law	- القانون الدولي للعمل
– international law	- القانون الدولي
– international law of human rights	- القانون الدولي لحقوق الإنساني
– international law of the sea	- القانون الدولي للبحار
– international law of treaties	- القانون الدولي للمعاهدات
– law of the family	- قانون الأسرة
– martial law	- قانون الأحكام العرفية
– model law	- قانون نموذجي
– natural law	- القانون الطبيعي
– organic law	- قانون أساسي
– personal status law	- قانون الأحوال الشخصية
– positive law	- القانون الوضعي
– private international law	- القانون الدولي الخاص
– private law	- القانون الخاص
– procedural criminal law	- القانون الجنائي الإجرائي
– procedural law	- القانون الإجرائي
– public international law	- القانون الدولي العام
– public law	- القانون العام
– social law	- القانون الاجتماعي

– statute law	ـ قانون نظامى
– substantive criminal law	ـ القانون الجنائي الموضوعي
– unity of law	ـ وحدة القانون
– law professionals	ـ رجال القضاء
law-decree	قرار بقانون
lawful	مشروع
– unlawful	ـ غير مشروع
lay down (to)	أرسى, وضع
league	عصبة
League of Arab States	جامعة الدول العربية
League of Nations	عصبة الأمم
lease	تأجير
leave	أجازة, حفظ
– leave on file of the case	ـ حفظ الأوراق
– maternity leave	ـ الوضع
– sick leave	ـ مرضية
legacy	وصية
Legal Consultative Council	مجلس شورى القوانين
legal	مشروع, قانوني
– legal situation	ـ مركز قانوني
legal school, legal doctrine	مذهب
– the school of Abu Hanifa	ـ المذهب الحنفيي
– the school of Malik	ـ المذهب الملكى
legality	مشروعية, شرعية
– legality of crime and penalty	ـ شرعية الجرائم والعقوبات
legatee	الموصى له
legator	مورث, موصى
legislation	تشريع
– ordinary legislation	ـ تشريع عادى
– retroactive legislation	ـ تشريع رجعي
legislature	مشرع, شارع
legitimacy	مشروعية
legitimate	مشروع, شرعي
leniency	رأفة
lessee	مستأجر
lessor	مؤجر
letter	كتاب, خطاب
– registered letter with acknowledgment of receipt	ـ كتاب مسجل بعلم الوصول
– letter of guarantee	ـ خطاب الضمان
level	طبقة
levy a tax (to)	فرض الضريبة
lex fori	قانون القاضي

lex posterior	القانون اللاحق
lex prior	القانون السابق
lex situs	قانون موقع المال
liability	مسئولية
– administrative liability	- المسئولية الإدارية
– civil liability	- مسئولية مدنية
– criminal liability	- مسئولية جنائية
– international liability	- مسئولية دولية
libel	سب
– public libel	- سب علني
liberalization	تحرير
license	ترخيص, رخصة
lien	امتياز
limitation	تقييد
line	خط
– demarcation line	- خط فاصل
liquidation	تصفية
liquidator	مصفى
list	كشف (كشوف)
– list of candidates	- كشف المرشحين
litigant	متقاض
litigation	تقاضى, خصومة
– civil litigation	- خصومة مدنية
– criminal litigation	- خصومة جنائية
loan	قرض
local	محلى
Local People's Council	المجلس الشعبي المحلي
logic	منطق
loss	خسارة, هلاك, فقد
– loss of nationality	- فقد الجنسية
majority	- أغلبية الآراء
make reference to (to)	أشار إلى
management	إدارة
mandate	وكالة, انتداب
mandatory	وجوبى, إلزامى
– mandatory power	- سلطة قائمة بالانتداب
manslaughter	قتل
– manslaughter through negligence	- قتل الخطأ
mark	علامة
market	سوق (أسواق)
– black market	- السوق السوداء
marriage	زواج
material	مادي

