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The American University in Cairo

School of Global Affairs and Public Policy

**APPOINTING AND TRAINING JUDGES
IN EGYPT AND COMPARATIVE SYSTEMS**

A Thesis submitted by

Moataz Muhammad Al-Saghir Aidaros

To the Department of Law

Spring 2022

**In partial fulfillment of the requirements for the degree of
LL.M. in International & Comparative Law**

The American University in Cairo
School of Global Affairs and Public Policy

APPOINTING AND TRAINING JUDGES
IN EGYPT AND COMPARATIVE SYSTEMS

A Thesis Submitted by
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to the Department of Law

Spring 2022

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DEDICATION

*To the people who never quit to achieve their hopes and aspirations
irrespective of the challenges they face . . .*

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Supervised by Professor Jason Beckett

ABSTRACT

The topic of the paper is very important, as it comes up at a time when the Egyptians have come to a point that reforming Egypt's justice system is a hopeless case. This is due to the outdated and inefficient way of thinking and performing in the judiciary. Thus the goal of this paper is to make an intellectual contribution to a sustainable reform program of the Egyptian judiciary and namely the systems of judicial appointment and judicial training using their roles as agents of progress and development. This aspiring research argues that the Higher Council of Judicial Entities and Bodies (hereinafter the Higher Council) is not necessarily threatening judicial independence but rather creating a balance between judicial independence and judicial accountability. However, some modifications must be made to its formation as a part of my proposals for reform. While the National Training Academy (hereinafter the NTA) is not appropriate nor ideal to train the members of the justice system because of the judicial leadership and ownership of the judicial training, thus, an independent body responsible for appointing and training judges shall be established and this will be displayed in my proposals for reform project at the end of this research paper.

KEYWORDS: Egyptian Justice System – Judicial Appointment and Judicial Training – Judicial Independence and Judicial Accountability – The Higher Council for Judicial Bodies – The NTA National Training Academy – Comparative Judicial Councils – Comparative Judicial Schools – The NJA National Judicial Academy – The ENM Ecole Nationale de la Magistrature – Escuela Judicial Consejo General del Poder Judicial

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I. INTRODUCTION

Modern and fast changes in any society require higher qualifications for the successful functioning of government. Hence, the judiciary, as one of the three branches of government, requires qualified and skilled individuals to operate the justice system in the best manner.¹ However, the improper practices performed in the systems of judicial appointment and judicial training have weakened the credibility and efficiency of the Egyptian justice system. Therefore, my main objective of this paper is to reform the systems of appointment and training in the Egyptian judiciary.

What made me come to this specific topic and what made me link the judicial appointment with judicial training and their relation with judicial independence and judicial accountability can be summarized in a nutshell, as simple as follows: Judicial independence requires that the judicial branch is accountable for its competency.² In parallel, judicial competency can be improved by judicial appointment. However, even the most strict appointment methods,³ cannot guarantee the continued proficiency of the judiciary.⁴ At the same time, the best tool to improve professional competency is through proper training.⁵ Therefore, proper judicial appointment and convenient judicial training are necessary for increasing judicial competency and promoting judicial independence and accountability. Judicial appointment and judicial training can be used as agents for progress and development in the justice system and the whole society. They contribute to, along with many other methods, end discrimination and gender bias, increase diversity on the bench, and increase judicial competency and efficiency which in turn increase judicial accountability and consequently increase judicial independence.

Judicial reformers or researchers interested in this field usually when discussing judicial reform programs focus more on judicial independence rather than judicial accountability and their effects on judicial competency and efficiency. This paper's contribution to such a field is that it argues that a judiciary that is not accountable is not truly independent. The slogan of judicial independence is being used by Egypt's judiciary as a tactic to avoid any accountability to either the other

¹ Laurance M. Hyde, *Essentials of a Modern State Judicial System*, Notre Dame L. Rev., 236 (1955).

² Helen Gregorczyk, *The Desirability of Judicial Education in Australia*, 14 J. of Professional Legal Educ., 89 (1996).

³ S.I. Strong, *Book Review of Richard A. Posner, Divergent Paths: The Academy and the Judiciary*, J. of Legal Educ., 421 (2017).

⁴ *Id.*

⁵ *Id.* at 422.

branches of government or to the public. This paper argues that a sustainable justice reform to the systems of judicial appointment and judicial training shall include all the justice stakeholders from other branches of government, the private legal profession, and civil society.

Therefore, I am beginning chapter one by explaining the systems of judicial appointment and judicial training in Egypt in detail where I indicate that there are many drawbacks in both systems that need to be addressed and reformed. The drawbacks of the judicial appointment system can be summarized as follows: 1) gender inequality and discrimination against women. 2) discrimination against candidates of lower socio-economic classes. 3) judicial nepotism and favoritism. 4) abstention from appointing lawyers and law professors. 5) lengthy appointment process. While the drawbacks of the judicial training system can be summarized as follows: 1) the budgets assigned to judicial training programs. 2) the intra-institutional disputes among the judicial institutions. 3) the fragmentation of training centers in the judicial institutions.

In chapter two, I highlight the role of the newly established Higher Council and the newly created NTA in both systems of judicial appointment and judicial training where I discussed the arguments stating that both of the newly created bodies are posing threats to the independence of the judiciary. Thus, chapter two consists of two main parts. The first main part is concerning the Higher Council, I counter-argue this argument by arguing that the Higher Council does not necessarily threaten judicial independence. I use three methods to support my argument, the first is through discussing the reluctance of the judiciary to reform the system of judicial appointment where I demonstrate the two famous examples of 2005 and 2007, besides the struggle of women to be Public Prosecutors and State Council Judges since 1946 to 2010 and even after the 2014 Constitution that clearly provides for the right of women to hold judicial positions in all judicial institutions. I conclude that the judiciary would never accept appointing women as judges except after the participation of the Executive, as a type of checks and balances technique, in allowing women to sit on the bench.

The second method I use to support my argument is discussing the status of the judiciary with respect to independence and accountability in the 2014 Constitution where I explain that before the referendum on constitutional amendments establishing the Higher Council in 2019, the Egyptian judiciary enjoyed wide autonomy, and not independence, that made it isolate itself more whether from the public or the other branches of government. Thus, the Higher Council helps in

the creation of bridges and shared spaces whether between the different judicial institutions or between the judicial institutions and the other branches of government. The third method I use is analyzing the comparative systems regarding higher councils for the judiciary, where I indicate that the presence of political members, whether from the Legislature or the Executive, in higher councils does not necessarily threaten judicial independence, thus, the mixed composition is not against the judicial independence if the majority of the members are judges. However, I propose that the formation of the Higher Council should be modified in chapter three.

The second main part of chapter two is concerning the NTA and its expanding role in training judges, thus providing a backdoor for the Executive to control the training and education of judges. I argue that the NTA is not appropriate nor ideal to act as a training academy for judges and prosecutors. I use two methods to support my argument. The first method is through analyzing the principle of judicial leadership of judicial training and the principle of judicial ownership of judicial training and the necessity of locating judicial training at the heart of the judiciary. The second method is through studying the comparative systems of judicial schools.

In chapter three, I highlight the roles of judicial appointment and judicial training as agents for development and progress within the judiciary, followed by the reform of judges' mentality through judicial training. Then, I explain the importance of the modification of the Higher Council's formation. Subsequently, I propose a reform project for both systems of judicial appointment and judicial training. I begin my reform project by highlighting the importance of creating an independent body responsible for appointing and training judges, then I discuss the most appropriate reform that can be implemented in Egypt. I end my reform project by proposing the creation of the NJA as the sole training center for all judicial institutions and all personnel working in the justice system. Finally, I state some recommendations that must be adopted and endorsed in the newly created NJA.

II. JUDICIAL APPOINTMENT AND JUDICIAL TRAINING IN EGYPT

Globally, the performance of judges after their appointment affects society's attitudes toward judicial institutions and the public confidence in them. From the quality of judicial performance, one can know how a country respects the rule of law. The judicial performance also can give indicators of the level of the economic performance in a country.⁶ In Egypt, the systems of judicial appointment and judicial training need to be reformed.⁷ As they have several shortcomings that must be tackled urgently to build an efficient justice system that delivers the service of justice to its society in a fair and fast manner. Before discussing these drawbacks, firstly, we need to get a closer look at both systems. Therefore, this chapter is divided into three main parts, first part is displaying the Egyptian judicial appointment system with its two main segments which are: the appointment requirements and the appointment procedures. The second part is about the Egyptian judicial training system and is composed of two sections: the first is the definition and objectives of judicial training, followed by the second section which is a close look at the five different judicial training centers in the different judicial institutions. In the third part, I will show, the readers and researchers interested in Egypt's justice system, and the need for reforming both systems of judicial appointment and judicial training. Thus, the third part will be divided into two main sections: the first section is demonstrating the defects of the judicial appointment system, while the second section is showing the drawbacks of Egypt's judicial training system.

A. Judicial Appointment System in Egypt

First, it must be noted that globally there are different models of judicial selection which can be divided into four models. Judicial appointment may take place through popular election, by the executive, by the legislature, or appointment by the judiciary itself. Most countries use mixed models in the whole judicial recruitment process where the final recruitment step is left to the executive through the Minister of Justice or the Head of State.⁸ Another model of judicial appointment can be added to the aforementioned four models, which is the appointment by a

⁶ Samuel Spac, *Recruiting European Judges in the Age of Judicial Self-Government*, 19 GERMAN L.J. 2078, 2079 (2018).

⁷ Shams Al Din Ahmed Al Hajjaji, *Form of Reform: Judicial Reform in Egypt Lessons from the Developed Countries*, (Hereinafter Al Hajjaji Form of Reform), Univ. of Cal. 129 (2016).

⁸ Luis Muniz-Arguelles & Migdalia Fraticelli-Torres, *Selection and Training of Judges in Spain, France, West Germany, and England*, 8 B. C. INT'L & COMP. L. REV. 8 (1985).

judicial council.⁹ The judicial council is an independent council that sends the list of judicial nominees to the executive or the legislature to issue the appointment decree. The judicial council typically consists of members from the three government branches as well as lawyers and law academics.¹⁰

In Egypt's appointment system of judges, judges appoint their peers.¹¹ Judges, prosecutors, and members of the judiciary are appointed by the high boards of the four judicial institutions.¹² These high boards are composed exclusively of the most senior seven members of each judicial institution. The four judicial institutions are the Ordinary Judiciary and the Public Prosecution as one institution with one high board, the Council of State, the Administrative Prosecution, and finally the State Lawsuits Authority. The high board of Ordinary Judiciary and the Public Prosecution is called the Supreme Judicial Council (SJC),¹³ while the high board of the Administrative Judiciary (the Council of State) is called the Special Board.¹⁴ The same applies to the Administrative Prosecution Authority and the State Lawsuits Authority, where the high board in each of the two authorities is called the Supreme Council.¹⁵ The appointment of new members of the judiciary is regulated by the law related to each judicial institution. The appointment system can be divided into two main groups, firstly: the appointment requirements, and secondly: the appointment procedures.

1. The Judicial Appointment Requirements

The requirements for judicial appointment in Egypt are very few, compared to the requirements adopted in other countries such as France, Germany, Spain, Italy, Macedonia, Poland, Russia,

⁹ Iveth A. Plascencia, *Judicial Appointments: A Comparative Study of Four Judicial Appointment Models Used by Sovereigns Around the World*, L. Sch. Student Scholarship, at 13, (2015).

¹⁰ *Id.* at 16.

¹¹ International Bar Association, *Separating Law and Politics: Challenges to the Independence of Judges and Prosecutors in Egypt*, 22 (2014). (hereinafter *Separating Law and Politics*)

¹² I use the term "judicial institutions" in this paper to describe the four judicial entities and bodies that are namely: the Ordinary Judiciary and the Public Prosecution as one institution with one high board, the Council of State, the Administrative Prosecution, and finally the State Lawsuits Authority.

¹³ See *Judicial Authority Law No 46 of 1972 amended by Law No 35 of 1984*.

¹⁴ See *State Council Law No 47 of 1972 amended by Law No 136 of 1984*.

¹⁵ See *the Administrative Prosecution Authority Law No. 117 of 1958 and the State Lawsuits Authority Law No. 75 of 1963*.

Ukraine, and other civil law countries.¹⁶ The appointment requirements of the Egyptian judiciary can be classified into two categories which are namely: general conditions and educational requirements. Firstly, the general conditions are: 1) the nationality of the candidate and his/her full civil capacity. 2) accumulative academic grade shall not be less than “Good”. 3) age shall not exceed thirty years on the date of the last day of application. 4) the eligibility, competence, and qualification required to hold this judicial position according to the assessment of the competent committee in the judicial institution. This one means that the candidate shall not be convicted by courts or disciplinary boards for having committed crimes of dishonor, in addition to, the good reputation of the candidate. 5) shall pass the interview and the test that is determined by the judicial institution. 6) medical fitness shall be proved according to the tests and the examinations from the competent authorities that are determined by the judicial institution. These conditions are stated in the Judicial Authority Law governing the Ordinary Judiciary and the Public Prosecution,¹⁷ the same is applied in the other laws of the other three judicial institutions.

Secondly, the only educational requirement in Egypt is a bachelor’s law degree with an accumulative grade of ‘Good’.¹⁸ The Egyptian judicial institutions do not require the candidates to enter admission exams before appointment to ensure the appointment of the most qualified applicants.¹⁹ The educational requirements differ from one country to another as some countries require a higher law academic degree to be appointed in judicial positions.²⁰

2. The Judicial Appointment Procedures

The appointment process is mainly consisting of five stages. It starts with the announcement by the judicial institutions for judicial vacancies. Then the applicants shall go through the interview stage. After it, the passing candidates are security checked as well as their families. Then the security cleared candidates go through the medical examinations.²¹ The successful candidates are

¹⁶ See generally, Lee Epstein et al. *Comparing Judicial Selection Systems, William and Marry Bill of Rights J. 7 (2001)*. (A comparative analysis of judicial selection systems in 27 European countries).

¹⁷ See *Judicial Authority Law No. 42 of 1972, art. 38*.

¹⁸ Adel Omar Sherif, *Overview of the Egyptian Judicial System, and its History*, Y.B. of Islamic and Middle Eastern L. 12 (1998).

