



HAL
open science

Egypt and its laws: A general presentation of law and judicial bodies

Baudouin Dupret, Nathalie Bernard-Maugiron

► **To cite this version:**

Baudouin Dupret, Nathalie Bernard-Maugiron. Egypt and its laws: A general presentation of law and judicial bodies. Egypt and Its Laws, London (N. Bernard-Maugiron and B. Dupret, eds., Kluwer Law International), 2002. hal-02614267

HAL Id: hal-02614267

<https://hal.science/hal-02614267>

Submitted on 27 May 2020

HAL is a multi-disciplinary open access archive for the deposit and dissemination of scientific research documents, whether they are published or not. The documents may come from teaching and research institutions in France or abroad, or from public or private research centers.

L'archive ouverte pluridisciplinaire **HAL**, est destinée au dépôt et à la diffusion de documents scientifiques de niveau recherche, publiés ou non, émanant des établissements d'enseignement et de recherche français ou étrangers, des laboratoires publics ou privés.

EGYPT AND ITS LAWS

A general presentation of law and judicial bodies¹

Baudouin DUPRET
Nathalie BERNARD-MAUGIRON

1. Historical summary

1.1. Judicial bodies

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

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

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

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

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

the creation of a specialized professional category (judges), the adoption of a coherent system of codes and the explicit choice of the European model.

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

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

The *shari'a* courts and the community councils ruled on personal status matters until 1955. A law-decree of 1931 had organized the former in three levels: courts of summary justice, courts of first instance and a court of appeal. They applied the laws in force and, where the text was silent, were requested to refer to the main texts of the Hanafite doctrine. They had powers in Muslim personal status matters; in cases of difference of religion or rite between the litigants, and in cases where litigants challenged the jurisdiction of the community councils. The latter dealt with the personal status of members of the Orthodox Churches, Catholics, Protestants and Jews. All these bodies were abolished by Laws 461 and 462-1955 and their powers were transferred to the ordinary courts. Chambers of personal status were first invested with matters earlier related to the *shari'a* courts and the community councils, before themselves being integrated in the civil chambers. It should be noted, however, that in matters of personal status, the principle of the personality of the law still prevails nowadays, which foresees that the applicable law is to be determined by the religion of the parties involved.

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

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

1.2. Positive Law

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

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

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

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

1.3. Legal professions

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

Initially divided between foreign and Egyptian judges, the body of Egyptian magistrates assumed its present form with the end of the Mixed Courts. New legal professions, that of advocate, for example, began to appear in the late nineteenth century. The first real regulations for this profession date from 1888, when Egyptian law determined the conditions pertaining to age, conduct and competence for the exercise of the profession of advocate. In 1893, a condition was added requiring a degree from the Royal School of Law or an equivalent foreign institution, and the rights and duties of the advocate were specified. In 1912, the Bar Association of National Courts Lawyers was created and recognized authority to regulate the essentials in the professional life of advocates, including the conditions of registration, praxis and discipline. In 1954, under Nasser, the Board of the Bar Association was dissolved for having opposed the new political system; then, in 1958, the election of its members was on condition of membership in the sole party, the National Union. In 1968, its activities were further limited by the obligation to function in the framework of the government-controlled Arab Socialist Union. On 5 June 1971, the Board of the Bar Association was once again dissolved, this time by Sadat, for having refused its support to the new President of the Republic in his struggle for power. The new elections, however, returned for the most part the same persons to the Board. The latter was again dissolved by Sadat in 1981, and a provisional Board was named in its place. After President Mubarak came to power, the Law of 1981 was replaced by Law 17-1983, which constitutes the law presently in force. However, by virtue of Law 100-1993 on professional associations, the Board was yet again dissolved and replaced by court-appointed custodians. The law provided for very strict conditions of quorum for elections to the Board of the Bar: half the registered members must vote at the first round, or one third at the second round. Following several years of administration of the activities of the Bar Association by the custodians, elections were finally held in 2001.

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

where he became dean in 1936. He was President of the Council of State between 1949 and 1954.

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

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

2.1. General judicial organization

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

Figure 1

Figure 2

2.2. Ordinary justice

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

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

The Courts of First Instance, consisting of a president, one or several vice-presidents and a “sufficient” number of judges, also sit in first instance in civil matters in litigations which are not within the competence of the Summary Courts, and in urgent or temporary cases. Appeals against their decisions can be placed before the Court of Appeal, on condition that the amount involved in the case be above 10 000 £E. They give decisions in criminal matters on appeals against rulings adopted by the Summary Courts (in that

case they are named *mahâkim junah al-isti'nâf*). Let us finally note the existence of special sections such as the courts of expeditious litigation (*al-mahâkim al-musta'jila*), which are emergency sections of the Courts of First Instance which try cases in matters which would suffer no delay (for example, conflicts concerning the rental of premises); juvenile courts (*mahâkim al-ahdâth*); or the judge of the Summary Courts in charge of enforcing sentences.

