

UNDERMINING THE INDEPENDENCE OF THE JUDICIARY IN EGYPT TEN YEARS OF TARGETING (2013–2023)

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Introduction:

The principle of judicial independence in the international legitimacy of human rights is associated with the principle of justice and the right to redress, which is confirmed by Article no. 14/1 of the International Covenant on Civil and Political Rights, which stipulates that “All persons shall be equal before the courts and tribunals”. The Covenant also affirmed that “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”. The Covenant Committee also affirmed that the right to trial before an independent and impartial court is an absolute right that applies in all circumstances without exception.

Article no. 7/1 of the African Charter on Human Rights also affirmed the same principle, and so is Article no. 26 of the Charter which stipulated that “States parties to the present Charter shall have the duty to guarantee the independence of the courts” In the same context came Article no. 8/1 of the American Convention on Human Rights, as well as Article no. 6/1 of the European Convention on Human Rights.

All of these covenants confirm this established principle in the international law, and Article no. 10 of the International Covenant, which stipulates: “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”.

As for the most important measure of the principle of judicial independence, they are the basic principles issued by the Seventh United Nations Congress on the Prevention of Crime in 1985. Which were unanimously approved by the United Nations General Assembly. These principles include the basic standards for the independence of the judiciary, which guarantee the right to a fair trial, starting with institutional independence, and the right to freedom of expression and association, determining the qualifications that judges must have, the methods of their selection and training, the immunity of judges, and other principles that represent the minimum guarantee of Judicial independence.

Despite the stability of the principle of judicial independence in human rights charters, and its association with the right to redress and fair trial, the judiciary is the weakest component of the three state authorities, in addition to the executive and legislative ones. Although the principle of judicial independence is one of the established principles in democratic political systems, the conflict between the three authorities is often biased toward the executive authority as it possesses elements of power that are not available to the judicial authority. The conflict between the three authorities continues in one form or another, regardless of the political situation. However, it undoubtedly increases in periods of political tension. Obviously, in the case of dictatorial authority, which always works to dominate all power while leaving limited spaces for the judiciary and legislation, the spaces that give the image of democracy come void of its real content.

Along its history, the Egyptian judiciary has been fighting through many battles to achieve complete independence from the executive authority. His long battle, extending from 2000 to

2014, is one of the most important of those battles, which was almost reaching its goal more than once. That period witnessed a significant increase in the movement of judges, and the multiplicity of tools and methods they used, especially after the 2005 parliamentary elections. The movement crystallized a strong leadership represented in the Independence Current, which took the Judges Club as a pillar of the movement. The Independence Current led the masses of judges through many small battles related to its supervisory role over the elections, and exposing political corruption during that stage. Many massive public conferences were also held demanding for the independence of the judiciary as a guarantee of justice and a fundamental interest for the people as a whole and not just for judges, which won them wide areas of popular solidarity. This solidarity encouraged it to use opposition tools of political nature, such as sit-ins and marches, until the January 25 Revolution came, making the independence of the judiciary one of its basic demands. The revolution and its aftermath represented a new phase after which the judges' movement witnessed a significant rise followed by a decline commensurate with the decline of the social movements in general, where the judiciary was subjected to an organized process of control by the executive authority. The basic question raised by this paper is: To where has the demand for judicial independence far reached during the last ten years?

To answer that question, we must address the outcome of the judicial independence movement, which was embodied in an integrated draft law guaranteeing the independence of the judiciary, as an introduction to understanding the current situation. Then we must address the status of the judiciary in the 2014 Constitution, then discuss the interventions of the executive authority to control the judiciary through dominating the supreme courts, and finally addressing Constitutional amendments of 2019 and their impact on the independence of the judiciary.

