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# **The Egyptian Legal System**

## **an inside look**

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## **Introduction**

The Arab Republic of Egypt (Egypt) lies in the northeastern part of Africa. Whilst most of the country lies in Africa, the eastern most part, the Sinai Peninsula, is considered part of Asia and is the only land bridge between the two continents. Egypt is divided into two unequal parts by the Nile River, and its terrain is mostly desert except for the Valley and Delta of the Nile, the most extensive oasis on earth and one of the main centers of habitation in Egypt. Whilst Cairo is the largest city and the capital of Egypt, Alexandria remains the principal port of Egypt on the Mediterranean and the second biggest city.

With an area of more than one million square kilometers (1001450 sq km), Egypt prides itself in having extensive borders: to the west is Libya, to the south is Sudan, to the northeast are Israel and the Gaza strip, to the north is Mediterranean Sea, and to the east is the Red Sea.

Egypt is the sixteenth most populous country in the world with a population of 78.8 million people (2006); not surprisingly most of the population is concentrated near the banks of the Nile River which amounts to about 40,000 sq km, leaving about 961450 sq km uninhabited. This is due to the fact that the land near the banks of the Nile is only arable agricultural land in Egypt. However, there are ongoing efforts of urban development and populating the desert in order to reduce the heavy concentration of the population along the Nile.

Egypt actually has been a coherent political entity since 3200 B.C. and one of the first civilizations to develop irrigated agriculture, urban life, and large scale political structures.

On the muddy banks of the Nile, the oldest political and administrative systems were established when Egypt's first central state was established. These systems have gone a long way and are now used in the institutions and modern administrative systems as well as the formulas of constitution, parliament, responsible government and judicial authority since the 19<sup>th</sup> century. At the present time, Egypt is making history again by creating a new phase of economic development and reform, ascertaining political and democratic authority and practices, enhancing freedoms and adhering to the rule of law, and respecting human rights.

## **The Egyptian Legal System**

The Egyptian legal system is built on the combination of Islamic (*Shariah*) law and Napoleonic Code, which was first introduced during Napoleon Bonaparte's occupation of Egypt and the subsequent education and training of Egyptian jurists in France.

The Egyptian legal system, being considered as a civil law system, is based upon a well-established system of codified laws. Egypt's supreme law is its written constitution. With respect to transactions between natural persons or legal entities, the most important legislation is the Egyptian Civil Code of 1948 (the "ECC") which remains the main source of legal rules applicable to contracts. Much of the ECC is based upon the French Civil Code and, to a lesser extent, upon various other European codes and upon Islamic (*Shariah*) law (especially in the context of personal status).

Despite the non-existence of an established system of legally (*de jure*) binding precedents, previous judicial decisions do have persuasive authority. Courts are morally and practically bound (*de facto* binding effect) by the principles and precedents of the Court of Cassation (for civil, commercial, and criminal matters) and the Supreme Administrative Court (for administrative and other public law matters).

It is worth noting that the classical dichotomy of public and private law has resulted in the crystallization of a separate set of legal rules applicable to transactions involving the State (or any of its institutions, subsidiaries, or state-owned enterprises) acting as a sovereign power. This entailed the establishment of the Egyptian Council of State (*Conseil d'Etat*), which are administrative courts vested with the power to decide over administrative disputes pertaining to administrative contracts and administrative decrees issued by government officials. These courts apply administrative legal rules, which are not entirely codified, and hence the scope of judicial discretion, in so far as no applicable legislative rule exists, is ample in light of the established precedents laid by the supreme courts.

## **The Judicial Power Court System**

As the third and independent authority of the State, the Egyptian Judiciary is comprised of secular and religious courts, administrative, non-administrative courts and a Supreme Constitutional Court, and penal courts, civil and commercial courts, personal status and family courts, national security courts, labour courts, military courts, as well as other specialized courts or circuits.