¹⁹ Mohamed Nour Farhat and Ali Sadek, ‘*Report on the State of the Judiciary in Egypt*’, The Arab Center for the Development of the Rule of law and Integrity 51.

²⁰ Shams Al Din Al Hajjaji, *The Reform of Judicial Appointment Process in the Ordinary Judiciary in Egypt*, (Hereinafter Al Hajjaji Reform), ‘The Reform Middle East L. and Governance J., 2 (2017).

²¹ *Id.* at 22.

approved by the Supreme Boards of the judicial institutions, and their names are sent to the President of the Republic via the Minister of Justice where a presidential decree is issued to ratify these approvals and declare the appointment of these candidates as new members of the judicial institutions.

The first stage of the appointment process is the Announcement. An announcement of each one of the four judicial institutions is published, stating the following: Whoever applies for the appointment to this position shall – in addition to the general conditions stipulated in the law – pass the following: 1) Their cumulative grades shall not be less than “Good”. 2) Their ages shall not exceed thirty years on the date of the last day of electronic registration. 3) Shall have the eligibility, competence, and qualification required to hold this judicial position according to the assessment of the competent committee in the judicial institution. 4) Shall pass the interview and the test that is determined by the judicial institution. 5) Their medical fitness shall be proved according to the tests and the examinations from the competent authorities that are determined by the judicial institution. The announcement mentions the conditions for application.²² It states the dates for taking application forms to be filled by the candidates and the deadline for submitting such applications. After submitting the applications, the judicial institutions select candidates, who meet the minimum requirement which is a law degree with a general accumulative grade of “Good”, for being interviewed.²³

The second stage is the oral interviews where the candidates are interviewed in a short oral interview by the members of the high board of each of the judicial institutions where the candidates are asked simple legal questions.²⁴ The interview only lasts for a few minutes which is not adequate to select the most qualified and appropriate candidates for such important positions.²⁵ Following the interview stage. The judicial institutions send the names of passing interviewees to the Ministry of Justice. The third stage is the Security Checks. This stage is considered the longest stage in time. The Ministry of Justice receives the names of all the passing interviewees and coordinates with the Ministry of the Interior to make security checks on the candidates and their families. The

²² *Id.* at 9.

²³ *Id.*

²⁴ *Id.* at 21.

²⁵ Foutouh El Chazli and Karim El Chazli, *The Independence of the Judiciary in Egypt*, Euro-Mediterranean Hum. Rts. Network (EMHRN), 50 (2010). <https://euromedrights.org/wp-content/uploads/2018/03/EGYPT-The-independence-of-the-Judiciary-EN.pdf>

security checks are extended to include all the candidate's family members and reach the fourth degree of kinship.²⁶ In their application, candidates are required to write the names, addresses, and jobs of family members up to the fourth degree. It includes parents, grandparents, siblings, uncles, and cousins, as well as their respective spouses and their children.²⁷ Candidates and their families should have no criminal or disciplinary records.²⁸

Stage four is the Medical Examination which consists of taking blood and urine samples from the candidates to ensure that they are free from alcohol and drug intake.²⁹ Whoever fails the tests are excluded from the list of candidates.³⁰ The fifth and last stage is the Presidential Decree issued by the President of the Republic for the appointment of the passed candidates as the various laws of the judicial institutions gives him/her the authority to issue the decree of appointment of the new members of the judiciary.³¹ The President of the Republic issues the appointment decree based on the nominations of the high board of each judicial institution.³²

B. Judicial Training System in Egypt

Parallel to the four models of judicial selection systems I have mentioned before, there are two different models for the judicial training systems. In England, judges are selected from legal professionals, such as attorneys and barristers, who have previous legal practical experience, thus they are not required to have legal training before their appointment and the same is adopted in the USA, Australia, and most common law countries.³³ While in France, Spain, and most European civil law countries, judges must have law degrees, and after their appointment, they must make more studies and take training in the judicial schools.³⁴ First, we shall discuss the definition of judicial training or education, followed by its objectives before displaying the status of judicial

²⁶ See Al Hajjaji, *supra* note 7, at 10.

²⁷ *Id.* at 10, 11.

²⁸ Judicial Authority Law No. 46 of 1972, art. 38.

²⁹ See Al Hajjaji, *supra* note 7, at 22.

³⁰ *Id.*

³¹ See generally the *Administrative Prosecution Authority Law No. 117 of 1958*, the *State Lawsuits Authority Law No. 75 of 1963*, the *Judicial Authority Law No. 46 of 1972* and the *State Council Law No. 47 of 1972*.

³² *Id.*

³³ Carlo Guarnieri, *Appointment and Career of Judges in Continental Europe: The Rise of Judicial Self-Government*, *Legal Stud.*, 170 (2004).

³⁴ *Id.*

training in Egypt and the fragmentation of the judicial training centers across the Egyptian judicial institutions.

1. Definition and Objectives

Judicial Training is a term used to include collegial meetings to discuss education topics and includes distance learning, electronic and print, and there are initial and continuing programs.³⁵ The most important objective of judicial training is to enhance judicial competence and help new judges make a smooth transition to judicial office.³⁶ It aims to provide judges with the required knowledge and skills to properly perform their judicial works.³⁷ Also, one of the goals of judicial training is to raise the professional competence of judges to deliver proper justice service to their societies. Judicial competence involves three parts which are legal knowledge, professional skills, and judicial disposition.³⁸ In other words, judicial training is very vital as it enhances judicial proficiency.³⁹

Moreover, judicial training is necessary to maintain the independence of the judiciary, its accountability as well as its impartiality, and effectiveness. Judges can improve their knowledge, skills, and understanding of social and economic issues through judicial training. Furthermore, judicial training enables judges in gaining a better understanding of the judicial function and they can exchange knowledge with their peers, allowing them to learn from each other.⁴⁰

The importance of judicial training is that, nowadays, around the world and not only in Egypt, the judicial function is difficult and challenging and there is a global belief that judges' legal education from their youth does not qualify them to serve as judges today, which in turn means that continuing judicial training is necessary for judges.⁴¹ As the social context keeps changing, judicial training has to be a continuing process designed to help the judge to realize this change. Judges need education and training before they are put on the job of adjudication of disputes and the

³⁵ Geeta Oberoi, *The Role of Judicial Education*, Nat'l Jud. Acad. L. J., 1 (2008).

³⁶ Livingston Armytage, *Training of Judges: Reflections on Principle and International Practice*, Eur. J. Legal Educ. 27, 28 (2005).

³⁷ Livingston Armytage, *Judicial Orientation; Six Factors Influencing Programme Development*, Int'l Bar Ass'n, at 3, (1994).

³⁸ Livingston Armytage, *Judges as Learners: Reflections on Principles and Practice*, 2nd International Conference on the Training of the Judiciary, 12 (2004).

³⁹ *Id.* at 3.

⁴⁰ T. Brettel Dawson, *Judicial Education: Pedagogy for a Change*, J. of Disp. Resol., 2 (2015).

⁴¹ Evan Bell, *Letter to a New Judge*, Commonwealth L. Bull., 98 (2014).

administration of justice.⁴² The Judicial training is found in many international instruments concerning the status of judges. For example, the Basic Principles on the Independence of the Judiciary stipulate that: “Persons selected for judicial offices shall be individuals of integrity and ability with appropriate training or qualifications in law.”⁴³

2. The Status of Judicial Training in Egypt

Egypt was one of the best judicial training hubs in the Middle East, however, it is weak nowadays.⁴⁴ The training programs offered to new judges and prosecutors have been reduced from a year to a few weeks of non-intensive basic training.⁴⁵ This produces unqualified judicial members who are unable to perform their judicial works properly. The laws governing the Egyptian judicial institutions do not include any provision related to the training of its members. The Egyptian judiciary does not have any training strategy for its members.⁴⁶ Thus, there is no legal training before judicial appointments,⁴⁷ and also, after appointment, there is no mandatory continuing judicial training.⁴⁸

There are many calls for the reform of the justice system through judicial training but nothing has been achieved.⁴⁹ For decades, there were many attempts for establishing a judicial institute or academy tasked with the training of the members of the judiciary but nothing was implemented. There was a project for the transformation of the NCJS into a Judicial Academy.⁵⁰ It shall include an examination system for those applicants for all judicial institutions and the candidates must attend 18 months’ training sessions and pass the graduation test.⁵¹ Judicial assistants shall be subject to the same criteria. However, this academy did not gain the required and the strong support

⁴² NR Madhava Menon, *Shaping of Future Judges: Tasks, Challenges and Strategies*, J. of Nat’l L. Univ. Delhi, 50 (2013).

⁴³ See Article 10 of the Basic Principles on the Independence of the Judiciary endorsed by General Assembly resolution no.40/32 and 40/146 of 1985.

⁴⁴ David Risley, *Egypt’s Judiciary: Obstructing or Assisting Reform*, Middle East Instit., 9 (2016).

⁴⁵ *Id.*

⁴⁶ International Bar Association’s Human Rights Institute (IBAHRI), *Justice at a Crossroads: The Legal Profession and the Rule of Law in the New Egypt*, 20 (2011).

⁴⁷ See Al Hajjaji, *supra* note 7, at 18.

⁴⁸ *Id.*

⁴⁹ “Lamis Al-Hadidy, *Judges need Training, Education and Reform*, Al-Watan News, (24 January 2016). Retrieved from: <https://www.elwatannews.com/news/details/936202>

⁵⁰ See Farahat and Sadek, *supra* note 19, at 56.

⁵¹ *Id.*

within the judiciary to become reality.⁵² In 2008, a law was drafted to support the idea of creating a judicial academy where judicial candidates can spend an examination period before being appointed to the judiciary.⁵³ This law however was not submitted to the Parliament.

Regarding the status of judicial training in Egypt, we can divide it into two phases, firstly: the judicial pre-appointment training, and secondly: the post-appointment training. On the one hand, concerning the pre-appointment training, the Egyptian judiciary does not require any form of pre-appointment training to apply for judicial positions.⁵⁴

Concerning the post-appointment training, on the other hand, the Egyptian judicial institutions believe that “the best way to learn how to fight is to have one.”⁵⁵ New members start their careers with initial training varying between one month or two, and there is no continuing education for judges.⁵⁶ Furthermore, there is no clear policy for pre-appointment training in the system of judicial selection.⁵⁷ Moreover, the law schools and the judiciary do not recognize any sort of judicial internships.⁵⁸ However, the Council of State requires the new appointees to have two diplomas of higher studies from law schools. The State Council Law No 47 of 1972 stipulated that requirement to be promoted.⁵⁹ The absence of such requirement results in depriving the new appointees in the rank of assistant delegates of the right to be promoted to the rank of delegates.

C. The Flaws of Egypt’s Systems of Judicial Appointment and Judicial Training

In Egypt, the two systems of judicial appointment and judicial training have many shortcomings that must be addressed in a comprehensive judicial reform program. On the one hand, the defects of the judicial appointment system can be divided into six defects. While, on the other hand, the challenges that face the system of judicial training can be summarized in four challenges.

⁵² *Id.*

⁵³ Nora Elbially and Miguel A. García-Rubio, *Assessing Judicial Efficiency of Egyptian First Instance Courts: A DEA Analysis Joint Discussion Paper Series in Economics*, 9 (2011).

⁵⁴ Shams Al Din Al Hajjaji, *Dilemma of Judicial Appointment in Egypt Questions of Gender Equality, Elimination of Political Opposition and Underprivileged Citizens*, (Hereinafter Al Hajjaji, *Dilemma*), DePaul J. for Soc. Just., 121, 122, (2018).

⁵⁵ *Id.* at 123.

⁵⁶ See Farahat and Sadek, *supra* note 19, at 55.

⁵⁷ See Al Hajjaji Reform, *supra* note 20, at 7.

⁵⁸ *Id.*

⁵⁹ State Council Law No. 49 of 1972, art. 73.

1. Five Defects of the Judicial Appointment System

The judicial appointment system has many shortcomings and defects that influence the competency and performance of the members of the judiciary.⁶⁰ The defects of judicial appointment can be categorized into 5 categories which are: a. gender inequality and discrimination against women. b. discrimination against candidates of lower socio-economic classes. c. judicial nepotism and favoritism. d. abstention from appointing lawyers and law professors. e. lengthy appointment process.

The first defect is gender inequality and discrimination against women.⁶¹ There is a clear lack of women representation in all three supreme courts which are: the Court of Cassation, the Supreme Administrative Court (State Council), and the Supreme Constitutional Court. Apart from the Administrative Prosecution Authority and the State Lawsuits Authority which appoint women,⁶² the courts of Ordinary Judiciary have around 16,000 men judges and a total of 66 women making up a barely 0.4 percent of Egypt's judges, while the Public Prosecution had no female representation.⁶³ It is worth mentioning that these 66 women judges were not appointed commonly, after graduation from law schools as their male judges, however, they were transferred, by the Minister of Justice, through secondment from among the already-appointed women in the Administrative Prosecution Authority and the State Lawsuits Authority. The courts of administrative jurisdiction (State Council) was rejecting appointing women since its establishment in 1946. While the Supreme Constitutional Court has only 1 woman among the 15 members of the Highest court in the country.

However, in October 2021, and after the creation of the Higher Council for Judicial Institutions with the representation of the Executive in its formation, 98 female judges were appointed at the courts of administrative jurisdiction (State Council) by way of transfer from the Administrative Prosecution Authority and the State Lawsuits Authority. Also, 11 female judges were appointed

⁶⁰ See Al Hajjaji, *supra* note 7, at 129.

⁶¹ See generally Ahmed El Sayed, *Female Judges in Egypt*, 13 *Y.B. of Islamic and Middle Eastern L. Online* 135- 149, (2006).

⁶² Omnia Gadallah, *Her Honor Setting the Bar: Fighting for Equality in Egypt's Judiciary*, The Tahrir Instit. for Middle East Pol'y, (10 February 2020). Retrieved from:

<https://timep.org/commentary/analysis/her-honor-setting-the-bar-fighting-for-equality-in-egypts-judiciary/>

⁶³ *Id.*

in the Public Prosecution by way of transfer from the 66 women, already working, in the Ordinary Judiciary.