Judicial Independence Draft Law of 2013:

During the years preceding January Revolution, the Independence Current formed a committee to draft a law for the independence of the judiciary. This was met with the Supreme Judicial Council submitting another corresponding draft. The debate between the two projects continued after the January Revolution, when the Minister of Justice then, Ahmed Mekki, adopted the Judges Club project after amending it through a committee of the Supreme Judicial Council. This committee is responsible, within its work, to listen to all stakeholders and review all the other projects. On the other hand, the Judges Club, headed by Counselor Ahmed Al-Zind, presented another project. Aside from the controversy between the different projects, which was a reflection of the political controversy taking place during that phase, the reality is that we are facing only two projects; The first is the Judicial Independence Project, which aims to ensure the greatest degree of independence from the executive authority, and the second represents the government with the aim of increasing control over the judiciary, despite that it was presented through some judges.

The most important features of the independence project can be summed up as follows:

First: stopping assigning and seconding judges, such as the secondment of judges to ministries and public bodies, and secondment to external parties. The thing that allows them to be granted significant financial advantages that exceed what bench judges receive, creating an undesirable struggle between them over financial advantages, and fierce competition for secondments and

assignments. This quite represents a tool for interference in the affairs of the judiciary. Therefore, stopping assignments and secondments was one of the most important demands supporting the independence of the judiciary.

Second: diminishing the influence of the Ministry of Justice by transferring financial, administrative, and oversight supervision to the Supreme Judicial Council, which ensures complete institutional independence so that all judges' affairs are within the judicial institution, especially the judicial inspection. This inspection is responsible for evaluating judges and holding them accountable, representing the stick through which influence can be made against them, impugning their independence.

Third: The Supreme Judicial Council is to be formed by an elected majority, which paves the way for the most qualified among the judges to represent them in the Supreme Judicial Council through a democratic mechanism, and ensures a balance between the criterion of seniority and the democracy of managing judicial affairs.

The judges tried to promulgate the law through a decree law from the Military Council. However, the attempt did not succeed due to a dispute with the Bar Association, which considered the project as a diminishment of lawyers' immunity during hearings. Accordingly, the project was postponed pending an elected parliament.

On the other hand, the government project represented the counter face of independence, which was presented through various means, whether through the Supreme Judicial Council before 2011 or through the Judges Club, headed by Counselor Ahmed Al-Zind after 2011. The last and most dangerous attempt was the one in 2013.

The Last Attempt of 2013:

The government, represented in the Ministry of Justice, presented a draft law for the judiciary under the slogan (purifying the judiciary). This was amid an escalating political conflict, which coincided with the growing mass movement against the authority of the Muslim Brotherhood. This authority worked to gain complete control over the judiciary, and this was evident in the famous Constitutional Declaration of November 2012, which sparked a strong and growing opposition movement against this authoritarian tendency, as it included the protecting the decisions of the President of the Republic.

These conditions were completely unfavorable for issuing a law of this importance, especially in light of the Brotherhood's control over Parliament at this time. The project faced great opposition as soon as it was presented in April 2013 without being presented to the judges. The judges announced their rejection to the project, and some of them threatened to hold a sit-in at the Judges Club. Minister of Justice Counselor Ahmed Mekki also submitted his resignation in objection to the project, which he described as an attack on the independence of the judiciary. The ruling of the Supreme Constitutional Court came invalidating the Parliament to block the way for the draft law.

An Attempt to Support Judicial Independence in 2014 Constitution:

The 2014 Constitution addressed judicial authority in Articles 185 to 191, including the most important standards for judicial independence, beginning with an explicit stipulation of independence in general articles: “The judiciary is independent. It is vested in the courts of justice of different types and degrees, which issue their judgments in accordance with the law. Its powers are defined by law. Interference in judicial affairs or in proceedings is a crime to which no statute of limitations may be applied”.

Passing through the stipulation of institutional independence in Article 185: “All judicial bodies administer their own affairs. Each has an independent budget; whose items are all discussed by the House of Representatives. After approving each budget, it is incorporated in the state budget as a single figure, and their opinion is consulted on the draft laws governing their affairs”.

