



Studies and Researches

Egyptian judiciary and human rights principles

Councilor / Sana Khalil

**Former assistant to the Minister of
Justice for the Human rights sector**

Introduction and Preface

The papyri found in the archaeological excavations in Egypt confirmed that the Pharaonic civilization was one of the oldest human societies that recognized justice as the icon of security and stability of society and that the judiciary is the mean of establishing justice. The Pharaonic civilization precedes in its existence the Greek and Roman legislation and that has been confirmed by many scientists and by the consecutive discoveries of archaeological sites, as stated by " DIODORUS SICULUS " that the priests of Memphis told him that the Goddess, "Isis" had been the one who set laws to settle justice instead of aggression and mercy instead of unfair injustice.

This confirms that justice in ancient Egypt was in a sublime position to the extent that justice and rights were considered as Gods called "Maat". Several papyri also explained that justice was applied by the ancient Egyptians to all without discrimination as opposed to other civilizations. Judges were appointed on basis of their knowledge, wisdom and integrity. They were required to judge issues independently and to have their judgments based on acts, regardless of the economic or social considerations of the litigants and without grudge or weakness.

It is from this historical background, the treasure of human knowledge and cultural stock mixed with efforts, experiences and human expertise from various human cultural tributaries, that the international human rights conventions since the very beginning have paid much care to the right of justice through an independent judicial author-



ity as a mean of national justice that guarantees and protects the internationally recognized rights and freedoms enjoyed by the human being at all times and places and that are inalienable or indivisible .

In this study we shall briefly expose two parts ,the first part is on the international and constitutional vision of the judicial authority. It includes two articles on the international background of the judicial authority and human rights, and on the Egyptian constitution and the judicial authority . The second part is on the practical applications of judicial bodies in Egypt represented in three judicial bodies: Supreme Constitutional Court, judiciary and State Council.

Part I: The international and constitutional vision of the judicial Authority

The Egyptian Constitution and the Judicial Authority:

The Egyptian Constitution, issued in January 2014- like the previous constitutions- in Articles 97 and 98, affirms that Litigation is a safeguarded right guaranteed to all. The state shall bring together the litigating parties, and work towards speedy judgment in cases. It is forbidden to grant any act or administrative decision immunity from judicial oversight. Individuals may only be tried before their natural judge. Extraordinary courts are forbidden. For those who are financially incapable, the law guarantees the means to resort to justice and defend their rights..

The Egyptian legal and judicial system, in its various branches (constitutional, civil and administrative), gives the right to litigation for all through the competent court to consider any violations of protected rights and freedoms. The Egyptian laws confront violations by imposing criminal sanctions on those found guilty and compensating the injured party or victim , as well as releasing judgments by the administrative judiciary in cases of violations arising from abusing the authority, by cancellation and compensation . In addition, the Egyptian legal system provides the right for the individual and the courts to legal challenge against legal texts contradicting the Constitution through the Supreme Constitutional Court in the circumstances, the ways and conditions prescribed by law, which in its turn issues final binding judgements for all authorities in the State.



Considering the fact that the Egyptian legal system is based on the Constitution as it is the supreme law, the new constitution guarantees all the rights and freedoms included in the international conventions on international human rights law, in which Egypt is a party. Consequently, these rights and freedoms enjoy the legal protection provided by the constitutional rule. The new Egyptian Constitution included some special provisions on rights and freedoms, guided by relevant international instruments. As well as the provision of a package of guarantees that sponsor these rights and freedoms.

Part II: Practical applications of judicial bodies in Egypt

We will deal with the practical aspects of the applications of the various judicial bodies (constitutional, civil and administrative) for these principles by reviewing their most important related judgments in the following articles.

Article 1: The Supreme Constitutional Court and the principles of human rights:

The Supreme Constitutional Court, through the exercise of its powers to reviewing and deciding the constitutionality of laws or their interpretation, referred to it, whether from individuals or the judiciary - plays a major and influential role in refining the national legislation in force to comply with the new provisions of the Constitution. The court issued several constitutional provisions that ended unconstitutional legislative texts that violated the provisions of the Constitution and established the principles of rights and freedoms and international conventions on human rights. Through these provisions, many constitutional foundations have been established in support of the rights and freedoms provided in the Constitution in force, the moment they were formulated.

