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## Judges as Reform Advocates

### A Lost Battle?

*Nathalie Bernard-Maugiron*

IT MAY seem surprising to find a paper on judges in a symposium dedicated to political and social protest movements in Egypt. How can judges, one of the three branches of state authority, constitute a social or even worse, a political protest movement? Had this symposium been organized only two years ago, judges would have probably not been a topic for discussion, although they had been very active throughout modern Egyptian history. Their contribution to democratic reform, however, has so far not been able to reach the public sphere.

The two main claims made by judges—full supervision of the elections and real independence of the judiciary—are not new. The call for judicial supervision of the elections was already one of the main recommendations of a symposium on the transparency of the electoral process organized by the Judges Club<sup>1</sup> in June 1990 (Ra'uf, 1998). Judicial independence was one of the main recommendations of the 1986 Conference on Justice

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<sup>1</sup> The Judges Club is the key actor of the struggle against the executive power. It was established in 1939 to defend the collective social interests of judges but has turned into a political forum. The Club is not registered as a syndicate or as an association and has no legal status, which puts it in a weak position in case of conflict, with threats of dissolution as we will see. There exist more than twenty clubs all over Egypt, but the main and most important one remains the Cairo one, of which almost all members of the ordinary judiciary and of the Public Prosecution are members (more than 9,000 members).

organized by the Club.<sup>2</sup> Moreover, in 1992, the general assembly of the Judges Club adopted a draft law proposing amendments to the 1972 Law on the Judiciary, in order to increase judicial independence. Earlier, in 1969, judges had already been involved in a serious conflict with the executive authority in order to keep their relative independence, a conflict that ended with the dissolution of the Board of the Judges Club and the famous “massacre of the judiciary.”<sup>3</sup>

Since confrontations between judges and the executive authority took place in the past, one may wonder why their protest movement only started being the focus of public attention in recent years, notably 2005–2007.

This new public interest in judges as reform advocates is due to the conjunction of several factors. One of them is the emergence of independent newspapers and private satellite television channels that gave a forum to judges. For the first time in their history, judges were given the chance to present their claims to public opinion and the public started getting familiar with them. The change of majority in the board of the club in 2002 may also be an important factor. After the 1969 “massacre of the judiciary,” indeed, the relations between the State and the Judges Club had become much smoother, particularly in the 1990s.<sup>4</sup> When Zakariya ‘Abd al-‘Aziz was elected as new club president in 2002 and his list won the majority of seats in the board, the club opted for a more confrontational approach toward the authorities. The judges’ movement, like all other social and political protest movements, also took advantage of a political opening in 2005, in a context of international and internal pressure for political reform. The year 2005 was also a very special year, since it witnessed a constitutional referendum, presidential elections, and parliamentary elections. Judges played a fundamental role on these three occasions through the supervision of the polling stations.

In their struggle, judges received the support of NGOs, political parties, the Muslim Brotherhood, professional syndicates, intellectual circles, university professors, students, and other protest movements like Kefaya. The culmination of that support came in May 2006, when two vice-presidents of

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<sup>2</sup> See *Bulletin du CEDEJ*, no 20, Cairo, 1986.

<sup>3</sup> This “massacre” occurred when 189 judges were dismissed from their positions and the Board of the Judges Club dissolved, because they had refused to join the single party at that time, the Arab Socialist Union.

<sup>4</sup> The president of the club at that time was Muqbil Shakir, who was appointed in 2006 as president of the Court of Cassation and therefore president of the Supreme Council of the Judiciary.

the Court of Cassation were referred to the disciplinary council for having accused colleagues of participating in vote rigging. They were perceived by the public opinion as victims of measures of retaliation for having denounced fraudulent practices.

What had started as a banal conflict between a judge and lawyers in Alexandria<sup>5</sup> gradually turned into an institutional crisis. The struggle of reformist judges for democratic reform took different forms, but its impact on democratic reform itself was more than mitigated while they had to pay a high price. One can even argue that they lost their battle.

### Judges Mobilize for Reform

Reformist judges mobilized various types of actions to make their claims known and to prevail. They threatened to boycott the judicial supervision of the elections; gave interviews to newspapers and satellite channels; their club published press releases, memos, and reports; they filed complaints with the public prosecution, and even organized sit-ins.<sup>6</sup>

**Boycott threats.** For the first time in their history, judges resorted to threats of boycott if the government failed to accede to their two main claims: monitoring the integrity of the electoral process and amending the Judicial Authority Law to guarantee more independence. The Constitution requires members of judicial bodies to supervise all polling stations.<sup>7</sup> Judges therefore had at hand a means of pressure that was quite disturbing for the State apparatus: they could refrain from monitoring the elections. Beginning with the general assembly of the Alexandria Judges Club in April 2005, they started threatening to refuse to supervise the constitutional referendum as well as the presidential and parliamentary elections if these claims were not met.

Government newspapers criticized the judges and maintained they could not refuse to implement a constitutional duty, given that they were the very

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<sup>5</sup> The Alexandria Judges Club held an extraordinary general assembly in April 2005, to protest against the aggression against a judge, who was being pressured by a group of lawyers who wanted him to acquit their client. They criticized the absence of reaction from the President of the Court of First Instance and of the Prosecutor General and called for judicial reform.

<sup>6</sup> Mohamed al-Sayyid Sa'id, Deputy Director of al-Ahram Center for Political and Strategic Studies, called the Judges' struggle "*intifadat al-qadaa*," in *Rawaq 'Arabi*, Cairo Institute for Human Rights Studies, no. 42, 2006, p. 4ff.

<sup>7</sup> Article 88, as interpreted by the Supreme Constitutional Court in a decision of July 2000.

people in charge of enforcing respect for the rule of law. The latter defended themselves by arguing that the Constitution did not compel them to serve fraudulent elections; on the contrary, their constitutional duty was to reject participation in such manipulations of the will of the people.<sup>8</sup>

After lengthy internal debates, the Judges Club, at its extraordinary general assembly on May 13, 2005, decided to authorize its members to monitor the constitutional referendum, the first of the 2005 polls. They declared this experience would allow members to assess the extent of the transparency of the process. Though the experience was not highly conclusive and the Judges Club report on the constitutional referendum<sup>9</sup> questioned in particular the soundness of the official figures related to electoral participation and vote-counting, the Judges Club decided, nevertheless, at their second extraordinary general assembly on September 2, 2005,<sup>10</sup> to monitor the presidential and parliamentary elections. They declared their fear that a boycott would open the door to wholesale fraud and were convinced that their participation would enable them to expose publicly all the abuses and violations they might witness. Accepting to supervise the presidential and parliamentary elections in spite of their negative assessment of the way the constitutional referendum had been organized and of the non-fulfillment of their claims may have been one of their main strategic errors since they lost part of their credibility. But this decision was probably due to a lack of consensus among the judges to push this trial of strength any further.