The text is flawed by combining judicial bodies that represent an independent authority, such as the general judicial courts and the administrative judiciary, with judicial bodies, which by their nature do not fall within the judicial authority, as they are practically governmental bodies same as the State Litigation Authority, which undertakes the pleading of cases filed against the government, and the administrative prosecution specialized in investigating cases of financial and administrative corruption. This confusion was the subject of a long legal controversy, and witnessed a debate between the Court of Cassation in Appeals No. 949 and 959 of 2000. It restricted the concept of “judicial” to the bodies that undertake ruling in cases affiliated with the judicial authority as an independent authority, and stripped the “judicial” status of governmental bodies affiliated with the government by nature. The Constitutional Court disagreed with that interpretation in Interpretive Decision No. 3 of Judicial Year 26 of 2004. It interpreted the status of judicial bodies such as the State Lawsuits Authority and the Administrative Prosecution as being part of the Egyptian judicial system, where they contribute, by virtue of their legal jurisdiction, to establishing justice. This judicial debate reflects the fact of the political controversial during that stage. However, it is certain that the ruling of the Court of Cassation was the correct interpretation of the distinction between the independent judiciary and bodies that are governmental in nature.

Article 186 came. By stipulating the autonomy of judges (judges are independent and not subject to removal. They have no authority over their work other than the law, and they are equal in rights and duties. The law determines the conditions and procedures for their appointment, secondment, and retirement, and regulates their disciplinary accountability. They may not be delegated, in whole or in part, except to entities and for works which are determined by the law, all in a way that preserves the independence and impartiality of the judiciary and judges and prevents conflicts of interest. The law sets forth the rights, duties and guarantees assigned to them).

The article included assignment and secondment, contrary to the judges’ demands to completely abolish assignment and secondment.

Article 188 came. By stipulating the Supreme Judicial Council to be responsible for managing judicial affairs : (The judiciary adjudicates all disputes and crimes except for matters over which another judicial body is competent. Only the judiciary settles any disputes relating to the affairs of



its members, and its affairs are managed by a higher council whose structure and mandate are organized by law).

Article no. 189 came to preserve the Public Prosecution's existing role; investigating, pressing charges and prosecuting all criminal cases except what is exempted by law. The law establishes the public prosecution's other competencies. Public prosecution is carried out by a Prosecutor General who is selected by the Supreme Judicial Council.

Article no.190 addressed the State Council, which is the body responsible for administrative judiciary as it stipulates: (The State Council is an independent judicial body that is exclusively competent to adjudicate in administrative disputes, disciplinary cases and appeals, and disputes pertaining to its decisions. It also solely competent to issue opinions on the legal issues of bodies to be determined by law, review and draft bills and resolutions of a legislative character, and review draft contracts to which the state or any public entity is a party. Other competencies are to be determined by law).

The text preserved the jurisdictions of the State Council as an independent judicial body, specialized in administrative judiciary, particularly its role in reviewing legislations submitted by the government to the Parliament, and reviewing contracts conducted by the state to ensure their legal integrity, especially after the revolution aftermath witnessed rulings invalidating many contracts conducted by the state during the implementation of The restructuring program known as "Privatization".

The Constitution addressed the Supreme Constitutional Court in Article No. 191, affirming the independence of the court as an independent judicial body, The Court's General Assembly is responsible for governing the Court's affairs. Then its jurisdiction was defined in Article no.192as follows: "The Supreme Constitutional Court is exclusively competent to decide on the constitutionality of laws and regulations, interpret legislative texts, and adjudicate in rulings as well as judicial jurisdiction disputes".

We can say that the 2014 Constitution included most of the demands of the judiciary that ensure its independence, except for assignment and secondment. However, the constitutional texts were not applied per se. The constitutional articles referred all regulatory affairs to the ordinary law issued by the legislative authority, which represents the major loophole that allows the executive authority to control the judiciary through ordinary laws. Even if legislations violated the Constitution, changing it requires a very long time, starting with enforcing the legal text, then appealing the unconstitutionality through a filed case, accepting the argument from the judge hearing the case, and then referring it to the Constitutional Court, the thing that may take years to examine. Indeed, laws were issued diminishing the independence of the judiciary in violation of the Constitution, as will be discussed later.