The Egyptian Court system is composed of a number of tiers: Courts of First Instance, Court of Appeal, and the Court of Cassation at the apex of the judiciary. The classical dichotomy of public and private law has resulted in the establishment of the Council of State (*Conseil d'Etat*), which are administrative courts vested with the power to decide over administrative disputes pertaining to administrative contracts and administrative decrees issued by government officials and ministries. The Supreme Constitutional Court was established in 1969 and has exclusive jurisdiction to decide questions regarding the constitutionality of laws and regulations as well as negative and positive conflict of jurisdiction.

Generally, the Egyptian judicial system is based on French legal concepts and methods. Judges are familiar with civil law systems' concepts, and despite the huge case backlog and time-consuming proceedings, the principles of the due process and judicial review are inherently cherished and respected. Accessibility to justice is an indispensable principle of the Egyptian legal system. Judges are generally independent from the State and enjoy judicial immunity; hence they cannot be dismissed or sacked by the Executive Authority. However, due to the huge amount of cases before the courts, there exists a heavy case backlog, which adversely affects the efficiency of the court system and the judiciary as a whole. Apart from the heavy case backlog which might cause some delay and inconvenience, judges are competent, able, and impartial, which ensures equality of the parties and justice. Furthermore, fees to administer judicial proceedings are not very high, and judicial aid through appointing lawyers as representatives for those who are unable to appoint a lawyer is generally available.

### **The Supreme Constitutional Court**

The Supreme Constitutional Court is an independent body in the Arab Republic of Egypt. It is currently located in the Cairo suburb of Maadi.

The Court is undeniably the highest judicial power in Egypt. By virtue Article (25) of the Supreme Constitutional Court's Law No.48 of the Year 1979, this Court is empowered to:

- ? Determine the constitutionality of the laws and regulations.
- ? Decide on jurisdiction disputes between judicial bodies or authorities of judicial competence.
- ? Decide on the disputes that might take place as a result of enforcing two final contradictory rulings issued by two different judicial entities.
- ? Interpret the laws issued by the Legislative Authority and the decrees issued by the Head of the State in case of any divergence with respect to their implementation.

### **Court of Cassation**

In 1931, the Court of Cassation was established to create a central tool to provide exclusive and uniform interpretation and application of the law. The court of Cassation is at the apex of the judicial hierarchy in Egypt and is based in Cairo.

The Court of Cassation's jurisdiction simply includes consideration of challenges brought to it by either adversary or by public prosecution; it also includes the examination of lawsuits that arose from a judge's action. When such a dilemma occurs, the courts assume the role as a court of merit rather a court of law.

Another function of the court is to give rulings on requests of reparations for all violated verdicts. The Court issues annual collections on approved judicial principles in the title "Rulings and Principles of the Court of Cassation".

### **Court of Appeal**

There exist around seven Courts of Appeal in Egypt in major cities. These are second degree courts that review the awards of the courts of first instance. Their review covers questions of fact as well as questions of law. Judges of sufficient experience and seniority sit as judges in the Courts of Appeal.

Appeals from rulings rendered by the Courts of First Instance should be made within specific time frames, otherwise an appeal will be rejected, as such time-limits are mandatory.

Judgments rendered by a Court of Appeal are only open to challenge before the Court of Cassation, and usually on points of law or lack or inconsistency of reasoning.

### **Court of First Instance**

The Courts of First Instance are first degree courts, which have the ability to consider lawsuits filed before them only if they fall under their jurisdiction and their rulings are, generally, subject to appeal.

Judges sitting in Courts of First Instance are relatively young and rank below the judges of the Courts of Appeal and the Court of Cassation in terms of experience and seniority.

### **Family Court**

This court was founded in 2004 to provide a specialized judicial tool for family disputes. This court aims at providing psychological peace and comfort for the children caught in the middle of disputes relating to tutelage, divorce, alimony and custody. Such court also aims at sustaining an amicable settlement for family problems through specialized and professional guidance agencies.