matter	مادة (مواد)
measure	تدبير (تدابير), إجراءة
– conservatory measures	- تدابير تحفظية
– precautionary measures	- تدابير احترازية
– preventive measure	- تدبير وقائي
– provisional measures	- تدابير مؤقتة, إجراءات وقتية
meet (to)	انعقد
member	عضو (أعضاء)
– founding member	- عضوا مؤسس
membership	عضوية
– active membership	- عضوية عاملة
memorandum	مفكرة, مذكرة
mental disturbance	عاهة العقل
merchant	تاجر
merger	اندماج
merits	موضوع
middleman	وسيط (وسطاء)
minister	وزير (وزراء)
– Finance Minister	- وزير المالية
– Minister of Interior	- وزير الداخلية
– Minister of Justice	- وزير العدل
– Prime Minister	- رئيس مجلس الوزراء
ministry	وزارة
– Foreign Ministry	- وزارة خارجية
– Ministry of Manpower	- وزارة القوى العاملة
– Ministry of Public Works	- وزارة الأشغال
– Ministry of Supply	- وزارة التموين
minority	صغر السن
minors	أحداث
minutes	محضر
misappropriation	اختلاس
misdemeanour	جنحة (جنح)
missing person	مفقود
mission	مهمة, مأمورية, بحثة
mistake	غلط, خطأ
– mistake on the part of the public utility	- خطأ المرفق
– personal mistake	- خطأ شخصي
mixed	مختلط
mobilization	تعبئة
– general mobilization	- التعبئة العامة
modern	حديث
modernization	تحديث

monarchy	ملكية
monetary	مالى
monitor (to)	راقب
monopoly	احتكار
moral	أدبى , خلقي , معنوي
morality	آداب
– public morality	- الآداب العامة
mortgage	رهن رسمى
– judicial mortgage	- رهن قضائى
– legal mortgage	- رهن قانوني
mortgagee	مرتهن
mortgagor	راهن
motion	دفع (دفوع), طلب
– to waive a motion	- نزل عن طلب
motive	باعث (بواعث)
– inexistence of motive	- انعدام الباعث
movable	منقول
Mufti of the Republic	مفتى الجمهورية
municipality	حى (أحياء), مديرية
murder	قتل
– willful murder	- قتل عمد
national	رعية (رعايا)
national	قومى
National Defense Council	مجلس الدفاع الوطني
nationality	جنسية
– withdrawal of nationality	- سحب الجنسية
– lapse of nationality	- إسقاط الجنسية
– original nationality	- الجنسية الأصلية
– unknown nationality	- جهالة الجنسية
nationalization	تأميم
naturalization	تجنس
necessitate (to)	اقتضى
negligence	إهمال
negotiations	مفاوضات
net tax liability	صافى الضريبة
neutrality	حيدة, حياد
nomination	تسمية
non-amenability	عدم قابلية
notes	مذكرة
– explanatory notes	- مذكرة إيضاحية
notice	إخطار
notification	إعلان, إخطار
null and void	باطل, منعدم , كأن لم يكن

nullity	بطلان
– absolute nullity	- بطلان مطلق
– initial action for nullity	- دعوى بطلان أصلية
– relative nullity	- بطلان نسبى
oath	يمين
– decisive oath	- يمين حاسمة
– suppletory oath	- يمين متممة
– take an oath (to)	- حلف يمين
obedience	طاعة
object	محل
objection	اعتراض, دفع , طعن , تصدي
– objection for cassation	- الطعن بالنقض
objective	موضوعي
obligating	ملزم
obligation	التزام
– contractual obligations	- التزامات تعاقدية
– non-contractual obligations	- التزامات غير تعاقدية
– obligations arising from a tort	- الالتزامات الناشئة عن الفعل الضار
obstacle	عقبة
occupation	احتلال
occurrence	حدوث
offender	جان
offense	جريمة, اعتداء, مخالفة, ذنب
– petty offense	- مخالفة
– immoral offenses	- جريمة أخلاقية
offer	إيجاب
Office of Trade and Foreign Affairs	ديوان التجارة و الأمور الأفرنكية
office	وظيفة
– public office	- وظيفة عامة
officer	مأمور, موظف, ضابط (ضباط)
– customs officer	- مأمور جمرك
– administrative officer	- موظف إداري
– financial officer	- موظف مالى
– investigation officer	- مأمور الضبط القضائي
official	رسمى
official, public official	موظف عمومى
official authorized to register marriage, *ma'dhun*	مأذون (مأذيين)
Official Gazette	الجريدة الرسمية
omission	عمل سلبي, امتناع
operation	تصرف
opinion	فتوى, رأي
– binding opinion	- رأي ملزم