The Attack on the Independence of the Judiciary after 2014 Constitution: The Beginning:

The Supreme courts in the Egyptian judicial system, namely the Courts of Cassation and the Supreme Administrative Courts, represent the supervisory role on the extent of the executive authority's commitment to the law in its application in the public judiciary, and its performance



towards administrative decisions. The cassation judiciary is based on the accumulation of legal principles that have been established from the frequency of its rulings in various cases, and its interpretation of legal texts, which has established, over a long time, public freedoms and the protection of citizens from power abuse.

As for the administrative judiciary, on top of which the Supreme Administrative Court falls; it is essentially a legitimate judiciary, and its frequent rulings gain great importance in explaining the actions and behavior of the authority and the extent of its commitment to the law through its administrative decisions. The administrative judiciary represents a source of protection for citizens from illegal decisions against them, and prevents executive authority from arbitrariness in its decisions.

During the last ten years, the Supreme Courts played a major role in protecting rights and freedoms, as the Court of Cassation ruled to invalidate the mass death sentences that were issued at in a large scale during the past ten years. It also ruled invalidation due to the absence of fair trial guarantees and the inadequacy of police investigations reports as evidences of conviction.

The Supreme Administrative Court also ruled the invalidation of many of the government's decisions, most notably the ruling that invalidated the government's transfer of Tayaran and Sanafir islands to Kingdom of Saudi Arabia, ruling that the two islands belong to Egypt and that their relinquishment was illegal as they are part of the geographical territory of Egypt.

The supervisory role of the Supreme Courts represented a nuisance to the executive authority, which has worked to impose one voice and one opinion under its favorite slogan: "Join Hands". Therefore, the executive authority worked to impose its control over the supreme courts through two basic steps during the last ten years. The first step was issuing Law No. 13 of 2017, and the second was amending some articles of 2019 Constitution.

1- Issuance of Law No. 13 of 2017 Pertaining the Mechanism of Appointing Supreme Courts' Presidents:

Judicial custom has established the application of the principle of seniority in appointing court presidents, since seniority is a neutral principle that avoids judges engaging in conflicts over positions. This principle has remained stable throughout modern Egyptian judicial history, especially after the establishment of the Court of Cassation in 1931. However, this situation began to change since 2017 with the issuance of law no. 13 of 2017.

The law included amendments to several articles pertaining entities and judicial bodies, and relating to the appointment of judicial bodies' heads, which are the Court of Cassation and the State Council, and judicial bodies, which are the Administrative Prosecution and the Egyptian State Lawsuits Authority. The amendments were as follows:

Article no. 35 of the Administrative Prosecution Authority (APA) Law No. 117 of 1958 is the article pertaining the appointment of the Administrative Prosecution head. The amendment included that the head of the Authority shall be appointed by the President of the Republic,



where the Authority Head-to-be is chosen from three of his deputies nominated by the Supreme Council of the Authority from among the seven oldest vice-presidents.

Amending article no. 16 of the State Lawsuit Authority law no. 75 of 1963, where the head of the Authority shall be appointed by the President of the Republic decision, where the Authority Head-to-be is chosen from three of his deputies nominated by the Supreme Council of the Authority from among the seven oldest vice-presidents.

Amending Article no. 44 of the Judicial Authority Law No. 46 of 1972, where the head of the Authority shall be appointed by the President of the Republic decision and the Authority Head-to-be is chosen from three of his deputies nominated by the Supreme Judicial Council from among the seven oldest vice-presidents.

Amending Article no. 47 of State Council Law No. 47 of 1972, so that the appointment of the President of the Council shall be by decision of the President of the Republic from among three of his deputies nominated by the General Assembly of the Council from among the seven oldest vice-presidents.

This law came with a strange legislative paradox: combining the judicial bodies that represent judicial authority, which is the general judiciary, on top of which is the Court of Cassation, and the administrative judiciary, on top of which is the Supreme Administrative Court, with judicial bodies that by their nature are subordinate to the executive authority, such as the State Lawsuit Authority which is responsible for pleading in cases filed against government agencies, and the administrative prosecution responsible for investigating administrative corruption cases. There is a big difference between judicial bodies that represent one of the three state authorities, and between judicial bodies that do not belong to the judicial authority, as previously discussed. This paradox revealed the tendency of the executive authority to deal with the judiciary as a public utility and not one of the state authorities.

