

COMMODIFICATION OF JUSTICE

VIOLATING THE RIGHT OF CITIZENS' TO RESORT TO JUSTICE



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Introduction:

Judiciary is the normal way to protect citizens from violating their rights. The path to litigation must be facilitated for everyone, regardless of his/her financial capabilities, and the costs of litigation should not be an obstacle to access to justice. However, in reality, recent years have witnessed a significant increase in judicial fees in Egypt. These fees that should be for a token price in order to facilitate the work of the judiciary have gone beyond the capabilities of citizens, hindering their ability to access justice. This also pushes citizens to pursue other ways of accessing their rights away from the judiciary, starting with customary sessions, passing through giving up the right, and perhaps ending to violence. This situation poses a great threat to societal stability in which the judiciary plays an essential role.

The increase in judicial fees, as part of litigation cost, negatively affects the components of justice to a significant degree, especially lawyers who have lost a large portion of their income, as the increase in fees represents a negative aspect of their income, and the poor who are unable to bear the high fees where they are often forced to give up their rights. This situation represents a major crack in the wall of justice.

The significant increase in judicial fees aroused in the context of the State's vision of development which was crystallized in its 2020/2030 goals of sustainable development. This increase has taken an upward curve since 2013 after the government adopted the International Monetary Fund's restructuring program. The program, which is integrated with the State's vision, is based on reducing the economic role of the state, empowering private capital, and abolishing goods and services subsidies. This means, in a more clear sense, that the citizen transforms from a rights holder into a customer where services are being commodified, and each commodity has a price calculated according to market standards, that is, cost and profit, and transforming service agencies and facilities into profit-making institutions.

This vision applies to the Ministry of Justice as well as to others. According to the Ministry of Justice website, its investment plan is linked to 2020/2030 vision; that is, it aims at increasing revenues and reducing expenses. During Parliament's discussion of the Ministry of Justice's 2022 budget, a representative of the Ministry

of Finance confirmed that the Ministry of Justice provides 300 to 350 million pounds for the budget annually, without telling us about the source of this amount. He also stated that most of the new court buildings are self-financed, including the construction of 12 court complexes at a cost of one billion and 750 million pounds, and also without specifying the source of that money. This confirms that the Ministry of Justice is working in the context of a restructuring program, and thus the judiciary is gradually turning into a commodity. This leads to critical consequences, the most important of which is limiting the work of the judiciary to those who are financially capable, and expelling the poor outside the justice system.

This paper aims to determine the impact extent of the significant increase in judicial fees on the right to justice as a basic human right. To reach this goal, we must address the concept of fees, their relationship to the right to litigation, the legislative structure that governs them, and the extent to which the increase in fees is consistent with the constitution and international conventions, and finally monitoring the types of fees increase in recent years, and the extent of the legitimacy of that increase.

The Principle of Free Justice:

Resorting to the judiciary is the right of every human being, regardless of financial capabilities. The judiciary is the proper way to enforce rights and arbitrate disputes. The governing principle of the right to litigation is free-of-charge justice, which means that judges receive their salaries from the State, and they are not permitted to receive any money from litigants, as the state is responsible for achieving justice. The ideal application for this would be for litigation to be free for all citizens, as paying any amount in exchange for resorting to the judiciary is considered a restriction of the right to litigation. However, this ideal application does not exist in reality. Legal scholars attribute this to many reasons, including reducing malicious lawsuits, contributing to the expenses of developing justice facilities, and reducing pressure on the courts. Despite the illogicality of these reasons since they are basically expected results that can be avoided or goals that can be reached, many policies can be put in place to achieve them other than charging the rights holders with financial sums, such as setting a penalty for abuse of the right to litigation, improving the legislative system to be more precise, and developing judicial institutions so that they become more efficient and more accomplished, in addition,

of course, to activating the principle that charges the losing party of the lawsuit of the expenses, since free-of-charge is the right of the right holder. Even if judicial fees are accepted in the context of maintaining efficient continuity of justice facilities, this does not mean in any way accepting fees as an obstacle to reach justice. The State is rather responsible for enabling those who are unable to access justice easily, by applying exemptions for those who are unable, and activating judicial assistance programs.

The work of the courts must remain far from investment standards. Achieving justice and resolving disputes over rights as a lofty goal for society is fundamentally different from the goal of investment, which turns the litigation process into an industry that generates money for the parties involved in it at the expense of the litigants. This methodology necessarily excludes those who are unable to do so. Expensed services are in fact a commodity for those who can afford it.