**Recourse to the media.** Reformist judges regularly expressed their opinions in newspapers or satellite channels to protest against the absence of any consideration given to their claims. Some of them even directly accused the executive power of being behind the abuses committed during the elections. Thus, after having noticed that changes had been introduced in the electoral lists between the two legislative rounds to serve the interests of the National Democratic Party (NDP), Mahmud Mekki, Vice-President of the Court of Cassation, accused the Minister of Justice of being behind these violations, particularly in the constituencies where the Muslim Brotherhood had obtained good scores in the first round.<sup>11</sup> Hisham al-Bastawisi, another

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<sup>8</sup> See *al-Wafd*, May 19, 2005.

<sup>9</sup> The Judges Club decided to appoint a committee in charge of following-up each of the electoral polls in 2005 and published a report on their positive and negative aspects.

<sup>10</sup> The Judges Club held three general assemblies in 2005 (on May 13, September 2, and December 16), among which the first two were extraordinary.

<sup>11</sup> *Sawt al-Ummah*, November 28, 2005.

vice-president of the Court of Cassation, accused the government of showing its determination to turn the so-called reform experience into a failure, while judges had believed the government promises and its support for a real democratic experience through the legislative elections.<sup>12</sup>

In an interview with *al-Dustur* newspaper, Mahmud al-Khudeyri, President of the Judges Club in Alexandria, was asked, “Do you think that the Ministry of Interior can take decisions such as attacking judges without referring to the President?” He answered, “No doubt, it was not a decision from the Ministry of Interior. The attack against the judges was a political decision from a higher authority than that of the Ministry.”<sup>13</sup> That same judge published many open letters to the President of the Republic and to other high-profile officials, calling on them to put an end to the conflict between the judges and the state apparatus. He also wrote an open letter to the Minister of Justice at the end of January 2007, entitled “You Have Exceeded Your Prerogatives!” saying that he did not deserve to be a minister.<sup>14</sup>

Such public stances taken by the reformist judges received from a warm to a cold reception. While the opposition, the syndicates, and NGOs supported them in the struggle for the transparency of elections, other circles criticized them as deviating from their judicial role and engaging in political activities, which violated both the principle of the separation of powers and the Law of the Judicial Authority.<sup>15</sup> For reformist judges, “talking politics” is different from “making politics.” They should not support a certain political party, but they enjoy freedom of expression, like any other citizen.

In March 2006, two of the most active reformist judges<sup>16</sup> were brought before the investigating judge to answer charges of defamation against some fellow judges they had accused of vote-rigging in *Sawt al-Ummah*. The paper had published a blacklist with the initials of all judges suspected of participating in fraud. Many observers or participants were astonished that instead of conducting investigations and interrogating the judges suspected of having been involved in fraud, the executive power had decided to keep

<sup>12</sup> *Ibid.*

<sup>13</sup> *Al-Dustur*, December 29, 2005.

<sup>14</sup> *Al-Masry al-Youm*, January 28, 2007. For other open letters of Mahmud al-Khudeyri to the Minister of Justice, see *al-Masry al-Youm*, November 13, 2006, and December 21, 2006.

<sup>15</sup> Article 73 of the 1972 Judicial Authority Law prohibits courts to express political opinions, and judges to be involved in political activities and run for elections of the People’s Assembly, regional assemblies, or political organizations.

<sup>16</sup> Mahmud Mekki, Hisham al-Bastawisi.

interrogating those who had denounced the abuses.<sup>17</sup> The Supreme Council of the Judiciary agreed to lift the judicial immunity of those two vice-presidents of the Court of Cassation in order to be heard. They were finally referred to the disciplinary council. Demonstrations of popular support took place in front of the High Court Building (Dar al-Qadaa al-'Ali) during each of the three hearings of the disciplinary council in May 2006, in what could be considered the first (and last?) manifestation of popular support for the judges. While the two judges could have been dismissed, all charges were finally dropped against one, while the other received a reprimand.

The judge behind the deferral of the two counselors before the disciplinary council also attacked *Sawt al-Ummah*, which had published his initials at the head of the blacklist. In the meantime, the Court of Cassation examined the validity of the elections in the constituency supervised by that judge.<sup>18</sup> In September 2006, the court ruled that fraud had effectively taken place and that the elections in that particular constituency had to be considered void.<sup>19</sup> The judge finally decided, in early December 2006, to drop the complaint he had filed against *Sawt al-Ummah* while the case was under consideration. The People's Assembly did not follow up on the report of the Court of Cassation and refused to declare the elections that had taken place in that constituency void.

**Press releases, memos, calls and Judges Club reports.** The Judges Club adopted numerous press releases and memoranda during 2005 to advocate for transparent elections. Many of them gave way to controversies, particularly the memos addressed to the Supreme Council of the Judiciary and to the electoral commissions. Many messages were thus sent by the Club to the Presidential Election Commission, during the summer of 2005, to express disagreement with the decisions adopted by this body, in particular those regarding the organization of the electoral process.<sup>20</sup>

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<sup>17</sup> See, for instance, Hisham Genina, Vice President of the Court of Cassation, *Nahdat Misr*, February 18, 2006.

<sup>18</sup> In accordance with Article 93 of the Constitution according to which the Court of Cassation is competent to investigate electoral complaints. The result of the investigation and the decision reached by the court is submitted to the People's Assembly to decide upon the validity of the contestation.

<sup>19</sup> See *Sawt al-Ummah*, 11 September 2006, for the decision.

<sup>20</sup> In August 2006, the president of the Presidential Electoral Commission, who had just left his function as president of the Supreme Constitutional Court on reaching retirement age, was nominated as Minister of Justice. Since then, the relations between reformist judges and the Minister of Justice have been marked by growing tension.

On November 23, 2005, in protest against aggression committed against judges by the police and security forces during the first two phases of the legislative elections, the Judges Club called for the intervention of the army<sup>21</sup> to protect the polling stations and the supervising judges from the police.<sup>22</sup> To many analysts, the Judges Club did not really wish for any army intervention, but it only wanted to convey a loud message to public opinion in order to denounce electoral rigging and to show they were not responsible for the fraud committed.<sup>23</sup> This call to army intervention, however, raised worries among liberals.<sup>24</sup>

For the first time, the Judges Club also decided to appoint a committee to monitor the organization of the electoral polls and write public reports on the basis of testimony made by judges. Two months after the constitutional referendum of May 2005, the Club published a report entitled *Egypt's Conscience (Damir Misr)*.<sup>25</sup> The report stressed that judges had monitored only 5 percent of the auxiliary polling stations and that the stations supervised by them had registered extremely low levels of participation, some stations having seen no voter and others having registered an average participation level of 3 percent. Meanwhile, those stations where state employees were in charge of the supervision registered very high levels of participation, reaching 100 percent at times. "Was no one dead, traveling, or prevented from participating for health reasons, work reasons, or out of laziness?" they wondered astonished.

The Judges Club also prepared a report on the 2005 presidential elections, made public in early November 2005. It denounced several types of abuses that judges had witnessed. It also criticized the attitude of the Presidential Election Commission. The long-promised report on the 2005 legislative elections was never made public; the Club only published partial reports on inquiries made in some electoral constituencies.

In March 2007, the Club announced the appointment of a committee in charge of following up the March 26 constitutional referendum and writing

<sup>21</sup> On the basis of Article 26 of the 1956 Law on the Exercise of Political Rights that authorizes the president of a polling station to call, in need, for police agents or armed forces.