The law gave the executive authority the authority to appoint the President of the Court of Cassation and the President of the Council of State to the President of the Republic, where he chooses from among the three most senior deputies to the President of the Court. Thus, the seniority criterion, the only objective criterion for filling senior judicial positions for the first time, was suspended, after it had been the prevailing criterion throughout the history of the court. Appointing The Egyptian Supreme Courts' heads by the President of the Republic was a quite revealing decision, while the new law granted the President of the Republic actual authority to appoint the heads of the Supreme Courts from among three candidates. For the first time now, the President of the Republic has the right to exclude the person with seniority, which certainly contradicts the principle of Separating Powers, which means the independence of the judiciary in all its institutional affairs.

The law was widely rejected by judges. It has been issued without presenting it to the judges, in violation of Article no. 158 of the Constitution. The Parliament approved the law after presenting it to a public session and voting on it without hearing opposition representatives' opinion on the law.



After passing the amendments, the Judges Club issued a statement in which it called on the President of the Republic to cease signing the law. The judges called for an emergency general assembly on May 5, 2017 to protest the law. The Supreme Judicial Council and the General Assembly of the State Council also objected and officially announced their rejection of the law.

Despite all the significant stakeholders' objections to the law, its enforcement started two months later by the retirement of the President of the Court of Cassation. The Supreme Judicial Council nominated the three oldest deputies to the President of the Court. And the President of the Republic appointed the second candidate in the seniority order, deviating, for the first time, from the principle of Seniority by bypassing the First Vice President of the Court of Cassation, Judge Anas Emara, as well as violating 2014 constitution.

For the second time, in May of the same year, and after the President of the State Council retired, and at the General Assembly meeting of the State Council on May 13, 2017 held to select three candidates, the General Assembly presented one candidate according to the principle of seniority, who is the First Vice President of the State Council, however, the President of the Republic issued a decision appointing the fourth deputy in the seniority order, in a clear violation to the same law. Some observers believed that the decision of the President of the Republic at that time was primarily aimed at overriding the appointment of the First Vice-President of the State Council at the time, Judge Yahya Dakrouri, as the latter issued number of judicial rulings that could be considered as opposing the political system. The most important of these rulings was what was issued on June 21, 2016, invalidating the demarcation of maritime borders agreement between Egypt and Saudi Arabia regarding the islands of Tiran and Sanafir, and thus continuing Egyptian sovereignty over them. It goes without saying; Judge Yahya Dakrouri was the head of the Administrative Judiciary Court that issued this ruling.

Law no. 13 of 2017 lasted only two years, as the judiciary was subjected to a greater attack, this time at the level of the constitution itself. For the first time, the executive authority had almost a complete institutional control over the judiciary.

2- Amending Some Articles of 2019 Constitution Pertaining the Rules for Appointing Presidents of the Supreme Courts:

In an attempt to halt the objections to the amendments pertaining the mechanism of selecting and appointing heads of judicial bodies by Law No. 13 of 2017, and to avoid challenging it before the Constitutional Court, the authorities went on fortifying this flawed law, by giving it a constitutional cover, stipulating those amendments in the text of the constitution itself, which was modified for this and other purposes.

The 2019 amendments to the 2014 Constitution included depriving the judiciary from their established powers, by the executive authority, represented in the President of the Republic. The most important of these amendments are:

- 1- Amending Article No. 158 of the Constitution so that the heads of judicial bodies shall be appointed by decision of the President of the Republic from among the seven most senior of their deputies.