The Concept of Legal Fees:

According to the Ministry of Justice, fees are compulsorily collected by the State in exchange for a specific service. Judicial fees mean (the amounts collected by the State through the clerks' office in the courts from the lawsuit parties in exchange for benefiting from the services of the judicial facility, whether represented by adjudicating disputes or requesting taking action related to protecting the right of the applicant).

Fees are amounts paid in exchange for resorting to the judiciary to protect a right or a legal position, and are imposed by law that determines their value and collection method. However, this definition is not a clear concept of fees. The reason for it was explained, which is to benefit from the judicial service. However, it did not clarify its relationship to litigation. According to Egyptian law, fees are a condition for accepting lawsuits. There is no lawsuit without fees except what is excluded by a special text such as Article no.6 of the Labor Law, which exempts workers from fees in labor lawsuits. I believe that judicial fees, according to Egyptian law, are the amounts that litigants are obligated to pay in order for their lawsuit to be accepted and judicially considered, and are collected for the benefit of the State in order to partially maintain judicial facility's budget and ensure its continued efficient work.

Fees and the Right to Litigation in International Conventions:

The right to litigation is one of the rights recognized internationally in human rights conventions since the issuance of the Universal Declaration of Human Rights. The right to litigation is stated in Article no.8 of the Declaration, which stipulates: "Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law".

Resorting to the courts is a basic human right, and it stems from the right to justice, as it is the right that guarantees a person the enjoyment of his constitutional and legal rights, and protection from any violation to which he is exposed.

Article no.10 of the Declaration also stated that: "Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him".

The text clarifies the fundamental aspects of the right to litigation, which is the absolute equality between everyone without discrimination for any reason, especially discrimination against women, and that the court must be independent, impartial, and fair.

The right to litigation is stated in the International Covenant on Civil and Political Rights in Article no.14 of the Covenant: "All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law...etc." .

General Comment 32 of the International Covenant Committee regarding Article 14 detailed the aspects of the enjoyment of the right to litigation, the most important of which are:

- Complete equality between litigants before courts and judicial bodies.
- Enabling access to courts, equal legal opportunities, and ensuring indiscrimination.
- Exempting fees for lawsuit parties actually deprives them of access to justice.

In addition, the African Charter on Human Rights affirmed the right to litigation in Article 7/1 of the African Charter on Human Rights (the right to litigation is guaranteed to all...), which was repeated in all regional charters.

Recently, the United Nations General Assembly adopted the Guidelines on Access to Legal Aid in Criminal Justice Systems in December 2015, which set 17 goals for access to justice, including the right of everyone to have equal access to justice.

The seventh principle of the principles of independence of the judiciary also emphasized the state's financial responsibility in providing all capabilities that enable the judiciary to carry out its work efficiently, as it stipulated: "It is the duty of each Member State to provide adequate resources to enable the judiciary to properly perform its functions".

The human rights charters that are part of Egyptian law emphasize the right to litigation and the state's obligation to remove any obstacles to exercising that right, especially imposing fees that represent an obstacle to the poor preventing them from accessing justice. This is consistent with what was stipulated in the 2014 Egyptian Constitution.

Fees in Constitution and Law:

Article no.38 of the 2014 Egyptian Constitution established the rule governing the monetary amounts collected from citizens, namely taxes and fees, as it states: "The tax system, as well as other public liabilities, aim at developing State resources and achieving social justice and economic development. Public taxes may not be created, altered, or cancelled except by a law; and exemption therefrom may only be made in the cases defined by the law. No person may be required to pay other taxes or fees except as provided for in the Law".

According to this rule, judicial fees are imposed and their value is determined by law. In terms of violation, it is not permissible for any party or State institution, whatever it may be, to impose or collect fees from citizens outside the framework of the law. That is: the Prime Minister or any minister may not issue a decision that leads to monetary collection from citizens for any reason.

The principle is that only the law imposes fees that are paid for services, including judicial fees, and this is consistent with Article no.97 of the Constitution, which stipulates: "Litigation is a right that is safeguarded and an inalienable right for all. The State shall guarantee the accessibility of judicature for litigants and rapid adjudication on cases. It is prohibited to immunize any administrative act or decision from judicial review. No person may be tried except before the ordinary judge. Exceptional courts are prohibited".

According to this constitutional text, litigation is a constitutional right, and the state is responsible for enabling the citizen to access justice, bringing the parties of litigation closer together, and is responsible for the speedy settlement of judicial disputes, which means that it must develop policies that guarantee swift justice, that is, reduce the time for resolving judicial disputes.