– consultative opinion	- رأي استشاري
– public opinion	- الرأي العام
opponent	معارض
opportunity	فرصة (فرص)
– equal opportunity	- تكافؤ الفرص
opposition	معارضة
optional	جوازي
order	أمر (أوامر)
– public order	- النظام العام
– court order	- أمر قضائى
– order of absence of justification for action	- أمر بعدم وجود وجه لإقامة الدعوى
organic	عضوي
organization	ترتيب
– international organization	- منظمة دولية
– regional international organization	- منظفة دولية إقليمية
– universal international organization	- منظفة دولية عالمية
– legal organization	- التنظيم القانوني, النظام القانوني
Organization of African Unity	منظمة الوحدة الأفريقية
Organization of the Islamic Conference	منظمة المؤتمر الإسلامي
pact	معاهدة
– alliance pact	- معاهدة التحالف
pardon	عفو
parliament	برلمان
parquet	نيابة
– assistant deputy of the parquet	- وكيل مساعد النيابة
– auxiliary deputy of the parquet	- وكيل معاون النيابة
– deputy of the parquet	- وكيل النيابة
– general parquet	- نيابة كلية
– head of the parquet	- رئيس النيابة
– parquet of the Court of Cassation	- النيابة العامة لدى محكمة النقص
– summary parquet	- نيابة جزئية
participate (to)	شارك فى
participation	مساهمة, مشاركة
– accessory participation	- مساهمة تبعية
– primary participation	- مساهمة أصلية
partner	شريك (شركاء)
– joint partners	- الشركاء المشاعين
– partners of a limited partnership	- الشركاء الموصين
partnership, general partnership	شركة التضامن
– limited partnership	- شركة توصية
– partnership limited by shares	- شركة التوصية بالأسهم
party	خصم (خصوم), طرف (أطراف)

– concerned parties	ـ ذوى الشأن
– joint party	ـ طرف متدخل
– original party	ـ طرف أصيل
party	حزب (أحزاب)
– multi-party system	ـ التعددية الحزبية
– political party	ـ حزب سياسى
patent	براءة, براءة الاختراع
peace	صلح, سكينة
– public peace	ـ السكينة العامة
penalty	جزاء, عقوبة
– disciplinary penalty	ـ جزاء تأديبية
– individualization of the penalty	ـ تفريد العقوبة
pending	قائم
pension	معاش
People's Assembly	مجلس الشعب
period	فترة
– probation period	ـ فترة الاختيار
permanent	دائم
permissible	مباح
permissiveness	إباحة
permit	ترخيص
perpetration	ارتكاب
perpetrator	جان, فاعل, مرتكب
– moral perpetrator	ـ الفاعل المعنوي
– principal perpetrator	ـ فاعل أصلى
person	شخص (أشخاص)
– international legal person	ـ شخص قانونى دولى
– juristic person	ـ شخص اعتباري, معنوي
– legal person	ـ شخص قانونى
– natural person	ـ شخص طبيعى
– private law person	ـ شخص القانون الخاص
– public law person	ـ شخص القانون العام
personal status	الأحوال الشخصية
personality	شخصية
– international legal personality	ـ شخصية قانونية دولية
petition	التماس, طلب, عريضة
– provisional petition	ـ طلب وقتى
petitioner	طاعن, رافع الدعوى, مدع
petty offense	مخالفة
physical	بدنى
pillage	نهب
plaintiff	مدعي, طالب
plan	خطة