The second defect is the discrimination against candidates of lower Socio-Economic classes.⁶⁴ In 2013, the Supreme Judicial Council SJC, which is the governing council of the Ordinary Judiciary and the Public Prosecution, rejected candidates who applied for the Public Prosecution because their parents do not hold university degrees.⁶⁵ This led tens of law school graduates to hold a press conference at the Journalists Syndicate in a protest against this decision on 18 October 2014 calling President Al-Sisi to interfere and impose social justice on the young judicial candidates. The issue arose in September 2013,⁶⁶ the SJC added new criteria to the appointments of prosecutors stipulating that parents of candidates must be university graduates, this new criteria led to retroactively excluding 138 of over 600 law graduates who were officially appointed as prosecutors in June 2013. Furthermore, in May 2015, the Minister of Justice at that time Judge Mahfouz Saber,⁶⁷ when asked during a T.V. interview whether “the son of a cleaning worker can be appointed in the judiciary.” He replied: “It is not acceptable to appoint such person, as applicants for the judiciary should be from an accepted social class.”⁶⁸ Saber resigned from his position a week later when his statements were being criticized widely as racist and discriminatory even by some judges.⁶⁹ The aforementioned practices of inequality became a tradition and laid a customary rule within the Egyptian judiciary to favor the appointment of judges’ sons and relatives in judicial posts, who constitutes an undeclared quota every year.⁷⁰

⁶⁴ See Al Hajjaji, *supra* note 20, at 23-25.

⁶⁵ Lobna Moneib, *Egyptian Law Graduates Denounce Class-Based Job Discrimination*, Ahram Online (Oct. 20, 2014). Retrieved from: <http://english.ahram.org.eg/News/113461.aspx>.

⁶⁶ *Id.*

⁶⁷ Tarek Amin and Mohamed Al-Sanhouri, *WAZĪR AL-A’DL LEL MASRY AL-YOUM: MAZELT A’ND KALAMI .. EBN AL-ZABAL MAYDKHOLSH AL-QADAA’*, *Minister of Justice to Al-Masry Al-Youm: I’m stil on my word, the son of a cleaning worker cannot enter the judiciary*, Al-Masry Al-Youm, (11 May 2015). Retrieved from <https://www.almasryalyoum.com/news/details/730563>

⁶⁸ *Id.*

⁶⁹ Ahram Online, *Egypt’s Justice Minister Resigns for Garbage Collector Comments*, (11 May 2015). Retrieved from: <https://english.ahram.org.eg/NewsContent/1/64/129988/Egypt/Politics-/UPDATED-Egypt%E2%80%99s-justice-minister-resgins-for-garba.aspx>

⁷⁰ See Al Hajjaji, *supra* note 20, at 24.

The third defect is judicial favoritism and nepotism in appointing members of the judiciary.⁷¹ Judges' family members and relatives are appointed to judicial positions despite poor academic grades.⁷² For example, the president of the Court of Tanta has 21 children and relatives who are appointed as judges and prosecutors, even though some of them have poor university grades.⁷³ Even after appointment, these judges benefit from special treatment, such as favorable secondments and court transfers.⁷⁴ The increased level of 'patronage' and clientelism in the judiciary damaged the judicial impartiality, and the nepotistic practices in appointing members of the judiciary shook the public confidence in the judiciary.⁷⁵ In December 2009, Judge Ismail Al-Bassiouni,⁷⁶ the former President of the Judges Club in Alexandria said that he supports the inheritance in judicial positions, but at specific rates, to open the door to the outstanding fresh graduates of law who do not have intermediaries or favoritism.⁷⁷ Judge Al-Bassiouni, demanded a special quota for the sons of judges in judicial positions, especially if the judge's son or daughter lives in a judicial environment and has wisdom and sobriety.⁷⁸ Moreover, in March 2012, Judge Ahmed Al-Zend,⁷⁹ the president of the Judges' Club at that time, and then the Minister of Justice, said that the appointments of judges' children will continue to happen year after year, and no power can stop this sacred practice.⁸⁰

The fourth defect is the abstention from appointing lawyers and law professors. Theoretically speaking, the Judicial Authority Law grants the right to lawyers and law professors to apply for

⁷¹ Sahar F. Aziz, *Independence Without Accountability: The Judicial Paradox of Egypt's Failed Transition to Democracy*, Penn. St. L. Rev., 159 (2016).

⁷² *Id.*

⁷³ Separating Law and Politics, *supra* 11, at 25.

⁷⁴ See Aziz, *supra* note 71, at 159.

⁷⁵ Sahar Aziz, *Egypt's Judiciary, Coopted*, Carnegie Middle East Ctr., (20 August 2014). Retrieved from: <https://carnegie-mec.org/sada/56426>

⁷⁶ Ragab Ramadan, *RA'EES QODAT AL-ASKANDRIYYA: AL-QADI LABOD AN YAN'ZEL A'N AL-SHA'B FE BORG A'AGI..*, *The President of Judges Club of Alexandria: The Judge must be isolated from the people in an ivory tower*, Al-Masry Al-Youm, (31 December 2009). Retrieved from: <https://www.almasryalyoum.com/news/details/1882584>

⁷⁷ *Id.*

⁷⁸ *Id.*

⁷⁹ Mohamed Al-Esewy, *AL-ZEND: TA'YIN ABNAA' AL-QODAH SYASTAMER.. W LAN TASTATI' QOWA FI MISR EQAF HAZA AL-ZAHF AL-MOQADAS*, *Al-Zend: The appointment of judges' children will continue, and no force in Egypt can stop this sacred movement*, Bwabet Al-Ahram, (9 March 2012). Retrieved from: <http://gate.ahram.org.eg/News/182259.aspx>

⁸⁰ *Id.*

sitting on the bench in the courts of the ordinary judiciary.⁸¹ In practice, however, judicial appointment in the First Instance Courts is restricted to senior public prosecutors who have reached the age of 30.⁸² The Supreme Judicial Council, which is in charge of the appointment in the ordinary judiciary, never opened the doors for judicial appointment in the First Instance Courts to any group other than senior public prosecutors.⁸³ The Judicial Authority Law stipulates two quotas for lawyers to be appointed as judges and prosecutors. Article 47 states that the yearly quota should not be less than 25% for the appointment of judges in primary courts, and 10% for appointments in the Court of Appeals.⁸⁴ Whereas article 118 states that the quota of lawyers shall be no less than 25% of the total appointees each year for the Prosecution Office.⁸⁵ However, both articles have never been applied in judicial selection.⁸⁶ These two articles have not been enforced yet due to what has been perceived as judicial bigotry toward lawyers and law professors.⁸⁷ The judiciary's acts are seen by some analysts as disappointing because such acts deprive the justice system of richly experienced lawyers and law professors.⁸⁸ Other observers see that the SJC's refusal to appoint lawyers and law professors reflects an example of an entrenched '*corporate culture*' among the judges.⁸⁹

The fifth defect of Egypt's judicial appointment system is the lengthy procedures which sometimes take many years.⁹⁰ For example, the presidential appointment decree of 2017's batch in the public prosecution was issued in April 2021 nearly after 4 years from the graduation,⁹¹ and the appointment presidential decree of 2015's batch was issued in 2020 in the administrative judiciary as an assistant delegate in the State Council, which means after 5 years.⁹²

⁸¹ The Judicial Authority Law No 46 of 1972, art. 39 paragraphs (c, f).

⁸² The Judicial Authority Law No 46 of 1972, art. 39 paragraphs (b, c).

⁸³ See El Sayed, *supra* note 60.

⁸⁴ The Judicial Authority Law No 46 of 1972, art. 47.

⁸⁵ The Judicial Authority Law No 46 of 1972, art. 118.

⁸⁶ See Farahat and Sadek, *supra* note 19, at 50.

⁸⁷ *Id.*

⁸⁸ *Id.*

⁸⁹ See El Chazli, *supra* note 25, at 51.

⁹⁰ See Al Hajjaji Form of Reform, *supra* note 7, at 124, 148.

⁹¹ El-Watan News, *QARAR GOMHOURY BE-TA 'YĪN 433 MO'WANEN LEL-NEYABA AL-AMMA, Presidential Decree to appoint 433 assistants for Public Prosecution*, (14 April 2021). Retrieved from: <https://www.elwatannews.com/news/details/5435932>

⁹² *QARAR GOMHOURY BE-TA 'YĪN BA'D AL-MANDOBĪN AL-MOSA'EDĪN BE-MAGLES AL-DAWLA MEN KHARIGI DOF'ET 2015, Presidential Decree to appoint some assistant delegates in the Council of*

2. Three Drawbacks of the Judicial Training System

According to El-Bialy,⁹³ many judges in Egypt are overworked and undertrained. There are huge backlogs that hinder judges to deliver efficient justice and many people see that the justice system is very slow. This is aggravated as judges generally work alone, without the assistance of law clerks who are used in other court functions. Here, we shall demonstrate the drawbacks of the judicial training system in Egypt and are hindering the establishment of a continuing and mandatory judicial training system.⁹⁴ We are going to display three main drawbacks which are: 1) the budgets assigned to judicial training programs. 2) the intra-institutional disputes among the judicial institutions. 3) the fragmentation of training centers in the judicial institutions.

Firstly, regarding the budgets assigned to judicial training programs, there is an insistent refusal from the high boards of the judicial institutions to disclose the judicial budgets, this is to say that there is a lack of necessary funds to justify the non-establishment of a judicial academy. In the past decades, the judiciary's justification for not creating a strong and effective judicial academy was because of the lack of the necessary funding and the non-independent judicial budget. However, currently, such justification has no base nor meaning. The 2014 constitution affirms the full independence of the judicial budget.⁹⁵ The judicial high boards became totally and completely responsible for the administration of their judicial budgets in Egypt. Although the judiciary has a full independent budget, it has never been made public. Therefore, the judiciary is not willing to allocate the necessary funding for establishing a judicial academy. This indicates that judicial training is not one of the top priorities of the high boards of the judicial institutions.

The second main drawback is the intra-institutional disputes among the judicial institutions on how the judicial training curriculums will be structured, who will teach them, and what types of training programs will be delivered. This led to the fact that each judicial institution has established its education and training center which will be fully discussed shortly. For a demonstrating example

State from the graduates of 2015 batch, Al-Masry Al-Youm, (25 May 2020). Retrieved from: <https://www.almasryalyoum.com/news/details/1980825>

⁹³ See Nora Elbially and Miguel, *supra* note 53, at 9.

⁹⁴ Linn Hammergren, *Judicial Training and Justice Reform*, Ctr. for Democracy and Governance, 16 (1998).

⁹⁵ Article 184 of 2014 constitution states "All judicial bodies administer their own affairs. Each has an independent budget, whose items are all discussed by the House of Representatives. After approving each budget, it is incorporated in the state budget as a single figure, and their opinion is consulted on the draft laws governing their affairs."

of the judicial balkanization in Egypt, in 2016 the project of creating a judicial academy came again to be discussed after many calls for decades, however, Judge Ahmad Al-Zend the former Minister of Justice expressed his fears about the challenges that are facing such judicial academy, he stated that one of the major obstacles is the four supreme judicial councils.⁹⁶ This will lead us to the rationale for establishing the Higher Council in 2019. The Higher Council will contribute to bridging the gap between the judicial institutions as will be fully discussed in chapter 3.

The third main drawback of the Egyptian judicial training system is what I call the fragmentation of the Egyptian judicial training system as there are many training centers across the Egyptian judiciary, but with no effectivity in creating a continuous, mandatory, and well-designed programs of judicial education and training. There are five judicial training centers across the country which are, firstly: the National Center for Judicial Studies (NCJS), secondly: the Center for Judicial Studies and Research of the State Council, thirdly: the Center for Judicial Training of the Administrative Prosecution, fourthly: the Center for Judicial Studies of the State Lawsuits Authority, fifthly: the Criminal Research and Training Institute of the Public Prosecution.

The first center, which is the main training center for all judicial institutions, is the National Center for Judicial Studies (hereinafter NCJS) was established by the presidential decree No 347 of 1981.⁹⁷ This center is under the supervision of the Ministry of Justice and its board is headed by the Minister of Justice and the membership of the president of the Court of Cassation, the president of the State Council, the Public Prosecutor, the President of the State Lawsuits Authority, the director of the Administrative Prosecution, the Director of the Center, as well as four experienced persons chosen by the Minister of Justice for a 1 year renewable.⁹⁸ The Center Director is chosen by way of secondment among the judges of the Court of Cassation or Courts of Appeal, which means from the Ordinary Judiciary and the Public Prosecution only.⁹⁹ The educational staff and

⁹⁶ Mostafa Abdullah & Amr EL-Masry, *AL-AKADEMIYYA AL-QADA'IYYA .. MASHROU' AL-'ADL LEL-QADAA'ALA AL-WASTA FE TA'YINAT AL-NEYABA, TARAHHA AL-ZEND, WA WAFAQ ALAYHA AL-SISI, The Judicial Academy, The Ministry of Justice Project to Eliminate Nepotism in the Appointment, AL-Zend suggested it, Al-Sisi approved it*, Sada El-Balad, (12 March 2016). Retrieved from <http://www.elbalad.news/2056104>

⁹⁷ Manshurat Qanuneya, *'ENSHAA' AL-MARKAZ AL-QAWMY LEL DERASAT AL-QADA'EYA'*, The Presidential Decree of establishing The National Center for Judicial Studies No 347 of 1981, art. 3. Retrieved from: <https://manshurat.org/node/71388>

⁹⁸ *Id.*

⁹⁹ *Id.* at art. 4.

the faculty of trainers are chosen on a part-time basis among practicing or retired members of different judicial institutions, and several law school professors as well as experts.¹⁰⁰

The NCJS's budget is funded by the Ministry of Justice with low funds.¹⁰¹ The NCJS is the principal center in charge of providing specialized training to judges throughout their professional careers.¹⁰² However, the NCJS provides non-mandatory training courses that are not regulated and not periodically organized.¹⁰³ Article 2 of the presidential decree provides for the objectives of the NCJS, the most important to our research are namely:¹⁰⁴ 1) training members of judicial institutions and qualifying them theoretically and practically to practice judicial work. 2) improve the technical and professional level of judicial assistants and employees working in assistant bodies to judicial institutions.