<sup>22</sup> *Al-'Arabi*, November 27, 2005. There were claims that the police heavily involved outside the stations, prevented opposition supporters from entering the stations.

<sup>23</sup> *Al-Dustur*, November 30, 2005; and *al-'Arabi*, November 27, 2005.

<sup>24</sup> See *al-Dustur*, November 30, 2005, with the commentary of Muhammad al-Sayyid Sa'id, Deputy Director of al-Ahram Center for Political and Strategic Studies, according to whom the army is not to interfere in politics.

<sup>25</sup> Published in *al-'Arabi*, July 3, 2005; and *al-Masry al-Yaum*, July 2, 2005.



an assessment report. The fact that very few judges participated in the supervision of the referendum, however, made the collection of reliable and credible information very difficult.<sup>26</sup>

Finally, the Club often called on the President of the Republic to intervene, in his capacity as responsible for the balance of powers and president of the Supreme Council of Judicial Bodies, according to Article 73 of the Constitution. In 2006, for instance, they called on the President to ask that the charges against the two reformist judges referred to the disciplinary council be dropped.<sup>27</sup> The president refused to intervene, saying he could not interfere with judicial independence and internal matters of the judiciary.<sup>28</sup> In March 2007, however, he responded positively to a call from the President of the Judges Club to intervene to drop the case against a judge referred to the disciplinary council by the Minister of Justice on charges of libeling the President. According to Mahmud al-Khudeyri, the Minister thought he would have pleased the President by referring this judge to the disciplinary council. Was not the presidential institution the one that had asked him to punish judges, threaten them, and silence them?<sup>29</sup> The President accepted to intervene in a second case, regarding a counselor from the State Council who suffered from a brain tumor and had to undergo expensive medical treatment in Germany. The Minister of Justice refused to cover the medical costs. On February 23rd, 2007, the President of the Judges Club of the State Council sent a memo to President Mubarak, requesting his intervention.<sup>30</sup> On March 10, 2007, the President ordered that the ministry bear the costs of the treatment.<sup>31</sup> Mahmud al-Khudeyri argued that the Minister had received instructions to treat judges harshly and silence them. However, he overacted and put everybody in a difficult situation, including the President, who took the easy way out by ordering him to cover the medical expenses.<sup>32</sup>

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<sup>26</sup> *Al-Dustur*, March 28, 2007.

<sup>27</sup> Ibrahim Eissa, chief editor of *Sawt al-Ummah*, wrote he was astonished by the fact that some judges turned to President Mubarak for intervention to find a solution to the crisis, "as if he was not the one who was responsible for the referral of these judges to investigation"; "his intervention has taken place already," *al-Dustur*, April 26, 2006.

<sup>28</sup> *Al-Gumhuriya*, April 23, 2006. See also, *al-Ahram*, April 24, 2006.

<sup>29</sup> *Al-Masry al-Youm*, April 15, 2007.

<sup>30</sup> *Al-Masry al-Youm*, February 25, 2007. See also, *Nahdat Misr*, February 25, 2007 and *al-Ahram*, February 25, 2007.

<sup>31</sup> *Al-Masry al-Youm*, April 2, 2007.

<sup>32</sup> *Al-Masry al-Youm*, April 15, 2007.

**Complaints to the prosecution.** Reformist judges accuse the Prosecutor General of not having been sufficiently diligent in carrying out investigations regarding complaints filed by them. A young female member of the administrative prosecution, for instance, publicly denounced through the press the fraud she had witnessed in the electoral constituency where she was in charge of supervising an auxiliary station.<sup>33</sup> She claimed that such manipulations meant that the victory of the NDP candidate was announced, whereas in most auxiliary stations the Muslim Brotherhood candidate was in the lead. The Judges Club decided to lead an enquiry and interrogate the judges who had supervised the other auxiliary stations in the same constituency. According to the club, 151 judges out of 160 agreed to testify, confirming her testimony: the candidate of the Muslim Brotherhood received three times as many votes as the NDP candidate.<sup>34</sup> A complaint was filed at the prosecutor's office, with no result. In November 2006, the Judges Club, in open conflict with the Minister of Justice, decided to send to the Prosecutor General the original vote-counting of all the auxiliary stations in that constituency, which it had received from an anonymous source that confirmed the victory of the candidate of the Muslim Brotherhood. This initiative also produced no results.

Other judges who took part in the electoral supervision filed complaints before the Prosecutor General to denounce acts of violence committed against them during the parliamentary elections, and to contest the electoral results in certain constituencies. No investigation followed.<sup>35</sup> Similarly, when in the early hours of April 24, 2006, the Egyptian police attacked a peaceful pro-reform camp set up in front of the Judges Club in Cairo and a judge was beaten and his arm broken, complaints were made to the Public Prosecutor, but with no result.

**Sit-ins.** In February 2006, the judges announced that the Ministry of Justice was many months behind in paying its financial contribution to the Club budget. To signal protest and raise objections against a secret draft amendment on the Judicial Authority Law introduced by the Supreme Council of the Judiciary as well as against the absence of results of the prosecutor's investigations concerning attacks against judges during the legislative elections, they decided to organize a sit-in in front of the Judges Club in Alexandria.

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<sup>33</sup> Noha al-Zini, *al-Masry al-Youm*, November 24, 2005.

<sup>34</sup> *Al-Masry al-Youm*, December 1, 2005.

<sup>35</sup> For a harsh criticism of the General Prosecutor, see *al-Dustur*, December 21, 2005.

A second one took place in Cairo on March 17, 2006, shortly before the convening of the extraordinary general assembly of the club.<sup>36</sup> Judges were seen demonstrating silently for half an hour in the street, in front of their club, wearing their red and green sashes. This impressive image was spread all over the world. A third sit-in took place on May 25, 2006, in front of the High Court in Cairo, the sad anniversary of the 2005 referendum on the constitutional amendment during which many female demonstrators were physically assaulted and sexually harassed.

Among other forms of mobilization used by reformist judges, one can mention the calling for extraordinary general assemblies of their club; the preparation of draft laws;<sup>37</sup> the formation of special internal committees in the club in charge of tackling particular issues;<sup>38</sup> the organization of opinion polling among its members;<sup>39</sup> the threat to exclude members accused of violating professional ethics from the club;<sup>40</sup> the organization of seminars; visits to regional clubs to motivate their members to participate in the general assembly of the Cairo Club, or even the performance of a minute of silence in the Club of the State Council to protest against the attitude of the Minister of Justice.<sup>41</sup> Some judges even threatened to suspend the court hearings or to obstruct the court functions for a few hours or for a whole day.<sup>42</sup>

If reformist judges were strongly mobilized in favor of genuine and transparent elections, the impact of their struggle on the rules organizing the electoral game and on judicial independence remains, however, very frail.

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<sup>36</sup> The Prosecutor General requested all members of the Public Prosecution to go to their work premises on the day of the general assembly of the Judges Club to accomplish overdue work, though it was a banking day (*al-Masry al-Youm*, March 15, 2006). Hundreds of them sent telegrams to express solidarity with the judges.