– general economic and social development plan	- الخطة العامة للتنمية الاقتصادية و الاجتماعية
planning	تخطيط
plea	دفع, طلب
– incidental plea	- طلب عارض
– to raise a plea	- أثار دفع
plead (to)	ترافع
pleading	مرافعة
– closure of the pleadings	- قفل باب المرافعة
– initiatory pleading	- صحيفة الدعوى
pledge	رهن حيازي الاختصاص
police	شرطة, هيئة الشرطة, ضبط
– administrative police	- الضبط الإداري
– judicial police	- الضبط القضائي
political	سياسى
position	منصب, مركز
– legal position	- مركز قانوني
possession	حيازة
– acquisition of possession	- كسب الحيازة
– joint possession	- الملكية الشائعة
– loss of possession	- فقد الحيازة
post	وظيفة
postpone (to)	أجل
postponement	تأجيل
power	صلاحية, سلطة
– absolute power	- السلطة المطلقة
– abuse of power	- إساءة استعمال السلطة
– balance of powers	- توازن السلطات
– discretionary power	- سلطة تقديرية
– executive power	- سلطة تنفيذية
– judiciary power	- سلطة قضائية
– legislative power	- سلطة تشريعية
– misuse of power	- انحراف السلطة
– organizational powers	- سلطات تنظيمية
– procedural powers	- سلطات إجرائية
– separation of powers	- الفصل بين السلطات
– power of attorney	- توكيل
preamble	ديباجة
precedent	سابقة (سوابق)
preclusion	إعفاء
preemption	شفعة
preference	تفضيل
preferential right	امتياز

prejudicial	مجحف
prejudicial to, against, contrary to	مخل ب
preliminary	تمهيدي
premises	عين
preparation	تحضير
preparatory	تحضيري
– preparatory memorandum (*travaux préparatoires*)	- الأعمال التحضيرية
prescription	تقادم
preside over (to)	رأس
president	رئيس
President of the Republic	رئيس الجمهورية
press	صحافة
Press Charter of Honor	ميثاق الشرف الصحفي
Press Union	نقابة الصحفيين
presumption	قرينة (قرائن) , قرينة, افتراض
– irrebuttable presumption	- قرينة قاطعة
– presumption of innocence	- افتراض البراءة
– simple presumption	- قرينة بسيطة
prevent (to)	حجب عن
preventive	وقائى
Prime Minister	رئيس مجلس الوزراء
principal	متبوع
principle	مبدأ (مبادئ)
– general principles of law	- المبادئ العامة للقانون
– principle of equal opportunity	- مبدأ تكافؤ الفرص
priority	أولوية
privilege	امتياز
– privileges in kind	- امتيازات عينية
Prize Council	مجلس الغنائم
probability	احتمال
procedural	إجرائي
procedure	إجراء
– organizational procedure	- إجراءات تنظيمية
proceedings	إجراءات
process	مسيرة
production	إنتاج, ناتج
– national production	- الناتج القومي
profession	مهنة
profit	ربح (أرباح)
– net profits	- الأرباح الصافية
– profit and loss assessment	- حساب الأرباح و الخسائر