One of the main goals of the NCJS is appointing the new members of judicial institutions,¹⁰⁵ and to put the rules that guarantee the proper selection of the new members of judicial bodies, and form committees that perform their tests, and credit the admission results, and proposing their distribution among the different judicial institutions.

The duration of the training sessions of the NCJS was at the beginning of its establishment between six months to one year.¹⁰⁶ The content of the training programs varies according to the trainees whether they are new prosecutors or new judges. For new prosecutors, the training programs include theoretical lectures related to the work of the Public Prosecution such as the penal law, criminal procedural law, forensic medicine issues, and criminal investigation.¹⁰⁷ Also, the training programs provide trainees with the necessary investigation skills, pleading skills, writing legal notes, and conducting legal research.¹⁰⁸ As for new judges, the training sessions include theoretical

¹⁰⁰ *Id.*

¹⁰¹ *See* Farahat and Sadek, *supra* note 19, at 55.

¹⁰² Mohamed Serag, *Legal Education in Egypt*, S. Tex. L. Rev. 617 (2001).

¹⁰³ *See* Farahat and Sadek, *supra* note 19, at 55.

¹⁰⁴ Presidential Decree No 347 of 1981, Article 2.

¹⁰⁵ Article 3 of the Minister of Justice decree no. 2782 for the year 1981 regarding the issuance of the Executive Regulation of the NCJS published in 19 September 1981. Retrieved from:

<http://site.eastlaws.com/GeneralSearch/Home/ArticlesTDetails?MasterID=16473>

¹⁰⁶ *Id.*

¹⁰⁷ *See* Farahat and Sadek, *supra* note 19, at 55.

¹⁰⁸ *Id.*

lectures, case studies within small workshops, judgment grounding, and court sessions management.¹⁰⁹

At the beginning of the NCJS creation,¹¹⁰ the center was dedicated only to the training of members of the Ordinary Judiciary either public prosecutors or ordinary judges.¹¹¹ Then, in 1997, the NCJS started to hold basic training sessions for the newly appointed administrative judges (Assistant Delegates at the State Council),¹¹² however, the State Council established its center for judicial studies in 2011.

The second center is the Center for Judicial Studies and Research of the State Council established by decision no. 607 for the year 2010 issued by the President of the State Council on 1 January 2011.¹¹³ The Center is presided by the president of the State Council and the membership of the most senior 4 vice-presidents, the secretary-general, the assistant of the secretary-general, the director of the center, as well as four members with the necessary experience chosen by the State Council's president.

The third center is the Center for Judicial Training of the Administrative Prosecution is subordinated to the president of the Authority and its headquarters is in the authority presidency building in the city of the 6th of October,¹¹⁴ and its high board is presided by the president of the authority, and the membership of the director of the inspection department, the director of the technical office of the authority's president for the examinations and investigations, the secretary-general of the supreme council, the director of the administration of prosecutions, two experienced prosecution members, one of them is chosen among the retired members and the other is chosen among law professors.

¹⁰⁹ *Id.*

¹¹⁰ *Id.*

¹¹¹ *Id.*

¹¹² *Id.*

¹¹³ *See generally Vision and objectives. JSRCSC – Judicial Studies and Research Center of the State Council. Retrieved from: <https://en.jsrcsc.org/archives/4300>*

¹¹⁴ *AL-MAWQE' AL-RASMEI' LEL-NEYABA AL-EDARIYYA – MARKAZ MA'LOMAT AL-NEYABA AL-EDARIYYA: AL-HAYKAL W AL-TANZIM, The Official Website of the Administrative Prosecution – The Center of Information: Structure and Organization. Retrieved from:*

<http://www.ap.gov.eg/%D8%A7%D9%84%D9%87%D9%8A%D9%83%D9%84-%D9%88-%D8%A7%D9%84%D8%AA%D9%86%D8%B8%D9%8A%D9%85>

The fourth center is the Center for Judicial Studies of the State Lawsuits Authority which was established in the State Litigation Authority,¹¹⁵ by decision no. 140 of 2017 issued on 22 August 2017. The center's main objectives are to organize training courses for members of the judicial body, paper and electronic publication of jurisprudence writings and judicial principles, as well as the holding of conferences and related workshops on legal and judicial matters.

The fifth center is the Criminal Research and Training Institute of the Public Prosecution. In December 2020, the Public Prosecutor and the President of the Court of Cassation inaugurated the Criminal Research and Training Institute in Al-Shorouq City after its renovation.¹¹⁶ The institute is responsible for the training of all members of the Public Prosecution in their different work fields which are: criminal cases, family cases, traffic cases, and child cases.

To conclude this part regarding the status of judicial training in Egypt, we shall stop at the fact that the number of judges who have a law degree higher than a law bachelor's is very low. For example, in the First Instance Courts (IFCs), the only qualification judges have is their law bachelor's certificate from law school. In 2009, only 16.7% of the total judicial staff of FICs in Egypt enjoys a higher qualifying degree, like a Ph.D., Master's, or even a certified diploma with a minimal number of Ph.D. holders (1%).¹¹⁷

At the end of this chapter, I displayed the drawbacks of Egypt's systems of judicial appointment and judicial training. Given the inoperative and outdated appointment and training systems that we have displayed previously, it is not surprising that the global rank of Egypt in the Rule of Law index of the World Justice Project is 136 out of 139 countries around the world.¹¹⁸

On the one hand, as regards the judicial appointment, there are discriminatory practices performed by the judicial institutions. The Egyptian judicial appointment system lacks transparency in criteria

¹¹⁵ Marwa El-Metwaly & Ahmed Saeed, *BEL SOWAR .. TAFASİL MO'TAMAR EFTETAH MARKAZ AL-DERASAT AL-QADA'IYYA BE HAY'ET QADAYA AL-DAWLA*, In pictures .. Details of the opening conference of the Judicial Studies Center at the State Litigation Authority, Al-Bawaba News, (4 March 2018). Retrieved from: <https://www.albawabhnews.com/2972595>

¹¹⁶ Al-Masry Al-Youm, *AL-NA'EB AL-cAM W RA'IS MAHKMET AL-NAQD YAFTEH-HAN MAHAD AL-BOHOUTH AL-JENA'EIYYA WA AL-TADRİB BEL-SHOROUQ (SOWAR)*, The Public Prosecutor and the President of the Court of Cassation inaugurate the Institute of Criminal Research and Training in El-Shorouk (photos), (31 December 2020). Retrieved from:

<https://www.almasryalyoum.com/news/details/2223555>

¹¹⁷ See Elbially and Miguel, *supra* note 53, at 9.

¹¹⁸ WJP Rule of Law Index, *World Justice Project: Advancing the Rule of Law Worldwide*. Retrieved from: <https://worldjusticeproject.org/rule-of-law-index/country/2021/Egypt%2C%20Arab%20Rep/>

and standards for an efficient and properly-functioned judiciary.¹¹⁹ One of the prominent problems that challenges the Egyptian judicial appointment is the lack of diversity within the justice system.¹²⁰ Any judicial appointment system that produces a non-diverse bench will not have public confidence.¹²¹ This is because a non-diverse judiciary does not serve the needs of the society given that the appointment system excludes qualified candidates.¹²²

While on the other hand, as regards judicial training, many obstacles hinder the creation of effective and well-designed education programs. The training system of Egypt's members of the judiciary is defective.¹²³ Law school graduates are appointed as members of the judiciary without any formal training before the judicial appointment and even after it.¹²⁴ The previously mentioned lead us to the conclusion that Egypt's judiciary is not meeting the expectations and aspirations of the Egyptians. Therefore, there is a great need to initiate a wide reform program to ensure that the most qualified candidates hold judicial positions, as well as to guarantee that the judiciary's members are continuously well-trained and properly educated to be able to administer justice according to the law and only the law and carry out their judicial functions in a proper manner that serves at the end the Egyptian citizens who are the recipients of the justice service.

I highlighted the creation of the NCJS in 1981 which is responsible for judicial appointments and judicial training whether initial or continuous, however, its appointment power has never been activated since 1981, and its training authority is very ineffective which led each judicial institution to create its training center leading to the fragmentation of the judicial training system.

¹¹⁹ Bahaa Ali El-Dean, *Privatisation and the Creation of a Market Based Legal System: The case of Egypt*, Brill, 222 (2002).

¹²⁰ See Al Hajjaji, *supra* note 20, at 18, 30.

¹²¹ Leo M. Romero, *Enhancing Diversity in an Appointive System of Selecting Judges*, 34 Fordham Urb. L. J. 499 (2007).

¹²² *Id.*

¹²³ Karim El Chazli, *The Judiciary in the Constitution: Lost Opportunities for Reform and Enshrinement of the Judiciary's Impenetrability*, Arab Reform Initiative, 10 (2014).

¹²⁴ See generally, Nora El Bialy, *The 2007 Judicial Reform and Court Performance in Egypt*, 12 Rev. L. & Econ., 96 (2016).

III. The Higher Council, the NTA, and the Comparative Systems

In the light of the defects and drawbacks of the appointment and training systems in the Egyptian judiciary, the Higher Council and the NTA were established. Regarding the Higher council, some analysts see that the Higher Council is considered an attack on the principle of judicial independence and is considered as an attack on the principle of separation of powers.¹²⁵ However, my argument indicates the importance of balancing the judiciary's wide autonomy with some degree of accountability. This accountability is operationalized through the creation of the Higher Council with the Executive representation in its formation while maintaining the substantial representation of judges in its formation. This will be discussed in detail later in this chapter.

While regarding the NTA, some Egyptian judges fear that induction of judicial training from the NTA would undermine judicial independence by providing a back door route to the executive control. Despite, it is recognized that judicial training does not weaken judicial independence but strengthens it,¹²⁶ however, I argue that the NTA is not the appropriate body to deliver judicial training to the Egyptian judges and prosecutors. I will support this argument by analyzing the comparative systems of judicial training schools and the international standards mentioned in many international and regional instruments in this regard.

Thus, chapter 2 is divided into two main parts, the first main part is demonstrating the establishment of the Higher Council. This main part is consisting of three sections, where the first section is about discussing the judicial reluctance of the reform of judicial appointments, besides showing illustrative examples that evidence such judicial reluctance. While the second section is about understanding the concepts of judicial independence and judicial accountability, followed by analyzing the independence and accountability of Egypt's judiciary under the 2014 constitution. The third section is about analyzing the comparative systems as regards the higher council for judiciaries. The second main part is about the establishment of the NTA and shows its expanding role in training judges and prosecutors. This is followed by three sections which are: the first section is an overview of the comparative judicial schools and highlights the process of appointing

¹²⁵ Amy Hawthorne, et. al, *Between a Rock and a Hard Place: How Egypt's Constitutional Amendments Erode Judicial Independence*, (18 April 2019). Retrieved from: <https://pomed.org/qa-between-a-rock-and-a-hard-place-how-egypts-constitutional-amendments-erode-judicial-independence/>

¹²⁶ Khurshid Iqbal, *The Rule of Law Reform and Judicial Education in Pakistan*, 17 Eur. J.L. Reform, 54 (2015).

and training judges and prosecutors at the ENM in France. The second section analyzes the leadership and the governing boards of the French Judicial School and the Spanish Judicial School. Then I will display my conclusions of the aforementioned.

A. The Higher Council for Judicial Entities and Bodies (the Higher Council)

In chapter 1, I discussed the status of judicial appointment and judicial training systems in Egypt. Also, I have manifested the need to reform both systems by showing their shortcomings and drawbacks. In this chapter, I argue that the main reason for hindering judicial reform in both systems is the judiciary itself. I support this argument by displaying the judicial reluctance and sometimes resistance towards judicial reform, especially in these two fields. Egyptian judges use the principle of judicial independence as a tactic to hinder any reform initiative. The Egyptian judges usually raise the slogan of judicial independence to hinder any reform program that may threaten their sectoral interests.

In this campaign, there is a belief that the newly established Higher Council, as prevalent, is threatening the independence of the Egyptian judiciary. However, I counter this argument by stating that it is promoting judicial independence by balancing judicial autonomy, and not independence, with judicial accountability. I support my argument through three methods, firstly: showing the reluctance of the judiciary to reform the judicial appointment system for sectoral benefits. Secondly: analyzing the status of the autonomy of the Egyptian judiciary under the 2014 constitution. Thirdly: analyzing the comparative systems in the domain of higher councils for judiciaries.

In 2019, article 185 of the 2014 Constitution was amended in a referendum on constitutional amendments to provide for the creation of a higher council that collects all the judicial institutions in it.¹²⁷ This amendment provided for the establishment of the Higher Council of Judicial Entities

¹²⁷ Article 185 (before 2019 amendments): Each of the judicial bodies or authorities shall have its own affairs and shall have its own independent budget, with all its (the budget's) elements discussed by the Parliament ... and shall be consulted in terms of the draft laws organizing its affairs.

Article 185 (after 2019 amendments): Each of the judicial bodies or authorities shall have its own affairs, and shall be consulted concerning the draft laws regulating its affairs; each of these bodies shall have an independent budget ... A supreme council for the judicial authorities headed by the president of the republic shall hold these authorities' common affairs. The members of the council would include the head of the Supreme Constitutional Court, the heads of the judicial authorities, the head of Cairo Appeal Court, and the Attorney-General. The council shall have a secretary who is appointed by the president of the

and Bodies. The Higher Council is presided by the President of the Republic and the membership of the Minister of Justice, the President of the Supreme Constitutional Court, the President of the Cassation Court, the President of the State Council, the President of the Cairo Court of Appeal, the Public Prosecutor, the President of State Lawsuits Authority, the President of Administrative Prosecution Authority and the President of the Military Judiciary Authority as well as the Secretary-General of the Council who is *ex officio* the First Assistant to the Minister of Justice.

The higher council has existed since 2008 under law no. 192 of 2008, but the 2014 constitutions did not provide for this council in its texts, so, a constitutional amendment was needed to revive the council. The Higher Council's main objective, as stated by the Parliament's Legislative Committee in its report, is to coordinate and deliberate on common affairs between judicial entities and bodies and it does not in any way affect the independence of the judiciary. Rather, it is an organizational council that carries out coordination matters between judicial institutions.