The amendment revived the Supreme Council of Judicial Authority, the council whose existence had long been opposed by judges, and was abolished due to its ineffectiveness. The Council is headed by the President of the Republic, and the membership of the President of the Supreme Constitutional Court, the heads of judicial authorities and bodies, the President of the Cairo Court of Appeal, and the Public Prosecutor, where it will have a Secretary-General appointed by the President of the Republic decision. This Council is responsible for joint affairs, reviewing the conditions of appointing, promoting, and disciplining members of judicial authorities and bodies. Its opinion is taken into account on draft laws regulating the affairs of these authorities, and its decisions are issued with the approval of the majority of its members, including the President of the Council.

Thus, the head of the executive authority is the same as the head of the Supreme Council of Judicial Authorities, with its broad powers and jurisdiction, by which eventually, the executive authority has a complete control over the judiciary.

- 2- Amending Article No. 189 to take away the authority of appointing the Public Prosecutor from the Supreme Judicial Council, delegating it to a presidential decision, where the President of the Republic chooses from among three nominees from the Supreme Judicial Council from among the Deputy Presidents of the Court of Cassation, the Presidents of the Courts of Appeal, and the Assistant Public Prosecutors.
- 3- Amending Article no. 190 pertaining the State Council, where submitting draft laws to the State Council has become optional for the government after been mandatory. The government is also no longer obligated to let the State Council review the contracts conducted by itself.
- 4- Amending Article no. 193 pertaining the Supreme Constitutional Court, and the amendment that took away the authority of appointing the President of the Court- from among the three most senior deputies- from the General Assembly of the Court. The appointment of the President of the Court became up to the President of the Republic, from among the five most senior deputies to the President of the Court. Thus the President of the Republic became empowered to appoint the Deputy Presidents of the Court, the commissioners of the court, whereby the executive authority becomes completely dominant of the formation of the court.

What Do These Amendments Mean?

The short answer to the question is: the dominance of the executive authority over the judicial authority, such that the constitutional articles stipulating the independence of the judiciary become merely a slogan devoid of the real content of independence starting from:

- The institutional revive of the “Supreme Council of Judicial Bodies,” which is assigned to appointing, promoting, and punishing judges, and which brings together the administrative judicial bodies with the judicial bodies that represent the judiciary. This entity is headed by the head of the executive authority, and has a Secretary-General chosen by the President



of the Republic, and his decisions are issued by the majority, provided the approval of his boss, who is the President of the Republic.

- Granting broad authority to the head of the executive authority in terms of appointing heads of judicial authorities from among the seven most senior deputies, a power that not only eliminates the principle of seniority, but also expands to a degree beyond Law No. 13 of 2017, which gave the President of the Republic the authority to appoint the heads of judicial authorities from among three candidates.
- The appointment of the Public Prosecutor, which is a high position as he heads the Public Prosecution, has become the authority of the President of the Republic from among three nominees from the deputies of the Court of Cassation, the presidents of the Courts of Appeal, and the assistant deputies, after he was appointed by the Supreme Judicial Council.
- The executive authority has the entire power over appointment of judges of the Constitutional Court, starting with the President of the Court and his deputies, all the way to the Court's Commissioners.

After the constitutional amendments, Article no. 44 of the Judicial Authority Law No. 46 of 1972 was amended, so that the President of the Court of Cassation is to be appointed by a decision of the President of the Republic from among the seven most senior deputies to the President of the Court.

These amendments represented a major obstacle to the independence of the judiciary. The 2013 draft law was the last integrated draft law for the Judicial Authority. After that, the executive authority followed another method, which was to intervene with limited amendments to the existing Judicial Authority Law No. 46 of 1972. These amendments were primarily aimed at controlling the Supreme Courts to limit their oversight role. The 2017 amendment was the first attempt to control the Supreme Courts, which contradicts 2014 Constitution. It was also subject to widespread criticism by judges. The biggest attack was to amend the Judicial Authority Law, however, after amending the Constitution itself, whereby the amendment to the Judicial Authority Law is based on a constitutional basis, even if this basis violates the basic principles of judicial independence.