progressive	تقدمى
prohibit (to)	حظر
prohibitions	محظورات
project	مشروع
promissory note	سند لأمر
promotion	ترقية
promulgation	صدور, إصدار
pronouncement	نطق
proof	إثبات
– burden of proof	- عبء الإثبات
property	ملكية, مال (أموال), ملك
– cooperative property	- ملكية تعاونية
– individual property	- الملكية الفردية
– industrial property	- الملكية الصناعية
– intangible property	- الأموال المعنوية
– intellectual property	- الملكية الفكرية
– joint property	- مال شائع
– private property	- الملكية الخاصة
– public property	- المال العام, الملكية العامة
– state property	- أملاك الدولة
– tangible property	- أموال مادية
proposal	اقتراح
prosecution	اتهام
– administrative prosecution	- النيابة الإدارية
– prosecution of suit	- تحريك الدعوى
protection	حماية, صيانة
protectorate	حماية
protocol	بروتوكول
prove (to)	أثبت
provision	حكم (أحكام), نص
– general provision	- نص عام
– specific provision	- نص خاص
– the challenged provision	- النص المطعون فيه
proxy	وكيل, وكالة
public	عام, علنى
– public funds	- مال عام
– public subscription	- اكتتاب عام
– public treasury	- خزانة عامة
– public utilities	- المرافق العامة
Public Anglican Community Council	مجلس الملى الإنجيلى العام
Public Land Reform Authority	الهيئة العامة للإصلاح الزراعي
Public Prosecution	النيابة العامة
publication	نشر

punishment	عقاب, عقوبة
– capital punishment	إعدام
– complementary punishment	- عقوبة تكميلية
– optional punishment	- عقوبة اختيارية
– preclusion of punishment	- امتناع العقاب
– principal punishment	- عقوبة أصلية
qualitative	نوعي
quality	صفة
queen	ملكة
questioning	استجواب
Radio and Television Union	اتحاد الإذاعة و التليفزيون
ranking	درجة
rape	اغتصاب
rapporteur	مقرر
rate	معدل
ratification	تصديق على
– instrument of ratification	- وثائق التصديق
ratify (to)	صدق على
reach (to)	اتصل ب
real estate	عقار
Real Estate Office	الشهر العقاري
real property	عقارات
real status	الأحوال العينية
recidivism	عود
recognition	اعتراف
recommendation	توصية
reconciliation	تصالح
reconsideration	إعادة النظر
recurrence	عود
referendum	استفتاء
referral	إحالة إلى
reform	إصلاح
– agrarian reform	- الإصلاح الزراعي
refusal	امتناع عن
regional	إقليمى
Regional Center for International Commercial Arbitration	المركز الإقليمي للتحكيم التجاري الدولي
register (to)	قيد
register	دفتر (دفاتر), سجل
– auxiliary daily register	- دفاتر اليومية المساعدة
– commercial register	- السجل التجاري
– commercial registers	- الدفاتر التجارية
– master daily register	- الدفتر اليومية الأصلي

registration	شهر, قيد, تسجيل
registry	سجل
regulate (to)	نظم
regulation	ضابط (ضوابط), لائحة (لوائح)
– executive regulation	- لائحة تنفيذية
– implementation regulation	- لائحة تنفيذية
– internal regulations	- لائحة داخلية
regulatory	تنظيمية
reject (to)	رفض
relate to (to)	تعلق ب
relation	علاقة
– diplomatic relations	- علاقات دبلوماسية
– international relations	- العلاقات الدولية
– peaceful relations	- علاقات سلمية
release	إخلاء
remain in force (to)	ظل قائما
remission	إبراء
removal	عزل, تنحية
rent	تأجير
repair (to)	جبر
repeal (to)	ألغى, نسخ
report	تقرير
representation	تمثيل
– permanent representation	- تمثيل دائم
representative	وكيل, ممثل
repression	قمع
reprimand	توبيخ
republic	جمهورية
repudiation	طلاق
request	طلب, تكليف
require (to)	كلف
requirement	مقتضى
rescission	فسخ
residence	إقامة
– place of residence	- محل الإقامة
– settled residence	- إقامة مستقرة
resignation	استقالة
– implicit resignation	- استقالة ضمنية
resolution	قرار
resolutive	فاسخ
resolve (to)	حسم
respect	احترام