### **Egyptian State Lawsuits Authority**

The Egyptian State Lawsuits Authority is an Egyptian judicial institution that was established in 1874, nine years before the Egyptian national courts were established in 1883.

Despite being legally stigmatized as an independent judicial institution, the Authority does not perform a truly judicial function; its role is confined to representing the State before national and international courts and arbitral tribunals.

The law states that the Egyptian Lawsuits Authority has the power to plead on behalf of the State. When it comes to the organizational structure of the Egyptian Lawsuits Authority it is divided into seven parts each capable to represent the state in the areas of its jurisdiction. Each department is headed by a vice president and only the Department of Foreign Disputes is headed by the President.

### **Public Prosecution**

The Public Prosecution has two major functions, which are: (a) to file criminal actions when acting as public prosecutors before a criminal court; and (b) the right to initiate actions even if the plaintiff has relinquished his right to do so.

Public prosecutors investigate crimes, visit crimes' scenes, question the accused, issue search warrants, order the imprisonment of the accused on the account of a crime for a period of fifteen days prior to trial or prosecution.

Moreover, joining the public prosecution is the path to becoming a judge in the Court of First Instance, the Court of Appeal, and the Court of Cassation. Nevertheless, some members of the Public Prosecution remain within the latter and get promoted to District Attorneys, Attorney Generals, and potentially qualify for the post of the Head of the Public Prosecution.

### **Administrative Courts (State Council)**

As previously mentioned, any administrative disputes in which any administrative body is party is a matter handled by the Administrative Courts and falls under its jurisdiction.

Administrative Courts do have a separate structure, where the Supreme Administrative Court sits at the apex of such structure. There are also departments for opinions and legislation which advises public entities on diverse aspects of public law such as administrative contracts, tenders, ministerial decrees etc.

In any governmental authority or agency there exists an in-house member of the State Council (in addition to a department for legal affairs) whose opinion should be sought with respect to any administrative law matter.

### **Courts Jurisdiction**

With respect to jurisdiction, it is necessary to distinguish between national jurisdiction in pure domestic cases and international jurisdiction regarding disputes involving a foreign element. A brief overview of both seems to be in order.

National or domestic jurisdiction is shared between two main judicial bodies:

(a) General courts; and (b) Administrative courts (State Council).

Whilst courts of general jurisdiction are concerned with the settlement of civil, criminal, commercial and personal status matters, administrative courts are concerned with the settlement of administrative or public law matters governed by the *jus imperii*.

The criteria for establishing general jurisdiction could be based on the value of the dispute, nature of the dispute, or territorial jurisdiction of the court.

With respect to the value of the dispute, general jurisdiction is divided between:

- (1) Trial courts: dealing with disputes of not more than L.E. 10,000 (ten thousand Egyptian pounds).
- (2) Higher courts (such as the Court of First Instance): dealing with disputes of not less than L.E. 10,000 (ten thousand Egyptian pounds).

With respect to territorial competence, courts of general jurisdiction are divided according to cities and suburbs. For example, there are Giza courts, Cairo courts, Alexandria courts, Mansoura courts, etc... within each city there might be a number of courts such as North Giza Court of First Instance and South Giza Court of First Instance.

As for the Court of Appeals, there is one in Cairo, one in Alexandria, one in Tanta, one in Ismaileya, one in Suez, one in Mansoura, and one in Kena.

As for the Court of Cassation there is only one in whole country and it is located in Cairo.