There is a distinction between judicial entities and judicial bodies. Judicial entities are the entities that are functioned with settling disputes by rendering court judgments such as: the Supreme Constitutional Court, the State Council, the Court of Cassation, and the Cairo Court of Appeal (the ordinary judiciary), as well as the Military Judiciary, as shown in figure (1). While judicial bodies are the bodies that perform judicial work however they do not render judgments in legal disputes such as: the Public Prosecution Authority, the Administrative Prosecution Authority, as well as the State Lawsuits Authority, as shown in figure (2).

republic for a period of time specified by the law. In the absence of the president of the republic, he shall be replaced temporarily by who he authorizes from among the heads of the judicial authorities.

Figure (1) The judicial entities in the 2019 Higher Council for Judicial Entities and Bodies.

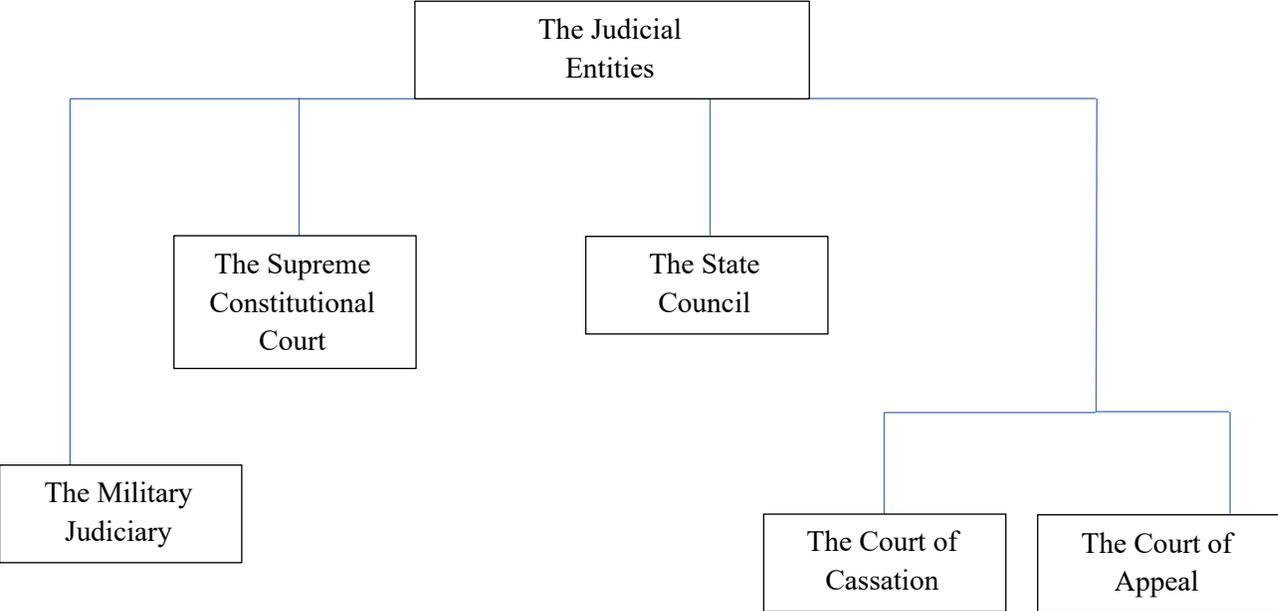
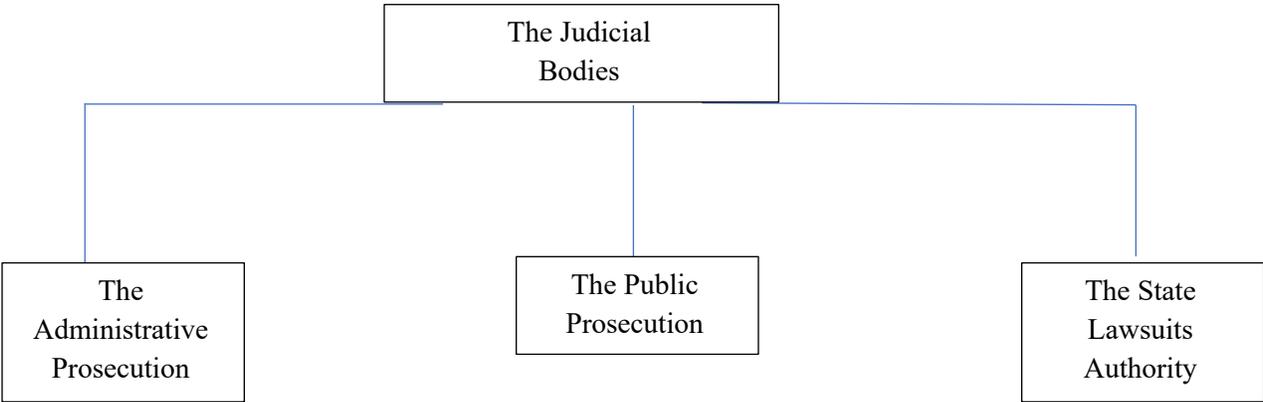


Figure (2) The judicial bodies in the 2019 Higher Council for Judicial Entities and Bodies.



Since its establishment or its revival, the Higher Council has made many accomplishments,¹²⁸ such as: achieving quick and effective justice, developing the judicial work system, especially with regard to the expansion of building new courts and the adoption of modern electronic and digital systems, also the provision of continuous training programs necessary for the new members of judicial entities and bodies, as well as strengthening the role of women in the judiciary, besides advancing the bodies assisting the judiciary.

In one of the meetings of the Higher Council presided by the President of the Republic, on 2 June 2021,¹²⁹ historic decisions were declared, among them was the promotion of equality between men and women in the judiciary by starting to appoint women at the State Council and the Public Prosecution as of the 1st of October 2021. This decision was issued after decades of discrimination against women and despite many lawsuits filed from young women fresh law graduates against this discrimination. In the implementation of the historic decision of the Higher Council to appoint women, and on the 5th of March 2022, the courts of the Council of State have seen the first female judges sitting on the bench in a historic moment.¹³⁰

¹²⁸ Akhbar El-Yom, 7 *SANAWAT MEN EL-INJAZ .. AL-RA'IS AL-SISI WA QODAT MISR YANHAZOUN LEL-cDALA AL-NAJEZA, 7 Years of Accomplishments .. President Al-Sisi and Egyptian Judges align with Quick and Effective Justice*, 6 June 2021, retrieved from:

<https://m.akhbarelyom.com/news/newdetails/3384999/1/7-%D8%B3%D9%86%D9%88%D8%A7%D8%AA-%D9%85%D9%86-%D8%A7%D9%84%D8%A5%D9%86%D8%AC%D8%A7%D8%B2...%D8%A7%D9%84%D8%B1%D8%A6%D9%8A%D8%B3-%D8%A7%D9%84%D8%B3%D9%8A%D8%B3%D9%8A-%D9%88%D9%82%D8%B6%D8%A7%D8%A9-%D9%85%D8%B5%D8%B1-%D9%8A%D9%86%D8%AD%D8%A7%D8%B2%D9%88%D9%86-%D9%84%D9%84%D8%B9%D8%AF%D8%A7%D9%84%D8%A9-%D8%A7%D9%84%D9%86%D8%A7%D8%AC%D8%B2%D8%A9>

¹²⁹ Ahram Gate, Wessam Abdel-aleem, *QARARAT TARIKHIYYA KHELAL EGTMAc AL-MAGLES -AL-AcLA LEL-HAY'AT AL-QADA'EYA BE-RE'ASET AL-RA'IS AL-SISI, Historic decisions during the meeting of the Higher Council of Judicial Bodies headed by President Al-Sisi*, 2 June 2021, retrieved from: <https://gate.ahram.org.eg/News/2755274.aspx>

¹³⁰ Independent Arabia, Ibrahim Abdel-Megid, *Egypt designates the First Woman on the Administrative Judiciary Bench: 98 Female Judges Appointed by Sisi after 75 Years of Demands*, 5 March 2022, retrieved from:

<https://www.independentarabia.com/node/309021/%D8%A7%D9%84%D8%A3%D8%AE%D8%A8%D8%A7%D8%B1/%D8%A7%D9%84%D8%B9%D8%A7%D9%84%D9%85-%D8%A7%D9%84%D8%B9%D8%B1%D8%A8%D9%8A/%D9%85%D8%B5%D8%B1-%D8%AA%D9%86%D8%B5%D8%A8-%D8%A3%D9%88%D9%84-%D8%A7%D9%85%D8%B1%D8%A3%D8%A9-%D8%B9%D9%84%D9%89-%D9%85%D9%86%D8%B5%D8%A9-%D8%A7%D9%84%D9%82%D8%B6%D8%A7%D8%A1-%D8%A7%D9%84%D8%A5%D8%AF%D8%A7%D8%B1%D9%8A>

We shall reach here an important conclusion, that the Egyptians would have never seen women sitting on the bench, after decades of struggling for their rights and decades of discrimination against them, except after the existence of the Higher Council that includes members of the Executive branch of government, mainly the President of the Republic and the Minister of Justice. The latter is always a judge who is chosen among working or retired judges. This supports the argument of the importance of balancing the judiciary's wide autonomy with some degree of accountability, which will be discussed later in this chapter.

The historic decision of appointing women in the State Council and the Public Prosecution was implemented in two phases, the first phase is by the immediate appointment of women in the two judicial institutions by the way of transfer from the other two judicial institutions, from the Administrative Prosecution that includes women as 43% of its total members, and from the State Litigation Authority that includes women as 20% of its members.¹³¹ The second phase is through allowing women to apply from the young law school fresh graduates, thus attaining full equality between men and women in the justice system, as these two institutions abstained for decades to appoint women as judges and prosecutors at the beginning of the judicial career path. Regarding the first phase of immediate appointment,¹³² 11 female members were transferred from the courts of the ordinary judiciary to hold senior positions in the Public Prosecution, in addition to 98 female members who were transferred from the Administrative Prosecution and the State Lawsuits to be

¹³¹ Al-Shorouk News, Muhammad Farag, '*BEL-ARQAM .. AL MAR'A FEL QADAA' AL-MASRY: 3 BEL-DOSTOREY-A .. TAMKĪN FEL-NEYABA AL-EDAREIYYA .. EHTIMAM LAFET BE-QADAYA AL-DAWLA, In numbers .. Women in the Egyptian Judiciary: 3 in the Constitutional Court .. Empowerment in the Administrative Prosecution.. and A Remarkable Interest in State Lawsuits Authority*', 13 March 2021, retrieved from: <https://www.shorouknews.com/news/view.aspx?cdate=13032021&id=816d69d4-45c5-4a88-a244-81d3c56cf32e>

¹³² Mobtada, Hossam Abdullah, *HAYAH KARIMA WE HOQOUQ MOSSANA .. AL-MAR'A QADIYYA FE cASRAHA AL-ZAHABY BE-cHD AL-SISI, A decent life and protected rights.. Women are judges in their golden age during the era of Sisi*', 20 October 2021, retrieved from: <https://www.mobtada.com/cases/1097603/%D8%AD%D9%8A%D8%A7%D8%A9-%D9%83%D8%B1%D9%8A%D9%85%D8%A9-%D9%88%D8%AD%D9%82%D9%88%D9%82-%D9%85%D8%B5%D8%A7%D9%86%D8%A9-%D8%A7%D9%84%D9%85%D8%B1%D8%A3%D8%A9-%D9%82%D8%A7%D8%B6%D9%8A%D8%A9-%D9%81%D9%89-%D8%B9%D8%B5%D8%B1%D9%87%D8%A7-%D8%A7%D9%84%D8%B0%D9%87%D8%A8%D9%89-%D8%A8%D8%B9%D9%87%D8%AF-%D8%A7%D9%84%D8%B3%D9%8A%D8%B3%D9%89>

judges in the Council of State. While regarding the second phase,¹³³ on 27 January 2022, the Council of State, and for the first time since 1946, announced the acceptance of a new batch of law school fresh graduates of 2021 that includes women. Also, on 31 January 2022, the Public Prosecution announced the acceptance of young women fresh law graduates.

To add another accomplishment, the Higher Council succeeded in decreasing the time required for appointing new batches of law school graduates,¹³⁴ thus in the last two years, the Egyptian judicial institutions appointed new members more than before, and they launched appointment announcements and competitions on a successive basis and a fast manner parallel with the new batches graduated annually. Thus, the State Lawsuits Authority announced its recruitment competition on 15 January 2022, and the Administrative Prosecution announced its recruitment competition on the 29th of January 2022. On 12 March 2022, the State Council began conducting interviews for 2021 female and male graduates together for the first time in history.¹³⁵ However, there is no specified date for the appointment, and this is one of the issues I addressed in the reform project in chapter 3, I propose that there must be a transparent and clear appointment process with a specific timeline.