respondent	مطعون ضده
responsibility	مسئولية
– omissive responsibility	- مسئولية تقصيرية
– responsibility for risk	- المسئولية على أساس المخاطر
responsible	مسئول
restitution	رد
restraint	ضابط
result	نتيجة
– probable result	- نتيجة محتملة
resume (to)	استأنف
retrial	إعادة محاكمة
retroactivity	رجعية
review	رقابة
– judicial review	- رقابة دستورية
Revolutionary Council	مجلس قيادة الثورة
right	حق (حقوق)
– accessory real right	- حق عينى تابع
– acquired right	- حق مكتسب
– author's rights	- حق المؤلف
– civil and political rights	- الحقوق المدنية و السياسية
– exercise of right	- استعمال الحق
– extinguishment of the right	- سقوط الحق
– fundamental rights	- الحقوق الأساسية
– human rights	- حقوق الإنسان
– individual rights	- الحقوق الفردية
– natural right	- حق طبيعى
– political rights	- الحقوق السياسية
– public rights	- حقوق عامة
– real rights	- الحقوق العينية
– right in kind	- حق عينى
– right to a fair remuneration	- حق فى أجر عادل
– right to assembly	- حق الاجتماع
– right to criticize	- حق النقد
– right to defense	- حق الدفاع
– right to education	- حق التعليم
– right to health	- حق فى الصحة
– right to life	- حق فى الحياة
– right to litigation	- حق التقاضى
– right to receive a pension	- حق فى المعاش
– right to run for elections	- حق الترشيح
– right to strike	- حق فى الإضراب
– right to the privacy	- حق الخصوصية

– right to vote	- حق الانتخاب
– right to work	- حق العمل
– rights of individuals	- حقوق الأفراد
– right of affectation	- اختصاص
– right of priority	- تقدم
– right of pursuit	- تتبع
risks	مخاطر
roll	جدول
room	غرفة
– counsel room	- غرفة مشورة
rule	قاعدة (قواعد)
– general abstract rules	- قواعد عامة مجردة
– judicial rules	- القواعد القضائية
– rules of conduct	- قواعد السلوكيات
– rules of jurisdiction	- قواعد الاختصاص
rule of law	سيادة القانون
rule on (to)	حكم في, فصل في
ruler	حاكم (حكام)
ruling	حكم (أحكام), فصل
– cassation ruling	- حكم النقض
– challenged ruling	- الحكم المطعون فيه
– conflict of rulings	- تناقض الأحكام
– disputed ruling	- الحكم المطعون فيه
– final ruling	- حكم قطعي, انتهائي, نهائي
– last degree ruling	- حكم آخر درجة
– ordinary ruling	- حكم عادي
– ruling in damages	- حكم بالتضمينات
– ruling on urgent action	- حكم مستعجل
safety	أمن
– public safety	- الأمن العام
salary	أجر, مرتب
sale	مبيع, بيع
– credit sale	- البيع بالتقسيط
sanctity	حرمة
savings	ادخار
scholar	فقيه (فقهاء)
scope	نطاق
search	ضبط, تفتيش
– judicial search	- التفتيش القضائي
– preventive search	- التفتيش الوقائي
search (to)	فتش
seat	مقر, مركز

– seat of management	- مركز الإدارة
– seat of the administration	- مركز الإدارة
secondment	ندب
secrecy	سرية
secretary general	أمين عام
sector	قطاع
– public sector	- القطاع العام
– public sector entity	- هيئة القطاع العام
– unit of the public sector	وحدة القطاع العام
secured person	مكفول
security	أمن
Security Council	مجلس الأمن
seizure	ضبط, حجز على, استيلاء
– real estate seizure	- حجز عقاري
Senate	مجلس الشيوخ
sentence	حكم (أحكام)
– death sentence	- حكم بالإعدام
– final sentence	- حكم نهائى
separation from bed and board, *séparation de corps*	الانفصال الجسماني
sequestration	حراسة, الحجز على أموال
service	خدمة
– medical services	- خدمات صحية
– public service	- الخدمة العامة
– social services	- خدمات اجتماعية
session	جلسة
– *in camera* session	- جلسة سرية
– open court session	- جلسة علنية
set forth (to)	بين
settlement	حل, تسوية, فصل, ترضية
– judicial settlement	- ترضية قضائية
share	سهم (أسهم), نصيب (أنصبة), حصة
sharecropping	الإيجار بالمزارعة
sheikh	شيخ (مشايخ)
shortcoming	قصر (قصور)
sign (to)	أبرم
signature	توقيع
single out (to)	ميز
slander	قذف
smuggling	تهريب
social	اجتماعى،
social security	الضمان, التأمين الاجتماعي
socialist	اشتراكي