Clearly, it is not surprising that the Constitutional Court, in addition to its important legal role, has played an important and influential role in spreading the culture of human rights, as the Constitutional Court's rulings are in-kind and all-inclusive, and are published in the official gazette of the country. This opens the door for all, not only the interested parties, to resort to it and make use of its judgments to avoid any constitutional defects in the laws in force for the interest of the desired enforcement of all the rights and freedoms of individuals and citizens.



Article 2: Judiciary and Human Rights Principles:

The courts through their two branches; civil and criminal, adjudicate all civil disputes of all kinds and criminal offenses related to the crimes , in accordance with law, the existing constitutional principles and the regulations and procedures stipulated in the Civil Procedure Law before the Civil Courts or the Code of Criminal Procedure before the criminal courts. Both laws have regulated the courts' levels, types, scope of jurisdiction, degrees of appeal against judgments issued, means of recourse to the judiciary, procedures for considering claims and guarantees for adversaries and defense - in accordance with international standards of criminal justice. Law gives the victim the right to bring a civil action for damages before the criminal court hearing the proceedings in connection with the legally designated offence in question. These offences obviously include violations of the public rights and freedoms of individuals. The Egyptian judicial structure is based on two levels of litigation. Courts in Egypt are divided to first instance courts, appellate courts and the Court of Cassation.

Article 3: Administrative Justice and Human Rights Principles:

Within the framework of the Executive branch practices of its terms of reference and the resulting decisions or regulations relating to the interests of individuals or groups, whether they concern the services or procedures provided to citizens, it shall, of course, comply with all constitutional principles and valid legal rules within the limits of its executive authority to work for the public interest, and provide the service to the citizens objectively considering standards and law.

The existence, independence, neutrality and integrity of the judicial authority - as one of the three powers on which the legal structure of the State is based - is in itself, despite all the human, universal and national interest it has received - a human right and not a criteria for the right to a fair trial. So the independence of the judiciary and the immunity of judges are not a luxury or an advantage for judges. They are a right for all. This right must be upheld and respected, as it is the primary and fundamental guarantee for justice in general and for the international and national system concerned for the protection and guarantee of human rights in general. They provide protection to all rights and free-



doms from any violation, assault or abuse from the part of the state or others. Without the existence of this guarantee all efforts to establish the concepts of the human rights system and awareness raising, shall be in vain – Evil, selfishness and the lack of respect for the other and for the law will prevail over. Thus the forces of good and right and justice would fade.

Conclusion:

Finally, we see that the new Egyptian constitution stipulates in Article 94 that the rule of law is the basis of the governance in the State and the State is subject to the law while the independence, immunity and impartiality of the judiciary are fundamental guarantees for the protection of rights and freedoms . It also provides the right to bring legal proceedings, access to justice and the standards necessary for the conduct of justice with all the internationally recognized guarantees in the light of article 97 that litigation is a protected and guaranteed right for all the prohibition of the immunization of any administrative action or decision from the control of the judiciary and that no person may be tried except before his natural judge. Article 100 of the Constitution confirms the State's obligation to implement the court decisions and refraining from implementing or impeding implementation by the competent public servants is a crime that is punishable by law and the convicted has the right to appeal the criminal case directly to the Court. The concerned Egyptian laws confirm these texts and constitutional guarantees.

What is required now is to speed up the completion of the necessary amendments to the laws relating to the judiciary, so as to ensure the full implementation of the constitutional texts, without ignoring the settlement of a new vision and prospects for the organizational and procedural aspects of the justice agencies at all levels, objectively and administratively, considering the scientific, practical and digital techniques as well as international experiences of judicial systems to pave the way for the access to justice sought by all in the framework of full respect for basic human rights and freedoms settled down in the international human rights conventions in which Egypt is a party.

As for the Bangalore Principles of Judicial Conduct, they do not go beyond the judicial tradition of the Egyptian legal fundamentals and ju-



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dicial structure, with respect to the professional performance of judges – to be passed to the successive judiciary generations. These principles dealt with the personal conduct of the judge and his appearance, which maintains his prestige and explained the limits and nature of his relations with colleagues, professionals and practitioners of the profession of law, as well as his interests, family and social relations. They linked directly the institutional independence with the judge's behaviors which should reflect this meaning and prove it .So, it is appropriate to prepare a code of conduct for the judiciary to serve as a guide and a reminder of these principles for the judges to guide them to work in the altar of justice. It is also worthy to mention the contents of these principles of the laws relating to the judicial authorities, in line with Egypt's international obligations, arising from its accession to the international human rights covenants.