With respect to international jurisdiction, Egyptian courts assume jurisdiction regarding international commercial disputes involving a foreign element on the basis of any of the following criteria:

(a) Cases in which the defendant is Egyptian unless the dispute pertains to immovables located in a foreign State; (b) Cases in which the defendant, despite being a foreign national, is either domiciled or resident in Egypt unless the dispute pertains to immovables located in a foreign State; (c) Cases involving property (movables or immovables) located in Egypt even though the defendant is a foreign national who is not domiciled or resident in Egypt; (d) Cases pertaining to an obligation created, performed, or should have been performed in Egypt; (e) Cases pertinent to a bankruptcy or insolvency declared in Egypt; (f) Cases in which the defendant voluntarily submits to the jurisdiction of Egyptian courts (full effect to the principle of party autonomy); (g) Claims, counterclaims, defences, incidental questions, other issues which are closely connected to cases filed before Egyptian courts; (h) Cases involving interim and provisional measures to be executed in Egypt.

The above-mentioned principles represent the diverse criteria for establishing jurisdiction of Egyptian courts both on national and international levels.

With respect to the effect of choice of law and exclusive jurisdiction clauses in international contracts, it should be noted that Egyptian law, like most legal systems, upholds the principle of party autonomy to

maximum possible extent. Thus, parties to a contract are free to agree on an applicable law and exclusive jurisdiction and their agreement will be upheld by courts in so far as their agreement does not violate public policy considerations or fundamental mandatory norms.

### **Arbitration**

Parallel to court litigation, arbitration has established itself as a prominent method for resolving business, commercial, and investment disputes. A new Arbitration Law No.27 of the Year 1994 was enacted and it governs both domestic and international arbitration. Courts are increasingly mitigating any form of hostility towards arbitration as an out-of-court dispute resolution system. Judges have generally accepted and supported arbitral proceedings and an arbitral award, by virtue of the new Arbitration Law, is never reviewed on the merits.

Thus, if the parties to a contract agree on an arbitration clause or agreement in disputes capable of settlement by arbitration (the criteria for arbitrability under Egyptian Law being the possibility of settlement) Egyptian courts will decline jurisdiction to review the subject matter of the dispute. However, an arbitral award rendered may only be subject to nullity proceedings in Egypt if: (a) the Seat of Arbitration is in Egypt or (b) the parties have agreed, if the Seat is in a different State, that the law applicable to the proceedings is the Egyptian Arbitration Law No.27/1994. Such nullity action, may be brought for a number of exclusive grounds; mainly procedural.

### **Enforcement of Judgments and Appeal**

With respect to enforcement of judgments and awards, as a general rule, enforcement is possible when an award is final, which is the case for awards rendered by the court of Appeal or final arbitral awards. However, judgments and awards rendered by the Court of First Instance may be enforceable by depositing a security.

Enforcement of the judgment may entail seizure of property or assets as follows: (a) conservatory seizure over movables or immovable (this is an interim or provisional measure of protection that may be ordered by the court to protect the interest of creditors); (b) seizure with a view to sell the seized property or assets (applicable to both movable and immovable); and (c) garnishment effected under the hands of third parties and seizure of employment wages. However, pursuant to Egyptian law, certain rights, assets or property may not be seized such as: industrial property rights, supplementary rights *in rem* such as mortgages and concessions etc..., rights of servitude, current accounts, funds or assets needed for public utilities, saving funds, and investment certificates.

On a different note, creditors may also induce voluntary enforcement of judgment by threatening to institute bankruptcy or liquidation proceedings against the debtor. Judgments rendered by the Court of First Instance are subject to appeal by the losing or respondent party, and judgments rendered by the Court of Appeal are equally subject to challenge before the Court of Cassation, whose review of the judgment does not hinder or impede enforcement *per se*.

With respect to the right of appeal, the party who lost his case before the Court of First Instance is entitled to appeal the judgment before the Court of Appeal, provided that the prescribed period of appeal is observed, which is usually 40 days as a general principle, unless a specific provision indicates otherwise.

With respect to recognition and enforcement of foreign judgments, Egyptian courts will generally recognize and enforce foreign judgments if the following conditions are satisfied: (a) Egyptian courts do not have jurisdiction over the dispute, and the foreign court which rendered the judgment enjoy jurisdiction pursuant to its rules on international jurisdiction; (b) the parties have been notified of the proceedings and validly represented before the competent court; (c) the judgment or award is final and binding pursuant to the rules prevailing under the law of the foreign court; and (d) the foreign judgment is not in conflict with a prior award or judgment rendered by Egyptian courts and is not in contravention of the prevailing public policy considerations.