<sup>37</sup> For example, draft amendments to Law No. 46/1972 on the Judicial Authority and to 1956 Law of the Exercise of Political Rights.

<sup>38</sup> Such as the committee in charge of writing reports after the electoral votes or the one in charge of preparing draft constitutional amendments.

<sup>39</sup> At the time of the General Assembly on December 16, 2005, the club consulted its members regarding three issues: Should the retirement age be extended? (3,706: no, 522: yes); should judges continue supervising future elections in the present conditions? (3,656: no, 460: yes); do you support the draft amendments to the Law on the Judicial Authority prepared by the Judges Club? (4,374: yes, 217: no).

<sup>40</sup> Among those members was the Prosecutor General.

<sup>41</sup> That was resorted to by the board of the State Council Club to protest against the Minister's refusal to execute the State Council decision, which required him to cover the medical treatment of the judge abroad. See *al-Wafid*, March 2, 2007.

<sup>42</sup> *Al-Masry al-Youm*, December 31, 2005.

Besides, they paid a high prize for the few concessions they gained. The state and decision-making bodies adopted counter-measures to discredit the movement or bring about its failure.

### **A High Price to Pay**

Reformist judges have paid a high price in their struggle with the regime. Not only did the government refuse to respond to their two main demands, but they even lost the right to supervise voting. Moreover, they and their club were subject to several measures of retaliation. The Judges Club of the State Council also started paying the price for the counselors' revolt.

**The exclusion of judges from the supervision of elections.** To avoid the fraud and irregularities they had witnessed in 2000, judges asked for more guarantees concerning the electoral process, in particular through full judicial supervision over every stage of the elections, from the preparation of the lists of voters to the announcement of results. They also cited other guarantees they saw as prerequisites for fair elections, such as giving a copy of the results of the vote-counting to the representatives of the candidates; having the heads of auxiliary stations announce the results immediately following the vote counting process; asking the presidents of auxiliary stations to check the identity of non-registered voters (*wafidin*) by asking them to present both their identity cards and their voter cards,<sup>43</sup> and facilitating the work of civil society.<sup>44</sup> However, their requests were not met.

Even worse, judges were deprived in March 2007 of their main responsibility in the electoral process: the supervision of the balloting process. They had been given this power in 2000, after a decision of the Supreme Constitutional Court.<sup>45</sup> Until then, only the general polling stations where the vote-counting took place were presided over by judges, whereas the auxiliary stations where the voting itself was conducted were presided over by state employees. The judicial supervision of both kinds of polling stations

<sup>43</sup> The Law on Presidential Elections adopted in 2005 and the 1956 Law on the Exercise of Political Rights as amended allow for non-registered voters to vote in any polling station, with an identity card and their voting card. In practice, according to the report of the Judges Club on the presidential elections, many voters had been able to vote several times in different polling stations with only their identity card. The poor quality of the water-resistant ink allowed this multiple voting.

<sup>44</sup> The Judges Magazine *al-Qudah*, August 10, 2005.

<sup>45</sup> Supreme Constitutional Court, Case No. 11/13, 8 July 2000, *Collection of Decisions*, volume 9, p. 667ff.

did not prevent all vote rigging, and judges themselves acknowledged that they had not been able to prevent all fraud and irregularities from taking place. However, the 2000 and 2005 parliamentary elections were considered to be the fairest of the past decades.<sup>46</sup>

The legal basis for judicial supervision of the elections was Article 88 of the 1971 Egyptian constitution. On March 26, 2007, that provision was amended. The election process was limited to a single day, rather than taking place in several rounds on different days, as had been the case in 2000 and 2005, to compensate for the insufficient number of judges. Besides, the electoral process was placed under the supervision of a higher commission, which included among its members current or retired judges. The establishment of a higher commission to supervise the election process is not new, since the 1956 Law on the Exercise of Political Rights, which regulates parliamentary elections, had already been amended in 2005 to provide for the creation of an electoral commission in charge of supervising the entire electoral process. The new amended constitutional Article 88 also states that the general committees, in charge of the vote-counting, shall be composed of members of judicial bodies. However, that provision is silent regarding the composition of the auxiliary committees in charge of supervising the polling itself, meaning they can be presided over by state employees, as had been the case before 2000.

State officials attributed this amendment to the growth of the number of voters and the need to establish more and more polling stations. Another argument was the fact that the involvement of judges in the supervision of the elections came at the expense of their main responsibility, which is settling judicial disputes in courts.<sup>47</sup> Another justification was that it aimed to preserve the dignity of judges since, during the elections of 2005, some of them had been verbally insulted and in some cases even physically abused while attempting to exercise their duties at the polling stations.<sup>48</sup> It was also underlined that judicial supervision of both general and auxiliary polling stations had not prevented vote-rigging from taking place.<sup>49</sup>

Ahmed Mekki, a vice-president of the Court of Cassation, denied that the dignity of judges had been harmed by their supervision of the 2005 elections, "Quite the opposite, we won the support of the public due to our

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<sup>46</sup> See UNDP, <http://www.pogar.org/countries/elections.asp?cid=5>.

<sup>47</sup> See for instance Muqbil Shakir in *al-Dustur*, January 17, 2007.

<sup>48</sup> *Ruz al-Yusuf*, November 15, 2006.

<sup>49</sup> *Majallat Uktubir*, January 28, 2007. See also *Ruz al-Yusuf*, *op.cit.*

stand during the electoral process.”<sup>50</sup> Judges also suggested that the number of auxiliary polling stations could be reduced and insisted on the fact that parliamentary elections only take place every five years and that judicial supervision would, therefore, not have such serious negative consequences on the speed of the judicial process. Moreover, why not organize the elections on public holiday or during the summer judicial break?<sup>51</sup> On March 26, 2007, the day of the constitutional referendum, the Judges Club of Alexandria flew its flag at half-mast and its President called on the Egyptian people to wear black on that day to mourn democracy.<sup>52</sup> He himself wore a black tie.

This constitutional amendment has deprived judges of the one big weapon they had in face of the regime, which was threatening to boycott the supervision of elections. Threatening to boycott the supervision of the general committees only is not effective, since the state will have little trouble finding 500 out of the 13,000 members of judicial bodies to sit in the general polling stations.<sup>53</sup> Hisham al-Bastawisi agrees that “the amendment will allow the government to ask the help of judges who are ready to lend legitimacy to rigged elections.”<sup>54</sup> Since the amendment of article 88 will limit judicial supervision of the elections, judges started calling for international supervision of the electoral process, though they were previously hostile to this. They were then accused of undermining state sovereignty.<sup>55</sup>

Failure to get full judicial independence. Judges also failed to get real judicial independence. Their protest movement ended up by pushing the authorities to amend the Judicial Authority Law No. 46/1972 in June 2006, but the amendments were far from reaching their expectations (Bernard-Maugiron, 2007). They did diminish the powers of the Minister of Justice regarding court supervision or the right to address warnings and disciplining judges, and attributed an independent budget to the judicial authority. But the composition of the Supreme Council of the Judiciary was not amended and its seven members continue to sit ex-officio because of the position they

<sup>50</sup> *Al-Ahram Weekly*, January 25–31, 2007.