¹³³ Ahmad Abdel-hady, *WAZA'EF QADA'EY-A .. LE-AWEL MARRA MAJLES AL-DAWLA YOcLEN QOBOUL DOFcA JADIDA TADOM ENATHAN MONZO 76 cAMN TANFIZAN LE-QARAR RA'IS AL-JOMHOURIYYA .. AL-NEYABA AL-EDAREIYYA TOcLEN MWAcEED MOQABLAT AL-MOTAQDMİN LE-WAZIFT MOcAWEN NEYABA .. W QADAYA AL-DAWLA TABDO' TSALLOM AL-MLAFAT, Judicial jobs.. for the first time, the State Council announces the acceptance of a new batch that includes females for 76 years, in implementation of the decision of the President of the Republic.. The Administrative Prosecution announces the dates of interviews for applicants for the position of assistant prosecutor.. and State Cases Authority begin receiving files*, Al-Yom Al-Sabee, 29 January 2022, retrieved from: <https://www.youm7.com/story/2022/1/29/%D9%88%D8%B8%D8%A7%D8%A6%D9%81-%D9%82%D8%B6%D8%A7%D8%A6%D9%8A%D8%A9-%D9%84%D8%A3%D9%88%D9%84-%D9%85%D8%B1%D8%A9-%D9%85%D8%AC%D9%84%D8%B3-%D8%A7%D9%84%D8%AF%D9%88%D9%84%D8%A9-%D9%8A%D8%B9%D9%84%D9%86-%D9%82%D8%A8%D9%88%D9%84-%D8%AF%D9%81%D8%B9%D8%A9-%D8%AC%D8%AF%D9%8A%D8%AF%D8%A9/5636417>

¹³⁴ *Id.*

¹³⁵ Mohamed Abdel-kader, *TFASİL EJRAA' AWEL MOQABLA LE-KHARIGI 2021 MEN EL-ENATH WAL-ZOKOUR MACN BE-MAGLES AL-DAWLA – SOWAR, Details of conducting the first interview for 2021 graduates, both females and males, at the State Council: Photos, Ahram Gate, 12 March 2022, retrieved from: <https://gate.ahram.org.eg/News/3438818.aspx>*

Furthermore,¹³⁶ the Higher Council has many achievements, one of them is unifying the leaderships of the judicial institutions in one council. Other advantages are, firstly, setting the conditions for appointment in the judicial institutions on the basis of competence, merit, and eligibility, and in a manner that guarantees equality and fairness. Secondly, non-repetition of the names of those accepted for appointment in more than one judicial institution, this decision helps in increasing other candidates' opportunities for access to judicial positions after preventing re-appointment of one candidate in more than one judicial institution. Thirdly, providing the State Litigation Authority with the reasons for not accepting the applicants for judicial positions in the other three judicial institutions, to submit them to the courts in the pending cases. This decision allows transparency to know the reasons for excluding some of the applicants for judicial positions.

1. The Judiciary's Reluctance to Reform Judicial Appointment

The judiciary is used to be a catalyst for transparency compared to other branches of government, however, it sometimes resists the creation of transparency and accountability standards for its practices.¹³⁷ Judiciaries around the world usually resist any attempt to reform due to their conservative nature. According to Shabbir, judicial institutions usually lack the true will to reform on a long-term basis, suggesting that reform programs shall be encouraged by the public and civil society.¹³⁸ Similarly, according to Aziz, any reform to the judicial appointment and accountability shall face resistance from the judiciary as the majority of Egypt's judges do not want to risk their material and status interests.¹³⁹ One of these interests is the nepotistic practices in the judicial appointments as we explained previously.

Thus, the judiciary resists any sort of reform of judicial appointment and judicial training, as the reform will put the judiciary's nepotism and non-transparency practices under public scrutiny. The judiciary prefers to maintain a "status quo" that had evolved over decades and is unwilling to

¹³⁶ Al-dostor, *BE-RE'ASET AL-SISI .. 7 QRARAT TARIKHIYYA LEL-AcLA LEL-HAY'AT AL-QADA'IYYA, Headed by Sisi .. 7 historic decisions of the Higher Council for Judicial Bodies*, 2 June 2021, retrieved from: <https://www.dostor.org/3468141>

¹³⁷ James Harrison, *Judging the Judges: The New Scheme of Judicial Conduct and Discipline in Scotland*, 13 Edinburgh L. Rev., 430 (2009).

¹³⁸ Cheema, G. Shabbir, *Building Democratic Institutions: Governance Reform in Developing Countries*, Kumarian Press, 186 (2005).

¹³⁹ Sahar Aziz, *(De) liberalizing Judicial Independence in Egypt*, Soc. Sci. Rsch. Network Electronic Paper Collection, 3 (2017).

support wide reforms that held it accountable for its actions whether to the public or to the other branches of government.

One of the most remarkable manifestations of the Egyptian judicial unwillingness and resistance to reform is the insistence on the outdated system of judicial appointment. The current appointment system shows how the high boards of the judicial institutions adopt antique methods for appointing judges and prosecutors.¹⁴⁰ This is to protect the majestic position of the judiciary as well as protect the discriminating practices in the judicial appointment. We shall display two famous examples that support this argument.

i. The Two Prominent Examples of Judges' Reluctance to Reform Judicial Appointment

Judges are as flawed as any other sect when it comes to selecting new members. This may happen for many reasons, one of them is that judges may have their interests arising from the bureaucratic nature of the profession, the other reason is that judges may believe that they are the only people who can properly select new judges.¹⁴¹

Two prominent examples manifest judicial reluctance to any reform, especially in the judicial appointment system. The first example is in 2005, when the judicial nepotistic appointment practices led many observers and analysts to criticize them¹⁴² such as the well-known writer Farouq Gweda, who wrote in Al-Ahram, a widely nation newspaper, about the judicial nepotism and the 'social non-fitness' that prevented some candidates to be appointed in the judiciary, in a reference to the exclusion of lower socio-economic candidates from the appointment. Gweda's article made a huge echo in Egyptian society.¹⁴³ Thus, instead of addressing such an issue, the Supreme Judicial Council which is the high board that has the authority to appoint judges and prosecutors in the Ordinary Judiciary and the Public Prosecution, decided to backlash against Gweda and ignored his demands to reform the judicial appointment process and put clear and

¹⁴⁰ See generally, Shams Al Din Al Hajjaji, *The Reform of Judicial Appointment Process in the Ordinary Judiciary in Egypt, (Hereinafter Al Hajjaji Reform), The Reform Middle East L. & Governance Journal, 1-24, (2017).*

¹⁴¹ See Spac, *supra* note 6, at 2081.

¹⁴² Hagar Salah, *KEDTO AFQOD HAYATI cAM 2005 KHELAL AL-TAHQIQ MACI HAWL MAQAL TAWRITH AL-QADAA'*, *I almost lost my life in 2005 during an interrogation about an article about inheriting the judiciary*, 4 January 2020, retrieved from:

<https://gate.ahram.org.eg/daily/NewsPrint/744537.aspx>

¹⁴³ *Id.*

transparent criteria to ensure fairness and justice. Furthermore, the Public Prosecution held investigations with him that lasted for 6 hours for ‘flouting the Judiciary’ and causing damage to the image of the judiciary among the public. However, the Minister of Justice at that time Mamdouh Marei published later an apology to Gweda in the newspapers for initiating an investigation with him.¹⁴⁴

The second example is in 2007, when the judicial appointments including sons and daughters of judiciary members increased intensively without considering their academic degrees and this, in turn, violates the principle of equality.¹⁴⁵ Paradoxically, the reform of the appointing criteria was initiated by the executive which took the reforming initiative, and Law No 17 of 2007 was issued with the approval of the Parliament.¹⁴⁶ The amending law raised the requirement of the overall academic grade from “pass” to “good”. The reform aimed to guarantee equality and end nepotism and favoritism which occurred during the judicial appointments. Judges considered such reform as a fight against them.¹⁴⁷

ii. The Struggle of Women to Sit on the Bar

There was discrimination against women and abstention from appointing them for decades in the two judicial institutions; the State Council and the Public Prosecution. To illustrate more, the first time in which the issue of discrimination against women in applying to the judiciary occurred was in 1949, when Aisha Rateb, a law school graduate, applied to be a judge in the State Council. She made the application following the State Council's announcement for vacancies. The State Council rejected her appointment. Accordingly, she filed lawsuit no. 33 for the year 4 before the Administrative Court challenging the decision of the State Council.¹⁴⁸ The Administrative Court issued its judgment in 1952 and rejected the case.¹⁴⁹ The Administrative Court ruled that Rateb's

¹⁴⁴ Ahmed Al-Sawy, *EcTDHAR RASMEĪ LE FAROUQ GWEDA*, Al-Masry Al-Youm, 11 December 2006, retrieved from: <https://to.almasryalyoum.com/article2.aspx?ArticleID=40524>

¹⁴⁵ See Sahar F. Aziz (De) liberalizing, *supra* note 141, at 3.

¹⁴⁶ Law No 17 of 2007 amending the JAL No 42 of 1972 art, 38.

¹⁴⁷ See Al Hajjaji, Form of Reform, *supra* note 7, at 38.

¹⁴⁸ Manshurat Qanuneya, *RAFD TAcYĪN A'ESHA RATEB QADIYYA FI MAJLES AL-DAWLA – FEBRAYER 1952, Refusal to appoint Aisha Rateb as a judge in the State Council - February 1952*, Administrative Court ruling number 33/year 44, 20 February 1952. Available at: <https://manshurat.org/node/71376?fbclid=IwAR3dQciLaFJMrvKbWpaKdpjzQmm3AQm8q-b2ocgPI8TGTIU6la4tQrjls-0>.

¹⁴⁹ *Id.*

exclusion by the state council was not based on legal or cultural considerations, and hence did not breach the principle of equality. Moreover, the state council has the discretionary power to choose whomever it sees fit for the position based on its assessment of the circumstances.¹⁵⁰ Since then, the State Council and the Public Prosecution are rejecting the appointment of women as members in both judicial institutions.

The discrimination against women continued until 2010 when the State Council announced accepting applications from women to apply as judges for the first time.¹⁵¹ However, this decision faced major opposition from the State Council's General Assembly which annulled the decision of the Special Board.¹⁵² Moreover, Egypt ratified 1981 the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW) by the Presidential Decree No 434 of 1981. Also, the laws regulating both the Public Prosecution and the State Council do not specify that the position of judge has to be occupied by a person of the male sex. Besides, on 14 March 2010, the Supreme Constitutional Court issued its explanation decision stating that women are constitutionally and legally able to serve as judges.¹⁵³ The Court ruled that the term "Egyptian" which is mentioned as a condition for being a judge in both laws, encompasses both male and female Egyptians. However, some judges considered the Supreme Constitutional Court ruling as an act of interference in the State Council's affairs.¹⁵⁴

¹⁵⁰ *Id.*

¹⁵¹ Nancy Messieh & Suzanne Gaber, *A Win for Women in Egypt's Courts*, Atlantic Council, 22 July 2015, retrieved from: <http://www.atlanticcouncil.org/blogs/menasource/a-win-for-women-in-egypt-s-courts>

¹⁵² Sahar Talaat, *cMOMEYET MAJLES AL-DAWLA TARFOD TAcYİN AL-MAR'A QADIYYA, The General Assembly of the State Council rejects the appointment of women as judges*, Youm 7 News, 1 March 2010, retrieved from: <https://www.youm7.com/story/2010/3/1/%D8%B9%D9%85%D9%88%D9%85%D9%8A%D8%A9-%D9%85%D8%AC%D9%84%D8%B3-%D8%A7%D9%84%D8%AF%D9%88%D9%84%D8%A9-%D8%AA%D8%B1%D9%81%D8%B6-%D8%AA%D8%B9%D9%8A%D9%8A%D9%86-%D8%A7%D9%84%D9%85%D8%B1%D8%A3%D8%A9-%D9%82%D8%A7%D8%B6%D9%8A%D8%A9/195633>

¹⁵³ Explanation Decision Request No. 1/ Year 32 Judicial (Explanation) Session of 14 March 2010, Available at: https://manshurat.org/node/7282?fbclid=IwAR3MTXVhU_uEUd7VG9bxWCggpNZq9af8BmKqminQ-cwJdyqJZctkR8xXjIg.

¹⁵⁴ Youm 7, *RA'İS AMAJLES AL-DAWLA AL-ASBAQ: AL-MAHKAMA AL-DOSTOREIYYA LA TAMLOK HAQ AL-MOWAFQA cALA TAcYİN QADIYAAT BEL-MAJLES MEN cDAMO, The former head of the State Council: The Constitutional Court does not have the right to approve the appointment of female judges to the Council* 15 March 2010, retrieved from: <https://www.youm7.com/story/2010/3/15/%D8%A7%D9%84%D8%AA%D9%88%D9%83->

There were various allegations for the abstention from appointing women on the judicial bench, some of these allegations are: Some judges stated that Islamic Sharia and the political circumstances are against appointing women as judges.¹⁵⁵ They added that the constitution does not “oblige” the judiciary to appoint women on the bench. Moreover, a former State Council President, indicated that there is a difficulty in having women working as public prosecutors or heads of courts because of the difficulty of them going to crime sites and holding criminal investigations.¹⁵⁶ Besides, a former member of the Supreme Judicial Council pointed out it is not desirable for a woman to work in the Public Prosecution,¹⁵⁷ as working as a public prosecutor requires great hardship that the woman may not be able to perform well.

In January 2014, the Egyptian Constitution was amended, it provides in article 9 that the state shall ensure equal opportunities for all citizens without discrimination, also article 11 explicitly grants women the right to be appointed in all the judicial institutions without discrimination. Article 14 states that public offices are a competence-based right for all citizens without bias or favoritism. Besides, article 53 criminalizes discrimination. Consequently, in March 2014, Omnia Gadallah, a female law graduate batch 2013 with the highest degree “Excellent with Merit”, applied to serve as a judge in the State Council. Omnia filed a judicial appeal (No. 20222 for the year 2016) before the State Council courts challenging the abstention of the State Council to admit her judicial

<http://www.atlanticcouncil.org/blogs/menasource/a-win-for-women-in-egypt-s-courts>

¹⁵⁵ Nancy Messieh & Suzanne Gaber, *A Win for Women in Egypt's Courts*, ATLANTIC COUNCIL, 22 July 2015, retrieved from: <http://www.atlanticcouncil.org/blogs/menasource/a-win-for-women-in-egypt-s-courts>

¹⁵⁶ Bwabet Al-Shorouk, *RA'IS MAJLES AL-DAWLA AL-ASBAQ: LA YOJAD NASS FEL-DOSTOUR YAMNA' TA'YIN AL-MAR'A QADIYYA*, Former Head of the State Council: There is no provision in the constitution that prevents women from being appointed as judges, 12 November 2017, retrieved from: <https://www.shorouknews.com/news/view.aspx?cdate=12112017&id=36cca583-99c1-42f4-89a6-f5a5c25007a9>

¹⁵⁷ El-Watan News, *TAcYIN AL-MAR'A YOTHIR AZMA DAKHEL MAJLES AL-DAWLA .. WAL-SABAB MADA 11 MEN EL-DOSTOUR*, The appointment of women provokes a crisis within the State Council .. The reason is Article 11 of the Constitution, 20 January 2014, retrieved from: <https://www.elwatannews.com/news/details/399888>.

application, but her appeal was dismissed citing the lack of eligibility of women to be appointed.¹⁵⁸ Therefore despite all the previous constitutional entitlements to appoint women on the bench, the Public Prosecution and the State Council ignored all the previous international conventions, laws, and judgments and decided to abstain from appointing women.