This right is complemented by the text of Article no.98 of the Constitution that stipulates: "The right of defense either in person or by proxy is guaranteed. The independence of the legal profession and the protection of its rights is a guarantee for the right of defense. The law shall provide all means by which those who are financially unable can resort to justice and defend their rights".

This text confirms that the right to litigation is not an abstract right. The State is responsible for ensuring that the law enables those who are financially unable to exercise their rights. This means that the law includes exempting those who are unable from fees, and it must include enabling them to defend their rights.

Judicial fees are governed by several laws. The Basic Law is No. 90 of 1944 amended by Law No. 126 of 2009 regarding civil lawsuit fees. This law sets standards for calculating fees imposed on different types of cases. The law divides the collection of fees into three stages as follows:

First: It is paid to file the lawsuit, and it is one of its conditions. The lawsuit does not become valid until the prescribed fee is paid, and the fee is calculated according to the value of the lawsuit, meaning that the fee increases as the financial value of the lawsuit increases.

Second: It is paid during the course of the case, and means the fees imposed on the proceedings of the case, such as experts' fees and the transportation of witnesses.

Third: The loser of the lawsuit is bound by it, which is issued by the ruling, and is collected for all types of cases.

As for criminal lawsuits, they are subject to Law No. 93 of 1944, in addition to the laws that determine fees before the administrative judiciary, the Supreme Constitutional Court, and the family courts.

However, fees laws are not the only ones that impose sums of money for lawsuit fees, as there are a large number of laws that impose fees on lawsuits, the most important of which are Law No. 646 of 1953 regarding taxes statute of limitations, and Law No. 36 of 1975, which established a fund for health and social services, and these amounts are collected for the benefit of a specific fund in favor of members of judicial bodies, and Law No. 96 of 1980, which imposes an additional fee for courthouse, which is supposed to be allocated to the development of court complexes, and recently a law imposed by Law No. 16 of 2018 imposing a stamp allocated to the fund for the care of martyrs' families.

Government Practices Regarding Fees increase:

The government's will was clear to increase judicial fees, as one of the means of raising funds for the public treasury, after its full adoption of the International Monetary Fund program. There is no service without a price, even if the right to justice itself is a right that is supposed to be free of charge or with a token fee.

The government has tried more than once to follow the ordinary ways to increase fees, which is by amending fees law in order to the increase to be constitutional.

First attempt was in 2015 when a draft law was prepared, including placing a stamp worth ten pounds on every judicial paper. This project faced widespread objections, especially from lawyers.

The second attempt was in 2018 by preparing a comprehensive draft law to amend the judicial fees law. The project was actually submitted to Parliament after the Council of Ministers approved it, however, the project was not issued as a result of facing the same objections, especially since the project came in light of the economic

crisis aggravation, and the proposed increases constituted a major obstacle to the right to litigation.

The government resorted to achieving its goal of increasing fees by illegal ways such as issuing administrative decisions from court presidents and prosecutors, and imposing these fees on litigants in violation of the constitution. The increases included the imposition of fees for many legal procedures that were free of charge. These fees also differ from one court to another, making it difficult to monitor them all. Examples of the most important fees imposed administratively in the courts can be observed as follows:

- Photocopying fee for 5 pounds per paper, while according to the law, it is worth 30 to 50 piasters, up to a maximum of 100.
- Imposing fees for reviewing document portfolios from 10 to 20 pounds per paper, depending on the degree of litigation
- A fee for searching lawsuit dockets of 5 pounds, and the fee increases at a rate of 5 pounds for each year of the research.
- Payment of legal fees in advance of 75 pounds for each lawsuit, which was paid by the loser of the lawsuit in accordance with the law and was estimated according to the ruling issued in the lawsuit.
- The fee for photos with a watermark (automated) is 5 pounds and 2 pounds as for development fee. The fee increases according to the years of research. The fee also varies from one court to another according to the decision of the president of each court.
- A 7% fee on compensation claims that are rejected.