<sup>51</sup> Counselor Husayn ‘Abd-Allah, former president of the Court of Appeal, *Ruz al-Yusuf*, February 5, 2007.

<sup>52</sup> *Al-Masry al-Youm*, March 24 and 25, 2007.

<sup>53</sup> Ahmed Mekki, *Al-Ahram Weekly*, January 25–31, 2007.

<sup>54</sup> *Ibid.*

<sup>55</sup> See *Ruz al-Yusuf*, February 2, 2007, for a criticism on this new stance of reformist judges.

hold in the judicial hierarchy.<sup>56</sup> Moreover, some of them remain appointed by a decision of the President of the Republic, like the President of the Court of Cassation and the Prosecutor General.

Reformist judges demanded that the President of the Court of Cassation be selected by secret ballot by the general assembly of that court. They also wanted that the judicial inspection department be placed under the control of the Supreme Council of the Judiciary and not the Ministry of Justice. This department, in charge of proceeding with the technical evaluation of judges and presidents of courts of first instance, as well as members of the prosecution, prepares the annual judicial “movement” project (rotation of judges). The fact that this department is under the control of the Ministry of Justice leaves the door open to possible abuses, since a judge who was somewhat reticent toward ministerial instructions would risk a negative evaluation that might have harmful consequences on his carrier.

Judges would have equally wished to reform the conditions of temporary assignment and secondment that they consider as undermining their independence. One of the means to sanction an intractable judge would be to transfer him to non-judicial functions. Inversely, one of the means of thanking a judge particularly complacent with the regime would be to nominate him to administrative functions in a ministry, where his salary will be far above that of his colleagues working in courts. Returning to judicial functions, such a judge would support, quite often, the best interests of the ministry where he had served for long. Similarly, judges can be seconded to a foreign government or an international organization.<sup>57</sup> Working in a foreign country, particularly the Gulf countries, is very lucrative for Egyptian judges whose stipends are low. A judge in the Emirates, for instance, will earn in one month what he would get in one year in Egypt. These assignments would be distributed to judges in return for compliance with the interests of the regime.<sup>58</sup>

The independence and autonomy of judges also assumes the absence of internal pressures in decision-making. Respect for such a principle requires

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<sup>56</sup> According to article 77 b of the Law of 1972, as amended in 1984, this council is composed of the President of the Court of Cassation, the President of Cairo Court of Appeal, the Prosecutor General, the two most senior vice-presidents of the Court of Cassation and the two most senior vice-presidents of the Courts of Appeal.

<sup>57</sup> These assignments are determined by the President of the Republic, with the advisory opinion of the general assembly of the court to which the judge belongs or of the Prosecutor General and with the agreement of the Supreme Council of the Judiciary.

<sup>58</sup> *Al-Dustur*, May 10, 2007.

guarantees of autonomy vis-à-vis the hierarchy, particularly court presidents. Besides addressing warnings to judges under their jurisdiction, court presidents can propose that the Prosecutor General initiate disciplinary action against them. Moreover, while Law 46/1972 entrusted the composition of the different circuits and the allocation of judicial matters among them to the general assembly of the court, that same law authorizes the assembly to delegate all or part of its powers to its president. In practice, all general assemblies of all courts, regardless of their degrees, extend every year an absolute delegation of authority to their presidents, delegating fundamental attributions, such as the composition of circuits and the distribution of cases among them. According to judges, this allows the assignment of a specific judge to decide on a specific case, while the distribution of cases should be mandated according to general and abstract rules.

The executive authority keeps the means to influence the affairs of the judiciary, either through the President of the State who nominates both the Prosecutor General and the President of the Court of Cassation, signs the decisions of nomination and promotion of judges, selects judges who will be commissioned abroad or assigned to the Ministry of Justice; or through the Minister of Justice who appoints the presidents of courts of first instance, selects the members of the Judicial Inspection Department, introduces requests for retirement or transfer to non-judicial functions.

#### **Attempts to isolate the Cairo Judges Club and reformist judges.**

The relationship between the current (2007) Minister of Justice, Mamduh Mar'i, and the Judges Club has never been friendly. It dates back to the time of the presidential election commission, when the Judges Club strongly criticized decisions framing the rules of the electoral process taken by that body and by its president. When that latter was appointed new Minister of Justice in August 2006, this decision was considered by judges as a way to reward him for his stance during the presidential elections.<sup>59</sup>

After he became minister, Mamduh Mar'i totally refused any dialogue with the Cairo Club,<sup>60</sup> any visit to its premises,<sup>61</sup> or invitation in the ministry.<sup>62</sup> He did not respond to any of their memos. The Cairo Club, which

<sup>59</sup> See for instance Hisham al-Bastawisi in *al-Masry al-Youm*, January 31, 2007.

<sup>60</sup> Though he has visited several regional judges clubs.

<sup>61</sup> He even refused an invitation for an *iftar* during Ramadan, stating that he never eats out of his home (*al-Masry al-Youm*, October 12, 2006).

<sup>62</sup> *Al-'Arabi*, June 24, 2007.



had been at the forefront of the struggle for electoral transparency, and its reformist judges have started paying the price for their activism.

**a) Cutting off funding for the clubs.** In 2005, the Minister of Justice suspended the annual financial subsidy the ministry used to pay to the judges clubs and which was considered their main source of funding.<sup>63</sup>

According to the first counselor of the minister, the freezing of this grant was due to the fact that there was no explicit line in the budget of the Minister of Finance allocated to judges clubs. The minister wanted to do what was right and not what used to be followed in the past.<sup>64</sup>

The board of the Judges Club has protested this suspension of their financial grant. In order to be able to continue to provide basic services to its members and pay overdue bills, it decided in October 2006 to raise the monthly membership fee from LE2 to LE20.<sup>65</sup>

Besides, in December 2006, the Central Auditing Agency was asked to audit the annual budgets of all clubs since 2001. The Cairo Judges Club suggested that the audit be extended to include budgets since 1991, after Muqbil Shakir became president of the Club.<sup>66</sup> Hisham al-Bastawisi wondered why such a control was decided at that particular time after 15 years of interruption. For him, it was a fabricated control and a link in the chain of intervention in the affairs of judiciary.<sup>67</sup> After a few weeks of tension, all clubs finally accepted to cooperate with that agency.<sup>68</sup>

**b) Discrediting reformist judges.** Reformist judges are regularly presented as being infiltrated by the Muslim Brotherhood.<sup>69</sup> This may be due to the fact that in most of the constituencies where judges reported fraudulent practices, a candidate of the Muslim Brotherhood was defeated by the

<sup>63</sup> According to Zakariya 'Abd al-'Aziz, President of Cairo Judges Club, no financial subsidy was received from the Ministry of Justice after October 2005 (*al-Dustur*, April 19, 2007).

<sup>64</sup> *Ruz al-Yusuf*, June 18, 2007.

<sup>65</sup> *Al-Masry al-Yaum*, October 29, 2006. See also *Nahdat Misr*, November 2–3, 2006.