At the intermediary level is the Court of Appeal (*mahkamat al-isti'nâf*). It consists of a president, a variable number of vice-presidents, the presidents of the Courts of First Instance of its district and a variable number of counselors. The jurisdiction of the Court of Appeal is geographic and it is divided into two chambers (civil and criminal). A jurisdiction with three judges sitting together, it is competent to hear appeals against decisions given by the plenary courts in civil matters. Also, its criminal chamber, bearing the name "criminal court" (*mahkamat al-jinayât*), judges felonies, that is, acts liable to imprisonment (between three and seven years), or to punishment by forced labour (seven years and more) or to the death penalty. With the exception of the death penalty, which must be confirmed by the Court of Cassation before being carried out, the rulings of the Court of Appeal are not subject to appeal. They can, however, be challenged before the Court of Cassation on points of law, which will suspend their enforcement. There are eight courts of appeal in Egypt (Cairo, Tanta, Alexandria, Mansura, Isma'iliyya, Bani Suwayf, Asyut, Qina).

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

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

Figure 3

2.3. Administrative justice

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

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

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

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

The advisory section of the Council of State (*qism al-fatâwâ*) is competent to give a legal opinion to the different state administrations (among which, ministries, public administration, public institutions or public sector companies). It has three levels. On the first are the Advisory Departments, each of which specialized in a particular ministry and its agencies. On the second level are three Committees of the Department Presidents that

discuss issues sent by the Advisory Departments and review public concessions and monopolies as well as draft contracts exceeding 50 000 £E to which the government is party. On the third level, is the General Assembly of the Legislative and Advisory Sections. It consists of the presidents of the Advisory Departments, the presidents of the Committees as well as of the president and members of the legislative section. Presiding over it is the first vice-president of the Council of State, and it is competent to give opinion on questions submitted to it by the Committees, the legislative section, the President of the Council of State, Ministers, the President of the People's Assembly or the President of the Republic. Recourse to the opinion of the advisory section is not obligatory and its opinions are not coercive. Nevertheless, its opinion is increasingly sought and very generally followed, notably so as to not risk subsequently having the text declared null and void by the judiciary section. When disputes oppose public administrations among themselves, recourse to the advisory section is obligatory and its decisions are binding.

Figure 4

Figure 5

2.4. *Constitutional law*

The Constitution of 1971 established a Supreme Constitutional Court (*al-mahkamat al-dustûriyya al-'ulyâ*) as an "independent and autonomous judicial body" (Art. 174) responsible for undertaking, alone, "the judicial control over the constitutionality of the laws and regulations and the interpretation of the legislative texts in the manner prescribed by law" (Art. 175). It was not until 1979, however, that the legislature organized its functioning.

Review of the constitutionality of laws is not contemporary, in Egypt, with the creation of the Supreme Constitutional Court, even though no constitutions prior to that of 1971 contained provisions instituting such review. The Council of State, created in 1946, pronounced in 1948 a ruling in favour of the judicial review of the constitutionality of laws. This control, however, was limited in the sense that, other than the fact that it was entrusted to the courts dealing with the merits of the case, it did not entail the abrogation of the provision considered to be unconstitutional and the decision of unconstitutionality was not binding for the judges before whom a similar litigation was subsequently referred.

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

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

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

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

Figure 6

2.5. Military justice and special jurisdictions

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

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

President of the Republic for confirmation. The state of emergency has been in force in Egypt without interruption since 1981.

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

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

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

2.6. *Parquets (public prosecution offices)*

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

The administrative prosecution office (*al-niyâba al-idâriyya*) conducts the preliminary investigation of offences committed by officials or by persons working in private organizations belonging entirely or in part to the state. It deals with disciplinary questions only. The eventual criminal aspects of cases which it investigates are sent to the general public prosecutor’s office. The office is headed by a president and its members are spread

over the different governorates in Egypt. They have the same status as members of the general public prosecution as far as rights, immunities and duties are concerned. The administrative prosecution was created by Law 117-1958 and is presently governed by Law 88-1973.

The Constitution of 1971 (Art. 179) established the office of the Socialist Public Prosecutor (*al-mudda'î al-'âmm al-ishtirâkî*), but Law 95-1980 organized it and charged it with the investigation and prosecution of individuals before the Court of Values. The Socialist Public Prosecutor is nominated and dismissed by the President of the Republic and is subject to the control of the People's Assembly. The competence of that office covers essentially cases of political and economic corruption and of the illicit accumulation of wealth, as well as the protection of all matters concerning the socialist orientation of the state.

2.7. *The State Litigation Authority*

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

2.8. *The magistrates*

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

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

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

To the privileges and immunities from which the magistrates benefit (among which, irrevocability which protects them from dismissal, from being retired and from transfer without consent), correspond the duties and obligations: rules of professional incompatibility, duty of keeping all information secret, obligation to reside in the district, confidentiality of investigation, etc. The Minister of Justice has a general right of supervision over the courts, but disciplinary sanctions against magistrates are taken by their peers. The disciplinary function is exercised by the president of the court and by a disciplinary council composed of the president of the Court of Cassation, three presidents of Courts of Appeal and three counselors of the Court of Cassation. Its decisions are not subject to appeal.