Socialist Public Prosecutor	المدعي العام الاشتراكي
society	جمعية
– cooperative society	- جمعية تعاونية
solidarity	تضامن
– social solidarity	- تضامن اجتماعي
source	مصدر (مصادر)
sovereignty	سيادة
Speaker of the People's Assembly	رئيس مجلس الشعب
standing	قائم
state	دولة, ولاية
– federal state	- دولة اتحادية
– guardian state	- الدولة الحارسة
– religious state	- دولة دينية
– secularist state	- دولة علمانية
– structure of the state	- شكل الدولة
– unified state	- دولة موحدة
State commissioners' body	هيئة مفوض الدولة
State Council	مجلس الدولة
State Litigation Authority	هيئة قضايا الدولة
state of emergency	حالة الطوارئ
stateless	عديم الجنسية
– to be stateless	- انعدام الجنسية
status	وضع, كيان
– legal status	- مركز قانونى
statutes	النظام الأساسي
stipulate (to)	نص
stock exchange	سوق رأس المال
stocks	سندات
stoppage	استيقاف
storage	إيداع
structure	بناء, بنيان
sub-contract	تنازل
sub-contractor	المقاول من الباطن
subjective	شخصى
subject-matter	موضوع
subletting	تأجير من الباطن
submission	تقديم
submit (to)	قدم
subordinate	مرؤوس
subordination	تبعية
– administrative subordination	- تبعية إدارية
– hierarchical subordination	- تبعية تدريجية
– legal subordination	- تبعية قضائية

subscription	اشتراك
substantial	جوهري
substantiated	مسبب
substantive	موضوعي
succession	توارث
suit	قضية (قضايا)
summons	تكليف بالحضور, طلب حضور
supervise (to)	راقب
supervision	إشراف
supply	توريد
Supreme Administrative Court	المحكمة الإدارية العليا
Supreme Constitutional Court	المحكمة الدستورية العليا
Supreme Council for Judiciary Affairs	المجلس الأعلى للشؤون القضائية
Supreme Council for Youth and Sport	المجلس الأعلى للشباب و الرياضة
Supreme Council of Judicial Bodies	المجلس الأعلى للهيئات القضائية
Supreme Court	المحكمة العليا
Supreme Judiciary Council	مجلس القضاء الأعلى
Supreme Military Court	المحكمة العسكرية العليا
Supreme Press Council	المجلس الأعلى للصحافة
Supreme Sufi Council	مجلس الصوفي الأعلى
suspect	مشتبه فيه
suspension	تعطيل
suspensive	واقف
suspicion	اشتباه
swindling	نصب
syndicate	نقابة
– professional syndicates	- نقابات المهن الحرة
system	جهاز, نظام (أنظمة)
– dual judicial system	- نظام القضاء المزدوج
– judicial system	- الجهاز القضائي, النظام القضائي
– legal system	- نظام قانوني
– mixed system	- نظام مختلط
– parliamentary system	- النظام النيابي
– political system	- نظام سياسي
– presidential system	- النظام الرئاسي
– single judicial system	- نظام القضاء الموحد
– system of taxation	- نظام ضريبي
task	مهمة
tax	ضريبة (ضرائب)
– imposition of taxes	- فرض الضرائب
– public taxes	- الضرائب العامة
– sales tax	- ضريبة على المبيعات
– tax base	- الوعاء الضريبي