<sup>66</sup> *Al-'Arabi*, December 3, 2006.

<sup>67</sup> *Al-Wafd*, December 23, 2006.

<sup>68</sup> *Al-Masry al-Yaum*, December 29, 2006. See also *al-Ahali*, December 20, 2006.

<sup>69</sup> See, for instance, an interview with Counselor Mahmud Sadiq Burhan, former head of the Judges Club in Mansoura, in *al-Masry al-Yaum*, May 9, 2006. Mahmud al-Khudeyri decided to complain before the public prosecution against such an accusation. See *al-Masry al-Yaum*, May 16, 2006.

candidate of the National Democratic Party. For instance, a few days after Noha al-Zini, a member of the administrative prosecution, denounced in *al-Masry al-Youm* the vote rigging she had witnessed in the constituency where she was supervising the elections,<sup>70</sup> *Ruz al-Yusuf* accused her of having close members of her family belong to the Muslim Brotherhood. In February 2007, rumors spread according to which Mahmud al-Khudeyri, President of the Alexandria Judges Club, was a candidate to the position of Guide of the Muslim Brotherhood. He denied having relations with them and accused the security services of having fabricated such rumors.<sup>71</sup> At the end of August 2007, the editor in chief of *al-Gumhuriya* published an article entitled “Details of the Project of the Brotherhood to Infiltrate the Judiciary and Overthrow the Minister of Justice,” in which he gave details about a private meeting between leaders of the Judges Club and the president of the Judges Club of the State Council.<sup>72</sup> The Judges Club called on a lawyer to study all legal measures that could be taken against that journalist for having defamed them.<sup>73</sup> In an interview to *al-‘Arabi* in June 2007, a journalist asked Ahmed Mekki whether or not he was a member of the Brotherhood. Mekki replied by asking why being a Muslim should make him belong to them.

Egyptian judges, like judges in general, are conservative. On the opening of the general assembly of the club in November 2006, judges prayed together in public.<sup>74</sup> Does this mean they belong to the Muslim Brotherhood and follow their ideology and programs? Some of the reformist judges, like Mahmud al-Khudeyri or Ahmed Mekki, a vice-president of the Court of Cassation, for instance, often refer in their interviews or articles to Qur’anic verses or *hadiths*. Ahmed Mekki acknowledged his conviction that any solution (*hal*) that would not respect the main principles of Islam would end in failure. However, he added that Muslims would remain underdeveloped

<sup>70</sup> See *al-Masry al-Youm*, May 16, 2006.

<sup>71</sup> *Al-Fajr*, February 26, 2007.

<sup>72</sup> *Al-Gumhuriya*, August 30, 2007. The Judges Club of the State Council, that had remained for long away from the conflict, entered in a confrontation with the Minister of Justice in 2007, feeling outraged by some of his statements and accusing him of not enforcing court decisions.

<sup>73</sup> *Al-Badil*, September 12, 2007. Ahmed Mekki deems such a complaint useless because of the parliamentary immunity enjoyed by that editor in chief, who was appointed by the President of the Republic in the Consultative Council in June 2007 (*al-Badil*, September 10, 2007). For Mekki, this article was written in return for this appointment (*al-Dustur*, September 12, 2007).

<sup>74</sup> See the picture on the front page of *al-Wafd*, November 18, 2006.

if they did not adopt the foundations of the modern state, describing Tony Blair's Great Britain as the closest regime to that established by the Prophet Muhammad.<sup>75</sup>

Judges are conservative and some of them are certainly influenced by the Islamist ideology, but is not Egyptian society as a whole conservative and influenced by this ideology? Why should judges not reflect the main trends of their society? Judges got the support of Muslim Brotherhood in their struggle against the executive power, but they were also supported by NGOs, trade unions, and opposition parties. Besides, if there was any proof that some of the leaders of the reformist judges belong to the Muslim Brotherhood, would not the security forces show it in public? Judges accuse the government of spreading false rumors to tarnish their reputation and divert them from their main concerns.<sup>76</sup>

Other reformist judges, and even sometimes the same ones accused of Islamist tendencies, also refer to nationalist values, maintaining that their action only aims at the respect of the legitimate will of the Egyptian people and its right to enjoy transparent elections and have an independent judicial system. Hisham al-Bastawisi, another vice-president of the Court of Cassation, in particular, constantly calls upon the people and refers to the popular support judges received during their protest actions. Reformist judges also based their struggle for real judicial independence on the modern principle of separation of powers. Some often also invoke human rights and the right to a fair trial or freedom of association. Although united in the defense of the same fundamental values, judges still constitute a group of individuals driven by personal motivations, religious or other.

The overdue appointment of women judges that finally took place in 2007 after years of struggle of feminist groups and international pressure was criticized by judges, in particular because they were not consulted beforehand.<sup>77</sup> The president of the Judges Club added that he was against this decision at this particular time since it was not the most pressing issue in comparison with the claims of judges.<sup>78</sup> According to Ahmed Mekki, "the timing of the raising of this issue is an attempt to divert the attention of judges away from their battle for reform and for complete judicial supervision of elections. Appointing women as judges will not offer solutions to the problems facing the judiciary but it will help the state redirect

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<sup>75</sup> *Al-Arabi*, June 24, 2007.

<sup>76</sup> *Al-Dustur*, September 12, 2007.

<sup>77</sup> *Al-Arabi*, December 3, 2006. See also *al-Masry al-Youm*, December 3, 2007.

<sup>78</sup> *Al-Masry al-Youm*, November 14, 2006.

its own confrontation with judges into a superficial conflict between male and female judges.<sup>79</sup>

Zakariya 'Abd al-'Aziz added that the Egyptian society was not ready yet for the appointment of female judges.<sup>80</sup> This stand showed the conservatism of those otherwise reformist judges and fueled criticism against them from civil society organizations that had so far stood beside them.<sup>81</sup> According to some observers, the government used the nomination of female judges to create internal divisions within the Judges Club and deprive it of NGOs support.<sup>82</sup> In March 2007, the president of the Judges Club of the State Council also opposed the nomination of female judges, for mainly religious and social reasons.<sup>83</sup> He too was criticized by human rights defenders.<sup>84</sup>

As Nagui Darbala, a vice-president of the Court of Cassation pointed out, judges were accused of having Zionist tendencies when they planned to receive a delegation of Human Rights Watch. Then, they were accused of their affiliation with the Muslim Brotherhood when the latter supported the draft amendment of the Law on the Judiciary prepared by the Judges Club. Later, they were accused of being pro-American when a delegation of the Congress asked to meet with them. After this, they were accused of having made a deal with the government when the law on the judiciary was amended, and finally, they were accused of being extremist when they published a press release condemning the attack on Iraq.<sup>85</sup>

**c) Alternative services.** The Minister of Justice began to establish parallel organizations to the judges clubs that offer similar services to judges, in what some considered as an attempt to undermine the role of the clubs. Since October 2006, offices have been established in each Court of First Instance to provide health and social services to their members.<sup>86</sup> According to Muqbil Shakir, President of the Court of Cassation and President of the Supreme Council of the Judiciary, the minister only wanted to provide new

<sup>79</sup> *Al-Ahram Weekly*, March 8–14, 2007.