However, ironically, on the 8th of March 2021,¹⁵⁹ which marks the international women's day, President of the Republic Abdel-Fattah Al-Sisi directed Minister of Justice Judge Omar Marwan to coordinate with the judicial institutions to allow women to become members of the State Council and the Public Prosecution.¹⁶⁰ The presidential directives came to fully enforce the constitutional entitlement of ensuring equality and non-discrimination against women particularly in these two judicial institutions. According to the statement of the Ministry of Justice, the directive aims to ensure that women can access different positions and achieve success in the judiciary. The Justice Ministry added that it started communicating with both judicial institutions to put the president's directives into force.¹⁶¹ What is ironic in this matter, is the reaction of judges, as the first reaction came on the following day to the presidential directives, on 9 March, when the spokesman for the Judges Club, confirmed that the governing board of the Judges Club appreciated the directives of President Al-Sisi of fully 'activating' the text of Article 11 of Egypt's 2014 Constitution.¹⁶²

¹⁵⁸ Bwabet Al-Shorouk, *MEN AISHA RATEB ELA QARAR AL-SISI .. ABRAZ MAHTAT RAFD TAcYİN AL-MAR'A QADIYYA BE-MAJLES AL-DAWLA*, From Aisha Ratib to Al-Sisi's decision.. the most prominent stations of rejecting the appointment of a woman as a judge in the State Council, 11 March 2021, retrieved from: <https://www.shorouknews.com/news/view.aspx?cdate=11032021&id=d40d4950-0a6c-44b7-92e8-4ed223bff5eb>

¹⁵⁹ El-Sayed Gamal El-Din, *Egyptian President calls for hiring Women in the State Council and the Public Prosecution*, Ahram Online, 8 March 2021, retrieved from: <https://english.ahram.org.eg/NewsContent/1/64/405594/Egypt/Politics-/Egyptian-president-calls-for-hiring-women-on-State.aspx>

¹⁶⁰ Masr 360, *SAYYEDAT FAWQ AL-MANASSA .. TAcYİN AL-MAR'A BE-MAJLES AL-DAWLA WEL-NEYABA AL-cMMA ESTEHQAQ DOSTOURI TA'KHAR TANFIZO*, Women on the bench .. The appointment of women to the State Council and the Public Prosecution is a constitutional entitlement whose implementation has been delayed, 12 March 2021, retrieved from: <https://masr.masr360.net/%d8%a3%d8%ae%d8%a8%d8%a7%d8%b1/%d8%a7%d9%84%d9%85%d8%b1%d8%a3%d8%a9/%d8%b3%d9%8a%d8%af%d8%a7%d8%aa-%d9%81%d9%88%d9%82-%d8%a7%d9%84%d9%85%d9%86%d8%b5%d8%a9-%d8%aa%d8%b9%d9%8a%d9%8a%d9%86-%d8%a7%d9%84%d9%85%d8%b1%d8%a3%d8%a9-%d8%a8%d9%85%d8%ac%d9%84%d8%b3-%d8%a7%d9%84/>

¹⁶¹ *Id.*

¹⁶² Bwabet Al-Ahram, *NADY AL-QODAH: AL-TAWGĪH AL-RE'ASI BE-TAcYİN AL-MAR'A BEL-NEYABA WA MAJLES AL-DAWLA YATWAFaq MAC AL-MWATHĪQ AL-DAWLIYYA*, Judges Club: Presidential directive to appoint women in the Public Prosecution and the State Council agrees with international conventions, (9 March 2021), retrieved from: <https://gate.ahram.org.eg/News/2630765.aspx>

2. The Status of the Egyptian Judiciary in the 2014 Constitution with respect to Independence and Accountability

Any attempt for reform is met by the Egyptian judges with the banner of protecting the principle of judicial independence. They use such a principle as a tactic to resist and hinder any kind of judicial reform. An Australian commentator explains that judiciaries worship and idolize the principle of judicial independence.¹⁶³ Judges usually use this 'trumping' principle of judicial independence as a powerful tactic while resisting any judicial reform.¹⁶⁴

i. The Concepts of Judicial Independence and Judicial Accountability

*'Judicial independence is not freedom to do as a judge pleases, but rather, freedom to do what a judge should. Some kind of oversight remains necessary.'*¹⁶⁵

Unfortunately,¹⁶⁶ there is no universally agreed definition of the principle of judicial independence, and this led to great difficulty in evaluating the claim that particular practice, such as judicial training, undermines judicial independence.¹⁶⁷

We shall discuss two concepts of judicial independence that help us in our analysis of the status of the Egyptian judiciary in respect of judicial independence and judicial accountability.

Firstly, judicial independence and judicial accountability have frequently been viewed as competing forces that need to be counterbalanced against one another.¹⁶⁸ According to Handberg, in the United States,¹⁶⁹ the public debate regarding judicial selection methods is driven by two divergent values: judicial independence and judicial accountability. The principle of judicial independence limits the types of actions that can be taken against the judiciary to ensure that justice is delivered in an impartial way and fair manner.¹⁷⁰ In this sense, judicial independence requires that judges shall be immune from other branches of government's discipline, however, this does

¹⁶³ *Id.*

¹⁶⁴ *Id.*

¹⁶⁵ Lynn M. LoPucki, *Court-System Transparency*, Iowa L. Rev., 531 (2009).

¹⁶⁶ Kate Malleson, *Judicial Training and Performance Appraisal: The Problem of Judicial Independence*, The Model L. Rev., 657 (1997).

¹⁶⁷ *Id.*

¹⁶⁸ David C. Brody, *Use of Judicial Performance Evaluation to Enhance Judicial Accountability, Judicial Independence, and Public Trust*, Denver Univ. L. Rev., 124 (2008)

¹⁶⁹ Roger Handberg, *Judicial Accountability and Independence: Balancing Incompatibles?*, Univ. of Miami L. Rev. 127 (1994).

¹⁷⁰ See Harrison, *supra* note 139, at 429.

not dismiss the possibility of any kind of external supervision of the judiciary.¹⁷¹ This means that there must be some kind of judicial accountability that can ensure that the judiciary is well-administering the justice system. In fact, an inclusive approach to the application of the principle of judicial accountability may reinforce judicial independence. Thus, judicial independence and accountability do not seem to be contradictory and can coexist together.¹⁷²

Secondly, the principle of judicial independence is not an abstract principle.¹⁷³ Common values, such as ‘judicial independence’ have significantly different meanings in different judicial cultures.¹⁷⁴ This indicates that it must be viewed as a response to specific issues in each country.¹⁷⁵ Thus, the significance of judicial independence differs from one country to another depending on the history of attacks on the judiciary in that country. As a result, Siri Gloppen warns that when assessing a judiciary’s independence, the background of the country is crucial.¹⁷⁶ In other words,¹⁷⁷ to decide how the judiciary exercises its judicial independence and accountability, consideration should be given to the circumstances of a country’s national politics, culture, and legal background.¹⁷⁸ For a simple and quick illustration, we have Spain and Sweden as clear examples. In Spain, the memory of Franco’s dictatorship, as well as earlier periods of authoritarian rule, has made the current Spanish system very radical in its approach to limiting political involvement in judicial selection. In Sweden, on the other hand, the judiciary’s steady and relatively peaceful progress as an independent force has left many ties with the government exist.¹⁷⁹ By applying this to Egypt’s judicial system, the Egyptian judges have been subjected to various attacks and interference from the executive because of the authoritarian framework in which Egypt’s judiciary has worked since its establishment.¹⁸⁰ Also, the Egyptian judiciary has battled executive intrusions bravely for more than a century.

¹⁷¹ Francesco Contini and Richard Mohr, *Reconciling Independence and Accountability in Judicial Systems*, Utrecht L. Rev., 29 (2007).

¹⁷² *Id.*

¹⁷³ John Bell, *Judicial Cultures and Judicial Independence*, Cambridge Y.B. of Eur. Legal Stud., 50 (2001).

¹⁷⁴ *Id.*

¹⁷⁵ *Id.*

¹⁷⁶ *Id.*

¹⁷⁷ See Sahar F. Aziz, *supra* note 71, at 121.

¹⁷⁸ *Id.*

¹⁷⁹ *Id.*

¹⁸⁰ See Sahar F. Aziz *supra* note 71, at 170.

Having mentioned the above, this leads us to the reason for the exclusive complete independence status granted to the Egyptian judiciary in the 2014 constitution. This special status made some researchers in the field of judicial reform describe the independence given to the Egyptian judiciary as not equivalent to its counterparts around the world.¹⁸¹

ii. The Independence and Accountability of Egypt's Judiciary in the 2014 Constitution

According to the democratic structure of states, government powers are distributed among the legislative, executive, and judicial branches to avoid the concentration and misuse of power. Competitive cooperation of the three branches creates in the end horizontal accountability.¹⁸² However, the texts of Egypt's 2014 constitution that regulate the judiciary do not deal with the present challenges facing the Egyptian judiciary such as the lack of quick delivery of justice, court inefficiency, poor judicial training, and nepotism in the judicial appointment.¹⁸³ The status of the Egyptian judiciary in the 2014 Constitution has two characteristics which are, firstly: full independence with no accountability, secondly: Egypt's Judiciary is autonomous and not independent.

The first characteristic is that the Egyptian judiciary in the 2014 constitution enjoys full independence with no accountability. The judicial independence in Egypt has a special status other than any country in the world.¹⁸⁴ This happened because the Constituent Assembly that drafted the 2014 constitution left the drafting of the articles related to the judiciary to the wishes of judicial leaders as this was the only aim that concerned judges to protect their sectoral interests.¹⁸⁵ So the constitutional articles relating to the judiciary are a reflection of the judicial institutions' sectoral interests and not a reflection of the hopes of the Egyptians.¹⁸⁶ The Constituent Assembly

¹⁸¹ Egypt's 2014 Constitution, Article 193, which gives absolute power to the SCC in choosing its members, making it the first constitutional court in the world, which has this kind of power. This is before amending the article in a constitutional referendum in 2019 allowing the President of the Republic to select the SCC chief justice

¹⁸² See Sahar F. Aziz, *supra* note 71, at 5.

¹⁸³ See El Chazli, *supra* note 123, at 9.

¹⁸⁴ See El Chazli, *supra* note 123, at 8.

¹⁸⁵ *Id.*

¹⁸⁶ Ahmed Rabie et al., *MOUSSA YATAcHAD LEL-QODAH BE-DERASET MOQTRAHAT-HEM LE-WADcHA FĪ AL-DOSTOUR .. W AL-ZEND: NABHATH cN MASLHETT AL-WATAN, Moussa pledges to the judges to study their proposals to put them in the constitution .. And Al-Zind: We are looking for the nation's interest*, El-Watan News, (20 September 2013). Retrieved from:

<https://www.elwatannews.com/news/details/326509>

intervened many times to ease tensions and settle conflicts between judicial entities and bodies when the interests of these institutions were conflicting.¹⁸⁷

The second characteristic of the status of the Egyptian judiciary in the 2014 constitution indicates that Egypt's Judiciary is too autonomous and not independent. Judicial independence means there are checks and balances between the executive, the legislative, and the judicial branches of government, this means that the judiciary is not above the other two branches; instead, it is equal and accountable to both. While judicial autonomy means building blocks and obstacles between the three branches.¹⁸⁸ Autonomy indicates that each state institution is performing its constitutional powers in isolated islands.¹⁸⁹ There is a big risk of having a very autonomous judicial branch. Although an autonomous judiciary has many advantages for democracy,¹⁹⁰ it also has some drawbacks. This status risks replacing the rule of law with the rule of judges. What I mean here by the rule of law is to set objective and transparent criteria for judicial appointments.

According to Nathalie,¹⁹¹ in the recent years the Egyptian judges were able to gain more autonomy with no oversight and no checks on their authority. Their independence has increased their 'isolation' from the state and society and no justice reform has been made.¹⁹² Increased judicial independence may appear as a positive development toward good governance. However, according to some analysts, in a country like Egypt, increasing judicial independence before initiating comprehensive reform makes it more difficult to improve the judicial system.¹⁹³ The full autonomy that the Egyptian judiciary has gained in the 2014 Constitution makes it very difficult to be checked or held accountable either to the public or to other branches.¹⁹⁴ This makes judges

¹⁸⁷ El-Watan News, *WAZĪER AL- cDL YOTALEB AL-HAY'AAT AL-QADA'EYA BE-HASM AL-KHELAF BAYNHOM FĪ AL-DOSTOUR*, *The Minister of Justice calls on the judicial bodies to resolve the dispute between them in the constitution*, (17 November 2013). Retrieved from: <https://www.elwatannews.com/news/details/356881>

¹⁸⁸ Rafael La Porta, et al., *Judicial Checks and Balances*, *J. of Pol. Eco.*, 447- 449 (2004) cited in Shams Al Din Al Hajjaji, 'Reform of Judicial Independence Rules in Egypt', *The Indonesian J. of Int'l & Comp. L.* 102 (2018).

¹⁸⁹ Nathan J. Brown, *Egypt's Judges in a Revolutionary Age*, Carnegie Endowment for Int'l Peace, 13 (2012).

¹⁹⁰ See Sahar F. Aziz, *supra* note 71, at 118.

¹⁹¹ Nathalie Bernard-Maugiron, *A Clash of Institutions: Judiciary vs. Executive in Egypt*, 46 (2016).

¹⁹² *Id.*

¹⁹³ Zaid Al-Ali and Michael Dafeel, *Egyptian Constitutional Reform and the Fight against Corruption*, Int'l IDEA & The Ctr. for Const. Transitions at NYU Law, 14 (2013).

¹⁹⁴ See Nathalie, *supra* note 193, at 46.

accountable to each other only and in turn decreases the level of public confidence in the judiciary. The status of the Egyptian judicial accountability affirms that the judiciary has become a kind of syndicalism which is like a corporate group function in separation from everything else.¹⁹⁵

Risley while analyzing the Egyptian judicial independence stated that the ‘people will not support a judicial aristocracy and the government will not support a judicial autocracy’ if the rule of law descends into the rule of judges.¹⁹⁶ The accountability of Egypt’s judiciary is questionable because judges are not appointed in a manner that is based on merit. There is a lack of transparency in the selection process. Moreover, many judges are not competent due to the lack of effective judicial training. There are negative results of the practices performed by the judiciary and one of the most important unfortunate consequences is the judiciary’s loss of public confidence.