– tax bracket	- الشريحة الضريبية
– tax collection	- تحصيل الضريبة
– tax evasion	- التهرب الضريبى
– tax exemption	- اعفاء ضريبى
– tax holidays	- اعفاءات ضريبية
– tax law	- قانون الضرائب
– tax rate	- سعر الضريبة
taxable income	الدخل الخاضع للضريبة
taxation	ضريبة
– direct taxation	- الضريبة المباشرة
taxpayer	ممول
temporary	وقتي
tenant	مستأجر
tender	مناقصة, عطاء
tenement	عقار
tenure	وعاء
term	أجل, ميعاد
termination	وفاء, إنهاء
territory	إقليم
testament	وصية (وصايا)
testator	موصى
testimony	شهادة
– false testimony	- شهادة الزور
text	نص
theft	سرقة
theory	نظرية
tip	وهبة
title	لقبة
tort	فعل ضار
totalitarian	شمولى
trade name	الاسم التجاري
trade union	نقابة
trademark	العلامة التجارية
transaction	معاملة, تصرف
– transactions of a pecuniary nature	- التصرفات المالية
transfer	انتقال, حوالة, نقل, إحالة
transferee	محال له
transferor	محيل
transgress (to)	اعتدى على
transition	انتقال
travaux préparatoires	الأعمال التحضيرية
treasury	خزانة
Treasury	خزانة الدولة

treatment	معاملة
– legal treatment	- معاملة قانونية
treaty	معاهدة
– peace treaty	- معاهدة الصلح
trial	محاكمة
– fair trial	- محاكمة منصفة
– trial *in camera*	- محاكمة سرية
trust	أمانة
– betrayal of trust	- خيانة الأمانة
unanimity	إجماع الآراء
unchallengeable	غير قابل للطعن فيه
unconstitutionality	عدم دستورية
under secretary of state	وكيل وزارة
undertake (to)	تعهد
undertaking	تعهد
unemployed	عاطل
unemployment	بطالة
United Nations	الأمم المتحدة
United Nations Commission on International Trade Law (UNCITRAL)	لجنة الأمم المتحدة لقانون التجارة الدولي
United Nations Educational, Scientific and Cultural Organization (UNESCO)	منظمة الأمم المتحدة للتربية و العلوم و الثقافة (اليونسكو)
United Nations General Assembly	الجمعية العامة للأمم المتحدة
uphold (to)	أيد
usage	استعمال
usufruct	انتفاع
usurpation	غصب
– usurpation of power	- غصب السلطة
utility	منفعة
– public utility	- المنفعة العامة
validity	سريان, صحة
value	قيمة (قيم)
verbal process	محضر
victim	مجنى عليه, مضرور
village head	عمدة
violate (to)	خالف
violation	إخلال
void	باطل
volition	إرادة
voter	ناخب
wages	أجر (أجور)
– minimum wages	- حد أدنى للأجور
waiver	تنازل عن

– tacit waiver	- نزول ضمني
waqf (mortmain goods)	وقف
– charity *waqf*	- وقف خيري
– private *waqf*	- وقف أهلي
wardship	وصاية
warning	انذار, تنبيه
warrant	أمر
– judiciary warrant	- أمر قضائي
waste	تبديد
wealth	ثروة
– national wealth	- الثروة القومية
widowhood (period of)	عدة
will	وصية
will	إرادة
– subjective will	- إرادة ذاتية
withdrawal	سحب, إقالة, تخلي عن
witness	شاهد (شهود)
– witness of the defence	- شاهد النفى
– witness of the prosecution	- شاهد الإثبات
witnessing	إشهاد
work	منصب
worker	عامل (عمال)
World Bank	البنك الدولى
World Health Organization	منظمة الصحة العالمية
World Trade Organization	منظمة التجارة العالمية
zakat	زكاة

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