<sup>80</sup> *Al-Masry al-Youm*, November 14, 2006.

<sup>81</sup> *Nahdat Misr*, November 20, 2006. See also *al-Masry al-Youm*, December 21, 2006 and *al-Fajr*, November 6, 2006.

<sup>82</sup> *Al-Fajr*, December 11, 2006.

<sup>83</sup> *Al-Masry al-Youm*, March 3, 2007.

<sup>84</sup> *Ruz al-Yusuf*, March 4, 2007.

<sup>85</sup> *Ruz al-Yusuf*, July 10, 2006.

<sup>86</sup> *Al-Masry al-Youm*, October 28, 2006.

services to the members of the judiciary without withdrawing anything from the clubs. Both offer services and there was no problem in having several providers of services.<sup>87</sup> Mahmud Mekki, a vice-president of the Court of Cassation, considered this decision a waste of public money since such services were already provided by clubs. For him, the real aim was to wean judges away from their clubs.<sup>88</sup> In June 2007, during their general assembly, counselors of the Court of Cassation were informed that an association was going to be established to offer services to the members of the court. For Ahmed Mekki, this is a new attempt to create bodies to challenge the Judges Club.<sup>89</sup> Similarly, for Hisham Genina, Secretary General of the Judges Club, the hidden aim was to deprive the club of any role in the service of the members of the Court of Cassation, despite the fact that the club could not be closer to the Court of Cassation, and counselors of that court were the first ones to benefit from its services.<sup>90</sup>

In February 2007, the ministry started circulating professional cards for judges, though this service used to be provided by the club. The first counselor of the Minister justified this measure by the fact that the cards offered by the club were old and printed on cheap paper. The Minister of Justice decided to improve their presentation.<sup>91</sup> The number of pilgrimage visas received by the Judges Club has also decreased, and they are now allocated by the Supreme Council for the Judiciary and not by the Ministry of Justice anymore.<sup>92</sup>

In June 2007, the Ministry of Justice decided to cancel the assignment of 16 court employees to the Cairo Club.<sup>93</sup> Zakariya 'Abd al-'Aziiz reacted by saying that this was an attempt to hinder and impede their activities, but added that this decision could have positive effects by providing a kind of administrative independence, just as the refusal to subsidize the club has led to a kind of financial independence.<sup>94</sup>

**d) Threats over the future of the club.** Judges fear that another retaliation measure may consist of seizing control over the club, the legal status

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<sup>87</sup> *Sawt al-Ummah*, February 19, 2007.

<sup>88</sup> *Al-Masry al-Youm*, October 28, 2006.

<sup>89</sup> *Al-Dustur*, June 24, 2007.

<sup>90</sup> Ibid. The Judges Club is only 50 meters from the Court of Cassation.

<sup>91</sup> *Ruz al-Yustufi*, June 18, 2007.

<sup>92</sup> *Al-Wafd*, October 29, 2006. See also *al-Masry al-Youm*, November 13, 2006.

<sup>93</sup> *Al-Dustur*, June 14, 2007.

<sup>94</sup> *Al-Masry al-Youm*, June 18, 2007.

of which is very controversial. The club refuses to apply for registration as an association so that it does not fall under the supervision of the Ministry of Social Affairs. Judges consider that since it is a gathering of members of the judiciary, their club should be organized by the Judicial Authority Law. However, Law No. 142/2006 that amended Law 46/1972 on the Judicial Authority remained silent regarding the status of the club. The regime justified this exclusion by the fact that the 1972 Law organizes the judiciary, while the statutes of the Judges Club are similar to that of professional syndicates and NGOs.

In January 2007, the Minister of Social Affairs publicly declared that the club should register as an association in conformity with the 2002 Law on Associations, saying he was ready to carry on this procedure upon a request by the club.<sup>95</sup> This declaration was perceived by the judges as a step toward the dissolution of the club. However, the following day, the minister denied any intention to dissolve the club.<sup>96</sup> Still, the fear of dissolution of the board and its replacement by nominated members, as had happened in 1969, weighed on the members of the club despite the affirmation of Hisham al-Bastawisi that it would be impossible to dissolve the club because it was under the protection of the Egyptian people.<sup>97</sup> There was also concern that it could be placed under the control of the Supreme Council of the Judiciary or, even worse for reformist judges, of the Ministry of Justice.<sup>98</sup>

**e) Regional clubs and the Cairo Judges Club.** The executive power has also adopted a strategy of divide and rule by using regional clubs against the Cairo one.<sup>99</sup> Besides the Cairo Club, there exist more than 20 regional clubs, the most important being the Alexandria one, established in 1941 to provide services to the large number of judges working in that city. The other clubs were created in 1980 by the Minister of Justice during Sadat's regime to try to undermine the influence of the Cairo one, which had strongly criticized the adoption of the Law on Shame<sup>100</sup> as a violation of fundamental freedoms.<sup>101</sup>

<sup>95</sup> *Nahdat Misr*, January 31, 2007.

<sup>96</sup> *Nahdat Misr*, February 3, 2007.

<sup>97</sup> *Al-Fajr*, February 5, 2007.

<sup>98</sup> *Al-Masry al-Youm*, November 8, 2006. See also *al-Dustur*, April 15, 2007.

<sup>99</sup> *Al-Dustur*, May 10, 2007.

<sup>100</sup> Law 95 of 1980 on Protecting Values from Shame criminalized a wide range of social and political offences and established Courts of Values.

<sup>101</sup> Ahmed Mekki in *Ruz al-Yusuf*, January 8, 2007.

This strategy had already been resorted to by the former Minister of Justice in 2005, who visited most regional clubs to get their support against the threat of boycott of the monitoring of the elections. Some regional clubs had then sent a letter to the ministry saying their members were ready to supervise the elections. In 2007, the President of the Asyut Judges Club, in particular, made several statements claiming that Asyut judges did not support the positions taken by Cairo Judges Club. When members of the club threatened to withdraw confidence from the president, he admitted that all his previous statements represented his personal views and not the official position of the club.<sup>102</sup>

**f) Extending the retirement age for judges.** In April 2007, the Law on the Judiciary was amended again to raise the age of mandatory retirement of judges from 68 to 70 years, a measure the Judges Club had opposed several times before. In December 2005, a poll had been administered during the general assembly of the club regarding this issue, according to which 3706 judges voted against it and 522 were in favor of it.<sup>103</sup> Reformist judges accuse the government of tailoring this amendment in order to reward some pro-government judges who were close the retirement age and maintain them in their powerful positions, including the presidents of the Court of Cassation, of Cairo Court of Appeal, of the State Council and of the Supreme Constitutional Court.<sup>104</sup> At the same time, the amendment prevents young reformist judges from occupying high-ranking posts within the judiciary.<sup>105</sup> It was justified by the government on the basis of the need to benefit from the experience of veteran judges<sup>106</sup> and speed up the flow of court cases. Judges replied that the older one gets, the less active his mental capacities.<sup>107</sup> Besides, most senior judges exercise administrative and leadership responsibilities and do not sit on the bench anymore.<sup>108</sup>

The board of the Judges Club decided to hold an extraordinary general assembly on April 29, 2007, followed by a sit-in or a protest march to Abdin

<sup>102</sup> *Al-Masry al-Youm*, May 27, 2007 and *al-Dustur*, May 27 and 31, 2007.