المحاكم الاقتصادية

(مستند رقم ١٠٠٠ ج ٢)

إيصال تحصيل

طريقة التحصيل	رقم القاتورة	إيصال رقم	رقم الشيك	الكلد المؤسسي	مملكة
نقدى	١٣٤٢٠٠٣-١٠٣	٢٢٢-٢٢-٢٢٢٠		١	مملكة القاهرة الاقتصادية

الخدمة (الوصف)	المستند من (الاسم ملحق الخدمة)	الخدمة (الوصف)	القيمة المبلغ
تفاصيل الأيصال <td>بيان المبالغ المحصلة <td>فرض <td>٠ </td></td></td>	بيان المبالغ المحصلة <td>فرض <td>٠ </td></td>	فرض <td>٠ </td>	٠
	خدمات <td>جنية <td>٠ </td></td>	جنية <td>٠ </td>	٠
	رسوم خدمة المحكمة <td>٢٣</td> <td>٠ </td>	٢٣	٠
	أصناف <td>١٠٦</td> <td>٠ </td>	١٠٦	٠
	أسر الشهود <td>٥</td> <td>٠ </td>	٥	٠
	مقرر <td>١٠٦</td> <td>٠ </td>	١٠٦	٠
	لرعاية واثان ولمانون جنية مصري فقط لا غير		٢١٢,٠٠

نسخة تقدم للمواطن

"A sample fee receipt for obtaining a copy of a ruling, noting that an automation fee of 212 pounds has been added, despite not using the service".

Most of these fees were free of charge, such as reviewing document portfolios and searching dockets, and they were much easier and faster than now. The increase in fees coincided with procedures that take a lot of time that is not included in the cost. For example, disclosing a case in the case docket used to take minutes, but now it takes days.

Societal Attempts to Confront Fees:

Large increases in fees represent a major problem for the justice system, especially litigants and lawyers. They also represent a major threat to the state in the long run. However, this State does not appear to be aware of or concerned with this danger. Lawyers in particular are leading the battle to confront the illegal increase in fees on two levels: the first is syndically, the second is judicial.

On the syndical level:

Lawyers have already been able to cease the issuance of two draft laws increasing judicial fees in 2015/2018. At the beginning of this year, the General Syndicate held a meeting with the Ministry of Justice to object to the increase in fees, especially electronic development fees. After that the Ministry of Justice announced, through a letter sent to the Bar Syndicate, that the electronic development fees are optional and not compulsory, and that the ministry will reconsider the union's other requests.

However, what was received from the Ministry of Justice has not been implemented in reality, and the courts are still collecting illegal fees.

On the level of Litigation:

Lawyers resorted to the Judiciary to confront fees increase, especially those fees imposed by courts presidents. Many judicial lawsuits were filed appealing on the decisions of courts presidents. Many rulings have also been issued abolishing decisions of courts presidents who ruled illegal fees. Examples of these rulings include:

- Appeal No. 2969 of the judicial year no.27 from the Ismailia Administrative Court to cancel the decision no. 2 of 2022 of the President of the Ismailia Court of Appeal.
- The Court of Cassation ruled that no fees were due on the lawsuits that were ruled to be rejected, and the ruling was issued in Appeal No. 4510 of the judicial year no. 87.
- The Mansoura Administrative Court ruled to cancel the decision of the Public Prosecutions Department to impose fees on issuing executive forms, copies of rulings, legal declarations, and certificate fees, in Appeal No. 6955 of the judicial year no.43.

These are mere examples of dozens of lawsuits filed to appeal on decisions increasing fees in various governorates. However, the rulings issued are executed in favor of the people to whom they were issued. This is a strange, illogical and of course unconstitutional rule. The administrative decision ruled to be cancelled becomes non-existent as if it had never been issued, so how can it be implemented despite its cancellation? The answer is that the State places fund collection as a priority to everything else, including the law.

Conclusion:

Increasing judicial fees in Egypt is a flagrant violation of the right to litigation recognized by international conventions and the 2014 Egyptian Constitution, and a clear violation of the law. Increasing fees, by administrative decisions of the heads of courts and prosecutors is illegal, a serious violation of the constitution and the

law, and represents a violation of the right to access justice. Certainly, this illegal policy constitutes a violation of the right of the poor to litigate by creating obstacles that prevent them from accessing justice and judicial redress. The Ministry of Justice must take immediate action to stop those measures that threaten social stability, and in particular must:

First:

Immediately abolish all fees imposed by administrative decisions from the heads of courts and prosecutions.

Second:

Suspend the powers of courts heads and prosecutions to impose fees on legal work in the courts.

Third:

The Ministry of Justice must fully adhere to the Constitution and the law in applying judicial fees.

Fourth:

The need for the Bar Association to intervene with the Ministry of Justice, and to use all legitimate means to abolish the illegal increase in judicial fees.