The Impact of Legislative Interventions after 2019 on the Independence of the Supreme Courts in Egypt:

In order to implement and enforce the constitutional amendments made in 2019 pertaining the Judicial Authority, Law No. 77 of 2019 was issued, amending Judicial Authority Law No. 46 of 1972, and State Council Law No. 47 of 1972. In addition to the laws of the Administrative Prosecution and the State Lawsuit Authority, so that the laws were compatible with the constitutional amendments, especially: Article no. 44, Article no.119 (first paragraph of the Judicial Authority Law), Article 83, (first, second and third paragraphs of the Law Organizing the State Council). This came after granting these legislations the necessary constitutional cover to protect from being challenged before the Constitutional Court. Accordingly, the current status of the Supreme Courts and the Judicial Council becomes as follows:



- **Court of Cassation:**

The position of the President of the Court of Cassation was subject to the Judicial Authority Law No. 46 of 1972. The Supreme Judicial Council is responsible for running the affairs of the ordinary judiciary, and is in charge of all the affairs of judges and courts of all levels. Its most important powers are the promotion of judges and the appointment of presidents of courts, including the Court of Cassation, while adopting the principle of seniority.

The current situation after the 2019 amendments to the Constitution and the subsequent issuance of Law No. 77 of 2019 has become that the appointment of the President of the Court of Cassation, who heads the Supreme Judicial Council, is subject to the authority of the President of the Republic from among the seven most senior deputies to the President of the Court without comment or review.

This led to granting the executive authority, represented in the President of the Republic, a broad authority to appoint the president of the highest court in the public judiciary, who subsequently occupies the presidency of the Supreme Judicial Council, which detracts from the independence of the judiciary and is considered a potential interference in its affairs.

- **State Council:**

The State Council Organization Law No. 165 of 1955 stipulates that the Privy Council stipulated in Article No. 57 shall assume responsibility for managing the administrative affairs of the State Council, and the Council has a general assembly with general jurisdiction over the Council's affairs, including the promotion of judges and filling senior positions in accordance with the principle of seniority.

The current situation after 2019 constitutional amendments and the subsequent issuance of Law No. 77 of 2019 is that the position of President of the Council, which heads the Supreme Administrative Court, falls under the jurisdiction of the President of the Republic, among the seven most senior vice-presidents of the Council, without review by any party.

This led to granting the Executive Authority, represented in the President of the Republic, a broad authority to appoint the President of the State Council, who holds the position of President of the Supreme Administrative Court, subsequently leading to the position of President of the Privy Council assigned to manage the affairs of the Administrative Courts, and the entire State Council.

- **The Supreme Constitutional Court:**

Constitutional Court Law No. 48 of 1979 gave the President of the Republic the authority to appoint the President of the Court, from among the five most senior deputies to the President of the Court, as well as to appoint the Vice President.



The current situation, after the constitutional amendments, is that the President of the Republic appoints the President of the Court, the Vice-Presidents, and the Board of Commissioners, so that all positions in the Court are under the complete authority of the President of the Republic.

This led to granting the executive authority, represented in the President of the Republic, the power to appoint all the senior positions in the court, starting with the president of the court, passing through the vice presidents, all the way to appointing the court's commissioners. This situation represents a violation of the independence of the court, and is considered a potential interference in its work.

- **The Position of Public Prosecutor:**

The position of Public Prosecutor, who heads the Public Prosecution, was subject to Judicial Authority Law No. 46 of 1972, where the prosecutor was chosen by the Supreme Judicial Council, with his appointment issued by a decision of the President of the Republic, and the Republican decision is considered to reveal the decision of the Supreme Judicial Council.

In the current situation, the Public Prosecutor is appointed by a decision of the President of the Republic from among three nominated by the Supreme Judicial Council after being appointed by the Council.

This means a prevailing control of the executive authority over the public prosecutor position appointment, which is one of the most important and critical positions in the Judiciary, represented in delegating the appointment decision to the President of the Republic, which affects the independence of the Public Prosecution and is considered a potential interference in its affairs.

- **The Supreme Council Of Judicial Bodies and Authorities:**

The Council was established for the first time by Law No. 82 of 1969. It was headed by the President of the Republic, and the powers of the Supreme Judicial Council and the Privy Council of the State Council were transferred to him, in addition to the Advisory Council for Prosecutions.