If the foreign award or judgment satisfies the above-mentioned conditions, a request for enforcement is submitted to the court whose jurisdiction encompasses the place of enforcement. Such request is

submitted in accordance with the general rules for filing cases, and the competent Egyptian court will then render its *exequatur* without reviewing the foreign judgment on its merits.

The prescription period with respect to enforcement requests and actual enforcement is 15 years in accordance with the general rules on prescription under the Civil Code.

### **Enforcement of Arbitral Awards**

With respect to enforcement of foreign arbitral awards, a request for enforcement should be submitted to the competent court, which, in the case of international commercial arbitration, is the Court of Appeal. The request should be accompanied by the original text of the award or a signed copy thereof, a copy of the arbitration agreement, and an Arabic translation of the award ratified by an authorized entity if the award is rendered in a foreign language, and a copy of the minutes verifying submission of the award in the registry of the competent court.

Furthermore, a request for enforcement of an arbitral award will not be accepted unless the period for filing a nullity action has lapsed in cases where a nullity action is possible.<sup>i[3]</sup>

The conditions for enforcement of arbitral awards are more relaxed than those of foreign judgments due to the impact of the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (1958) to which Egypt is a signatory, and the provisions of the Egyptian Arbitration Law No.27/1994. The conditions of enforcement are: (a) the inexistence of a prior Egyptian award on the same issue; (b) absence of any contravention to Egyptian public policy considerations; and (c) valid notification of the arbitral award.

At the stage of recognition or enforcement, arbitral awards, like foreign judgments, are not reviewed on their merits.

### **Primary Materials**

Egyptian Codes (Statutes) are published in Arabic in the [Official Gazette](#) (a special journal dedicated for publishing Statutes only) available in Arabic in book format. Prime Minister's and Minister's Decrees are published in the Egyptian Gazette, which is available in Arabic in book format. However, an electronic version of all such statutes, decrees, and regulations should be available in Arabic on the [Tashreaat](#) website.

[LADIS](#) or [Tashreaat](#) publishes all laws, decrees, etc. This is in addition to court rulings, some legal articles mainly in Arabic but there are some materials in English. [Tashreaat](#) also has specialized pages for human rights, IPRs, Constitutions of Arab countries. They offer legal opinions on diverse aspects of law, and they publish a monthly legal bulletin. (Generally it is a good website to subscribe to).

Unlike common law countries we do not have dedicated periodicals or reports where cases and court judgments are published. Moreover, not all court rulings are published. However, the Court of Cassation Judgments, State Council Judgments, and Constitutional Court Judgments are published in book format in what we call "Collection of Awards". These are organized in chronological order by Judicial Years. Nowadays soft copies of such rulings are available on CDs and some databases such as [Tashreaat](#). However, databases are not entirely complete, so a manual search through the "Collection of Awards" is still important.

It is worth noting that the [Constitutional Court](#) does have a website available in Arabic, English and French, where you can view some useful information, documents and even search for Awards rendered by the Court.

[Egypt's information portal](#), the Information and Decision Support Center for the Cabinet (IDSC), provides information on a wide variety of things. The website provides studies, reports, laws, statistics, working papers, statistics, and periodicals (daily, weekly, monthly, quarterly, and annually). This is available free of charge. However, not all information is available in English. This website is not dedicated to legal

information; it provides economic, scientific, industrial, commercial, social, historical, geographical, political information. It also offers interactive services.

The [Middle East Library for Economic Services](#) is the website of the Middle East Library.

The website of the [Legal Arab Information Network](#) is another example of a subscription-based database that contains information on Arab laws, agreements, cases, researches etc.

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