<sup>103</sup> *Al-Masry al-Youm*, December 18, 2005.

<sup>104</sup> *Al-Masry al-Youm*, February 2, 2007. Five members out of seven of the Supreme Council of the Judiciary would have reached the retirement age in 2007 (*al-Dustur*, April 26, 2007).

<sup>105</sup> *Nahdat Misr*, April 4, 2007.

<sup>106</sup> *Ruz al-Yusuf*, April 26, 2007.

<sup>107</sup> *Nahdat Misr*, April 18, 2007.

<sup>108</sup> *Al-Badil*, September 10, 2007.

presidential palace.<sup>109</sup> This suggestion was dropped and judges only observed a minute of silence due to the small number of judges who attended the assembly. According to officials in the club, the low attendance was due to the fact that the assembly took place on a working day.<sup>110</sup> Another explanation was the state of despair and frustration among judges: “Judges heard that whatever they did, the state would not back off and withdraw the bill.”<sup>111</sup>

## Conclusion

The Minister of Justice has been at the forefront of the struggle of the executive power against the Judges Club, but the “negative neutrality” of the President of the Republic may also have given a “green light”<sup>112</sup> to the ministers of justice and interior to do whatever they liked. The club members probably also have a share in the responsibility for the failure of their movement. Their willingness to supervise the 2005 presidential and parliamentary elections though the government had refused to accede to most of their demands may have played a major role. Their position toward international support was also not clear. For instance, they first accepted to meet representatives of Human Rights Watch anxious to discuss the club’s concern over judicial independence, but had to retreat due to political pressure.<sup>113</sup> Similarly, they refused to talk internal politics with a sympathizing delegation of the European Union in November 2006, and turned the meeting into a harsh criticism of the positions adopted by the European Union in the region.<sup>114</sup> They were also criticized for adopting statements on international political issues, such as the war in Lebanon in August 2006 for which they criticized the US as the maker, supporter, and main beneficiary

<sup>109</sup> Judges said they feared the President of the Republic might have been misinformed by the Minister of Justice of their view regarding raising the retirement age and wanted to inform him directly so that he could intervene and stop the examination of the draft law (*al-Wa'af*, April 26, 2007. See also *al-Dustur*, April 26, 2007).

<sup>110</sup> *Al-Ahram Weekly*, May 3–9, 2007.

<sup>111</sup> Ahmed Saber, Secretary General of the Judges Club, *ibid*.

<sup>112</sup> Khalil al-'Anani, “The Crisis of the Judicial Authority in Egypt: A Political View,” in CIHRS, *Rawaq Arabi*, 42, 2006, p. 108 (in Arabic).

<sup>113</sup> A joint statement was published by the heads of the eight Courts of Appeal meeting in an extraordinary assembly on March 29, 2006, accusing Human Rights Watch of being an American and Zionist organization, and that meeting them would permit foreign interference in internal matters. For a criticism of this decision of the Club by Hisham al-Bastawisi, see *al-Masry al-Yaum*, April 5, 2006.

<sup>114</sup> *Al-Masry al-Yaum*, November 23, 2006.



of the aggression against the Arab nation; warned against the New Middle East approach proposed by US President; considered popular resistance the only way to protect the Arab nation and its honor; expressed their entire support to the heroic Lebanese resistance; and asked the Egyptian government to abrogate the Camp David agreements.<sup>115</sup>

At the end of May 2007, a panel of judges was attacked by supporters of a former member of parliament, after they announced his sentencing to three years of prison for bribery. Pro-governmental newspapers accused the members of the board of the Club of being responsible for this loss of prestige of the judiciary, after they had tarnished its image by accusing their colleagues of participating in vote rigging.<sup>116</sup> “How can we expect the public to accord respect to judges when daily they see how the judiciary is humiliated by the state?” replied Hisham Genina, Secretary General of the Judges Club<sup>117</sup>, underlining, for instance, that judges who have been brave enough to expose electoral fraud were referred to disciplinary hearings, or that court decisions are not implemented while the constitution is amended to end full judicial supervision of elections. What has happened, added Genina, is that the public has come to realize that the judiciary enjoys no independence from the executive. It is this, he says, that has caused them to lose respect. The physical attacks suffered by judges during the 2005 elections was also referred to as an explanation<sup>118</sup> Both parties seem to have a short memory though and forget that everything had started in spring 2005 with a similar attack of lawyers on judges in Alexandria. In between, however, the support enjoyed by reformist judges seemed to have vanished. The last extraordinary general assembly in May 2007 was attended by less than 100 judges, and the club did not organize the protest march it had planned for in order to denounce the raising of retirement age. In April 2007, reformist judges seemed divided,<sup>119</sup> and some of them started re-adjusting their statements.<sup>120</sup> Besides, two members of the Cairo board

<sup>115</sup> *Al-Sharq al-Awsat*, August 4, 2006. See also two articles written by Mahmud al-Khudeyri, in which he considered Hassan Nasrallah a hero (*al-Masry al-Yaum*, August 21 and 27, 2006).

<sup>116</sup> *Ruz al-Yusuf*, May 31, 2007.

<sup>117</sup> *Al-Ahram Weekly*, June 7–13, 2007.

<sup>118</sup> See for instance *al-Masry al-Yaum*, June 3, 2007 and *al-Dustur*, June 2, 2007.

<sup>119</sup> For instance, Ahmed Mekki said the Judges Club was going to release a report on the March 26, 2007, referendum (*Nahdat Misr*, April 17, 2007, and May 16, 2007) while Zakariya ‘Abd al-‘Aziz stated there would be no such report because after the amendment of article 88, the Club had nothing to do anymore with the elections (*al-Wafd*, May 17, 2007).

<sup>120</sup> Ahmed Mekki, *Ruz al-Yusuf*, May 25, 2007.

were said to have resigned in May 2007, without revealing the reasons for such a decision.<sup>121</sup>

Without international and internal pressure and the support of fellow judges, as had happened in December 2005 during the elections for the board of the Cairo Judges Club,<sup>122</sup> the regime may well succeed in muzzling the only protest movement that had represented a real threat to it because it was coming from inside. There were hopes among the judges in 2005 that “their actions could help open some political space for opposition groups to occupy and jar one of the most inert political systems in the region out of its prolonged stasis” (Brown and Nasr, 2005). It seems that after two years of awakening, the political system is back to that stasis.<sup>123</sup>

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<sup>121</sup> *Majallat Uktubir*, May 27, 2007.

<sup>122</sup> The list presented by the outcoming president Zakariya ‘Abd al-‘Aziz had won all the 14 seats as well as the presidency of the club. This victory was seen as the expression of support of judges to the positions taken by their club in its conflict with the régime. This was underlined by the very high participation rate.

<sup>123</sup> For a study of different aspects of the links between judges and political reform in Egypt and in the Arab World, see ‘Abd al-Fattah (2006).