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

2.9 The Bar Association

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

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

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

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

3. Geographical structure of courts

3.1. Ordinary Courts

The Court of Cassation exercises its competence throughout the national territory. The Courts of Appeal number eight (Cairo, Tanta, Alexandria, Mansura, Isma'iliyya, Bani Suwayf, Asyut, Qina) and their seats are found in the capital of the governorates. The Courts of First Instance, numbering twenty-four (North Cairo, South Cairo, Giza, Alexandria, Damanhur, Tanta, Shibin al-Kum, Banha, Kafr al-Shaykh, Mansura, Zagazig, Dumyat, Isma'iliyya, Suez, South Sinai, North Sinai, Port Said, Bani Suwayf, Fayyum, Minia, Asyut, Suhag, Qina, Aswan), are in principle located in the capital of every

governorate. Cairo however has two and the governorates of Wadi al-Gadid, Matruh and Red Sea have none. There is in principle a Summary Court in each agglomeration (*qism*) or district (*markaz*), which amounts to more than 200.

Figure 8

3.2. *The Council of State*

The Supreme Administrative Court has its seat in Cairo. The Court of Administrative Justice is seated in Cairo too, but the president of the Council of State can decide to create divisions of the latter in other governorates. Thus Courts of Administrative Justice have been established in the governorates of Alexandria, Mansura, Gharbiyya, Isma'iliyya, Asyut, Port Said and Qina. The Administrative Courts are seated in Cairo and in governorates in which the president of the Council of State has decided to establish them. This is the case for the governorates of Alexandria, Mansura, Gharbiyya, Isma'iliyya, Asyut, Port Said and Qina.

4. Elements of a sociology of the body of magistrates

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

In Egypt, all deputies of the parquet must be trained at the National Center of Judicial Studies, the program of which has repeatedly changed in the course of time. The use of the file of trainees which has been kept between 1981 and 1992 has made it possible to determine the geographic origin of the young magistrates, their academic backgrounds and, consequently, their degree of mobility.

One thus observes that the universities of the capital (Cairo, al-Azhar, 'Ayn Shams, Police Academy) provide the largest contingent of auditors, distantly followed, in order, by the universities of the Delta (Mansura, Zagazig and Tanta), the university of Alexandria and the universities of Upper Egypt (Asyut and Bani Suwayf). Of the four faculties in Cairo, that of Cairo University is far ahead of the Police Academy, which has taken precedence over the Faculty of Law of 'Ayn Shams University; al-Azhar is in last place (and in a manner not proportional to its demographic weight).

Figure 9

Figure 10

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

Figure 11

Figure 12

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

Figure 13

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

Figure 14

Figure 15

5. A few indicators of criminality

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

Generally speaking, one will first note an overall increase in the reported rate of criminality². This overall increase is highly pronounced in the metropolitan areas, namely Cairo and Alexandria, but also in the public prosecutor's offices in Port Said, Suez, Isma'iliyya, Qalyubiyya and Asyut. Generally, the rate of criminality in Upper Egypt is higher than the national average, particularly in the public prosecutor's offices in Minya Asyut and Aswan.

² The rates correspond to figures on criminality given by the public prosecutor's offices related to population figures of the administrative district of the given public prosecutor's office.

Turning now to criminality according to sector, it will be noted that willful homicide, the rate of which is already low when compared with the averages in other countries, shows an overall declining tendency, whereas attempted homicide shows the opposite tendency. Moreover, the rate of theft and attempted theft increased five-fold over the same period of time. Although the rates are generally low or very low, the cases of arson are seen to increase considerably (six-fold) and cases of counterfeit money appeared. The rate of occurrences of embezzlement reported to the public prosecutor's office doubled, while corruption is seen to be of a very erratic character (but the national average doubled). Questions of morality have not undergone any appreciable evolution. On the other hand, both the carrying of arms and possession of drugs display very high average rates and, in the case of drugs, a substantial increase. It is noteworthy that the carrying of arms is a phenomenon very largely specific to Upper Egypt. Finally – and this remark takes us to the general question as to the nature of this nomenclature and the phenomena it expresses – there was quadrupling of the rate of criminal acts not included in defined categories, referred to the public prosecutor's office. In this respect, it would not be exaggerated to say that the legal taxonomy obviously has some difficulty in reflecting the criminal acts referred to it. In addition, some very large increases, a number of sudden and erratic variations, or the rate of zero reported occurrences of certain criminal acts in certain public prosecutor's offices, necessarily give rise to two questions: first, as to the conditions in which data were collected and, second, as to the confined character of police and judicial action in specific domains. The fact that in Kafr al-Shaykh, for example, the rate of corruption reported to the public prosecutor's office would have gone from zero in 1982 to more than nine for 100 000 inhabitants, in 1996, can only call for the greatest prudence in the interpretation one might propose.

Figure 16

Figure 17