The Council met with strong opposition from judges because it violates the independence of the judiciary, as it combines judicial bodies with bodies that are non-judicial in nature, such as the Administrative Prosecution and the State Lawsuits Authority, which gives governmental bodies dominance over the judiciary.

The dispute over the Supreme Council continued until it was abolished by Law No. 35 of 1984. Its first article stipulated the formation of the Supreme Judicial Council, which would include the President of the Court of Cassation, the two most senior deputies of the Court of Cassation, the two most senior presidents of the Courts of Appeal, and the Public Prosecutor. Article Three stipulated that the Supreme Judicial Council would replace the Supreme Council of the Judiciary, and thus the Supreme Council was abolished.



Then came President Mubarak restoring the Supreme Council of Judicial Bodies by Law No. 192 of 2008, and heading it, with the membership of the Minister of Justice, and the heads of judicial agencies and bodies. However, unlike the previous Council, it stipulated in the terms of reference that it should not affect the powers of the Supreme Councils of Judicial Bodies.

This time, the Council was a response from the executive authority to the judicial independence movement that escalated after the 2005 parliamentary elections. But this Council did not act, and authority was actually vested in the Supreme Councils of the Judicial Bodies, and the situation remained as it was until it was effectively abolished after the 2012 and 2014 Constitution.

After the 2019 amendments, the judiciary is now subject in a large part of its powers and jurisdictions to the Supreme Council, which includes government judicial bodies with judicial authorities, and is headed by the President of the Republic, who heads the executive authority. The Council includes a majority of bodies that are not judicial in nature, according to the meaning defined by the Court of Cassation.

This means that the Supreme Council, with its structure and jurisdiction, bringing together all the supreme councils of judicial authorities and bodies, undermines the independence of the judiciary and opens the door to interference in its affairs.

Conclusion:

Over the past ten years, the Egyptian authorities were able to issue a number of legislations and constitutional amendments, which enabled the President of the Republic to have the absolute power to select and appoint the heads of the supreme judicial councils (the Court of Cassation - the Constitutional Court - the State Council - the Military Judiciary), then gather them all together in One organizational entity (the Supreme Council of Judicial Bodies) headed by himself.

This represents a clear interference and violation of the principle of judicial independence, which is based on several pillars, the most important of which is: Judicial bodies shall administer their affairs without interference or unjustified control from the executive authority in their work, in accordance with international conventions concerned with the independence of the judiciary, as well as the comments of the United Nations Human Rights Committee, in addition to the United Nations basic principles regarding the independence of the judiciary issued by the General Assembly in 1984.

Recommendations:

For the purpose of ensuring the minimum guarantees that support and enhance the independence of the judiciary in Egypt, and its compatibility with relevant international standards, charters and treaties that have been ratified by the Arab Republic of Egypt and have become part of domestic law, we recommend the following:

- 1- Abolition and dissolution of the Supreme Council of Judicial Bodies, which is subject to the presidency of the President of the Republic, due to this formation's suspicion of influencing the directions and decisions of the Supreme Councils of Courts.
- 2- Suspending Law No. 77 of 2019 and resuming the selection of the President of the Court of Cassation on the absolute seniority basis for the oldest member of the Supreme Judicial Council, with the President of the Republic issuing a decision to appoint him.
- 3- The President of the Constitutional Court is chosen after the approval of the Court's General Assembly, according to the absolute seniority rule for members of the General Assembly, with the President of the Republic issuing a decision appointing him.
- 4- Suspending Law No. 77 of 2019, pertaining the method of selecting and appointing the President of the State Council, provided that the selection and appointment of the President of the State Council (President of the Privy Council) is based on the absolute seniority of the members of the Council. The President of the Republic issues a decision appointing him.
- 5- The Public Prosecutor is chosen from among the deputy presidents of the Courts of Appeal, the first public defenders, or the councilor of the Court of Cassation according to absolute seniority, after the approval of the Supreme Judicial Council, and the President of the Republic issuing a decision appointing him.



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