Therefore, reform is greatly needed that can balance judicial independence – or we can say judicial autonomy – with judicial accountability. This reform shall establish a mechanism of accountability for the judiciary. Judicial independence and accountability “are not at odds with each other but are rather different sides of the same coin”.¹⁹⁷ Also, for courts to function effectively, people must have confidence in judges.¹⁹⁸ This confidence is promoted when there is a fair and transparent system of judicial appointment. Thus, there must be clear and defined criteria in all stages of the appointment process. These criteria must be published and declared to the public and the candidates for judicial posts.

3. The Comparative Systems of Higher Councils for Judiciary

As I expressed before, the quality of newly appointed judges in Egypt is not up to the standards. This is mainly because the Egyptian law schools are offering traditional legal education which has been repeatedly accused of failing to prepare judges for the new and challenging responsibilities that modern society is assigning to them.¹⁹⁹ This also was the case in the European continental judiciaries after the second world war.²⁰⁰ In many justice systems in Europe there was a tendency

¹⁹⁵ See Nathan J. Brown, *supra* note 191, at 12.

¹⁹⁶ David Risley, *Internal Threat to Judicial Independence*, (10 June 2015). Retrieved from: <https://egyptjustice.com/analysis/2015/6/4/internal-threat-to-judicial-independence>

¹⁹⁷ *Id.*

¹⁹⁸ *Id.*

¹⁹⁹ Mohamed Abo-ALMagd, *Eslaah Al-taclim Al-qanoni fi Masr, Reforming legal education in Egypt*, (16 October 2017). Retrieved from <https://www.vetogate.com/2913787>

²⁰⁰ See Guarnieri, *supra* note 33, at 169.

to reinforce the judiciary's external independence, particularly in relation to the executive.²⁰¹ As a response, these two reasons led to the creation of higher councils of the judiciary charged with making all decisions affecting the status of judges, apart from the executive interference, as well as the establishment of specialized centers for judicial training in many countries, and the latter will be discussed shortly in the comparative systems of judicial schools.

Here I shall demonstrate the comparative systems of higher councils for judiciaries. I will focus on judiciaries of European civil law countries as they are very similar to a large extent to Egypt's legal and judicial systems. The subject of my analysis includes mainly France, Spain, and Italy in addition to other European civil law countries. I intend to use this analysis in my counter-argument that the Higher Council is not threatening Egypt's judicial independence.

Over the decades, the world has seen a clear rise in judicial power and an increasing participation of judges in the administration of judiciaries.²⁰² In Italy, the judicial system is known for its extreme independence, in which the judicial council controls all affairs of judicial governance. This is similar to its Egyptian counterpart. According to Garoupa & Ginsburg, judicial councils sustain as institutions because they include actors from different fields of the society, where no one institution can easily be in control of the judiciary.²⁰³ The judicial councils help to equalize independence and accountability in the judiciary. Therefore, judicial councils are often the targets of institutional reform such as in Italy and Brazil.²⁰⁴

Similar to France, Egypt adopts the collegiate or panel system that allows the new judges to act as advisors, and this allows them to gain practical professional training over the course of their careers. Their exercise of the judicial function is reduced under the lead of senior experienced judges in the panel until they become able to practice their judicial functions properly. Also similar to France,²⁰⁵ Egypt's judges (the Ordinary Judiciary) and prosecutors (the Public Prosecution) belong to the same profession and the same institution. Also, administrative courts (the State Council) form part of the Egyptian judicial system but with different leadership or administration, unlike in France, in which administrative courts are not part of the French judicial system.

²⁰¹ *Id.*

²⁰² Nuno Garoupa and Tom Ginsburg, *Guarding the guardians: Judicial Councils and Judicial Independence*, *The Am. J. of Comp. L.*, 203 (2009).

²⁰³ *Id.* at 228.

²⁰⁴ *Id.*

²⁰⁵ *See* Guarnieri, *supra* note 33, at 170.

In the following table (1), I compare the judicial councils in Egypt, France, Italy, and Spain as regard the number of the members, the presidency of the council, the number of members from inside the judiciary as well as the number of members outside it.

Table 1 - Judicial Councils in Egypt, France²⁰⁶, Italy²⁰⁷ and Spain²⁰⁸

Country	Egypt	France	Italy	Spain
No. of members	11	22	27	21
Presidency	President of the Republic	President of the Court of Cassation	President of the Republic	President of the Supreme Court
<i>Ex officio</i> members	All of the 10 members	Public Prosecutor at the Court of Cassation	- First President of the Court of Cassation - Attorney General at the Court of Cassation	
No. of members of the judiciary: elected/appointed		6 judges 6 prosecutors	16 elected by their colleagues	12 elected by the Parliament
No. of members from outside the Judiciary		1 member of the Council of State 1 lawyer 2 by the President of the Republic 2 by the President of the National Assembly 2 by the President of the Senate	8 law professors or lawyers elected by the Parliament in a joint session	4 law professors or lawyers elected by the Congress of Deputies 4 law professors or lawyers elected by the Senate

²⁰⁶ The French Higher Council of the Judiciary, Membership and Organization, retrieved from: <http://www.conseil-superieur-magistrature.fr/le-csm/composition-et-organisation>

²⁰⁷ The Italian Higher Council of the Judiciary, Composition of the Council 2018-2022, retrieved from: <https://www.csm.it/web/csm-internet/csm/composizione/consiliatura-attuale>

²⁰⁸ The Spanish Higher Council of the Judiciary, retrieved from: <https://www.mjusticia.gob.es/en/justicia-espana/organizacion/consejo-general-poder-judicial#:~:text=%E2%80%8BArticle%20122%20of%20the,a%20term%20of%20five%20years.>

The previous table (1) shows some facts that we must analyze. Regarding the ratio of judges and non-judges members in the comparative Judicial Councils, judges constitute the majority of Judicial Councils but not necessarily the consensus, as we can see the ratio of judges and non-judges members in France (14 out of 22 members), in Italy (16 out of 27), and in Spain (12 out of 21). Also,²⁰⁹ Romania (10 out of 19), Slovenia (6 out of 11). However, in Belgium (22 out of 44) the ratio is equal and the same is applied in Slovakia.

Regarding the mechanism of checks-and-balances among the three arms of governments, the Parliament appoints some members in France, Italy, and Spain. The same is in Bulgaria and Slovakia. The President of the Republic appoints 2 members in France, while in Italy the Judicial Council is presided by the President of the Republic, and also in Malta. The Minister of Justice is a member of the Council in Romania, Poland, and Latvia. Regarding non-judge members of Judicial Councils, they may be lawyers as in France, Italy, and Spain, in addition to Belgium, Malta, Denmark, and Sweden. They may be also law professors such as in France, Italy, and Spain, besides, Belgium, Croatia, and Slovenia.²¹⁰

Furthermore, many international and regional instruments state that Judicial Councils shall consist of a majority of judges and may include political members whether from the Executive or the Legislature. such as: the Universal Charter of the Judge adopted by the International Association of Judges (IAJ) in 1999,²¹¹ the Dublin Declaration on Standards for the Recruitment and Appointment of Members of the Judiciary in 2012,²¹² and the Budapest Resolution on Self Governance for the Judiciary: Balancing Independence and Accountability in 2008.²¹³ Other instruments that call clearly for the mixed composition of the higher councils are namely: the Kyiv Recommendations on Judicial Independence in Eastern Europe, South Caucasus, and Central Asia

²⁰⁹ Goda Ambrasaitė – Balynienė, *Comparative Analysis on the High Councils for Judiciary in the EU Member States and Judicial Immunity*, 9 ,(2015).

²¹⁰ *Id.* at 11.

²¹¹ The Universal Charter of the Judge adopted by the International Association of Judges (IAJ) Central Council in Taiwan on November 17th, 1999, and updated in Santiago de Chile on November 14th, 2017. Available at: <https://www.icj.org/themes/cijl/international-standards/>

²¹² Dublin Declaration on Standards for the Recruitment and Appointment of Members of the Judiciary (2012) adopted by the European Network of Councils for the Judiciary. Available at: <https://www.icj.org/themes/cijl/international-standards/>

²¹³ Budapest Resolution on Self Governance for the Judiciary: Balancing Independence and Accountability (2008) adopted by the European Network of Councils for the Judiciary. Available at: <https://www.icj.org/themes/cijl/international-standards/>

regarding Judicial Administration, Selection and Accountability adopted in 2010,²¹⁴ besides the Opinion no.10 (2007) of the Consultative Council of European Judges (CCJE),²¹⁵ which provides that mixed composition has two advantages such as preventing the perception of self-interest and cronyism and the other advantage is reflecting the different viewpoints within society, thus giving the judiciary an additional source of legitimacy. Another instrument that calls for mixed formation is the Venice Commission Report on Judicial Appointments,²¹⁶ this instrument states that a mixed formation creates a balance between judicial independence and the necessary judicial accountability, thus, avoiding the negative effects of corporatism within the judiciary.

In Conclusion, the argument stating that the Higher Council is threatening judicial independence has no solid ground, as such council does not necessarily threaten this independence. Moreover, this argument can be countered by what Bogdanor is stating. Bogdanor makes an important distinction between "sacrificial" and "explanatory" accountability.²¹⁷ In sacrificial accountability, the institution is subject to the oversight of another. While in explanatory accountability, the institution is examined by another body thus, the institution under examination or oversight is obliged to increase transparency in its exercise of public powers, and transparency is vital for the good governance of any country.²¹⁸ Thus, not leaving the exercise of public powers to its own free will may be flawed because of corporate interests. This is very clear in the example of depriving women of judgeship. The judiciary's reaction to any call for appointing women was that the judiciary is the master of its own decision and has its wide discretionary power to decide whether to appoint women or not, and this led to dismissing cases filed by young women who applied to judicial positions and the most prominent two examples are Aisha Rateb and Omnia Gadallah. Now, I shall refer to the NTA and the discourse that it is considered a threat to the independence of the judiciary.

²¹⁴ Kyiv Recommendations on Judicial Independence in Eastern Europe, South Caucasus and Central Asia: Judicial Administration, Selection and Accountability (OSCE Office for Democratic Institutions and Human Rights, 2010), retrieved from: <https://www.icj.org/themes/cijl/international-standards/>

²¹⁵ Opinion no.10 (2007) of the Consultative Council of European Judges (CCJE) to the attention of the Committee of Ministers of the Council of Europe on the Council for the Judiciary at the service of society, retrieved from: <https://independence-judges-lawyers.org/international-standards/>

²¹⁶ Venice Commission's Report on Judicial Appointments, CDL-AD(2007)028, retrieved from: <https://www.icj.org/themes/cijl/international-standards/>

²¹⁷ V Bogdanor, *Parliament and the Judiciary: The Problem of Accountability*, (2006 Sunningdale Lecture) cited in James Harrison, 'Judging the Judges: The New Scheme of Judicial Conduct and Discipline in Scotland', *Edinburgh L. Rev.*, 429 (2009).

²¹⁸ *Id.*

B. The National Training Academy (NTA)

The NTA was established by the presidential decree no. 434 of the year 2017 as one of the recommendations of the first National Youth Conference held in Sharm El Sheikh in December 2016.²¹⁹ In fact, the NTA was originally established as a national center for training and qualifying young Egyptian leaders in all fields and all governmental sectors. The NTA's main goal is to achieve human development requirements for the youth in all sectors of the state and upgrade their abilities and skills.²²⁰ However, the different judicial institutions piled up to conduct training programs for their new members at the NTA. Since its establishment in 2017, the NTA provided training programs to the assistants of the Minister of Justice, judges of the Economic Courts, judges of the State Council, members of the State Lawsuits Authority, members of the Administrative Prosecution, Public Prosecutors, as well as the first 11 female prosecutors in the history of the Public Prosecution.²²¹

The NTA held many training programs for the members of the judiciary, such as the State Council,²²² the State Lawsuits Authority,²²³ and the Administrative Prosecution.²²⁴ The NTA performs this role of training judiciary members despite the existence of the NCJS and the different training centers established in the judicial institutions. However, the Minister of Justice stated that

²¹⁹ Salwa El-Zoghby, *AKHEROHA AL-AKADEMIYYA .. 8 TAWSYAAT LE-MO'TMAR AL-SHABAB AL-AWAL cLA ARD AL-WAQE'*, *The Last of them is the Academy .. 8 Recommendations for the first Youth Conference are achieved*, El-Watan News, (28 August 2017). Retrieved from:

<https://www.elwatannews.com/news/details/2467938>

²²⁰ *Id.*

²²¹ Al-Masry Al-Youm, *RASHA RAGHEB TOWADEH INJAZAT AL-AKADEMIYYA AL-WATANIYYA LEL-TADRĪB DEMN FACALYAT MONTADA SHABAB AL-cALAM*, *Rasha Ragheb explains the achievements of the National Training Academy*, (13 January 2022). Retrieved from:

<https://www.almasryalyoum.com/news/details/2503078>

²²² Sada Al-Balad, *RA'EES MAJLES AL-DAWLA YASH-HOD TAKHRĪJ AL-MOSTASHRĪN BEL-AKADEMEIYYA AL-WATANIYYA LEL-TADRĪB*, *The President of the State Council witnesses the graduation of Councilors at the National Training Academy*, (5 January 2021). Retrieved from:

<https://www.elbalad.news/4644360>

²²³ Bwabet Al-Shorouk, *AL-AKADEMIYYA AL-WATANIYYA LEL-TADRĪB TOBREM PROTOCOL LEL-TcAWON Mac HAY'AT QADAYA AL-DAWLA*, *The National Training Academy concludes a protocol of cooperation with the State Cases Authority*, (18 March 2021). Retrieved from:

<https://www.shorouknews.com/news/view.aspx?cdate=18032021&id=4466ec05-02de-4de0-be77-fab97eb50938>

²²⁴ Bwabet Al-Shorouk, *AL-AKADEMIYYA AL-WATANIYYA TODDREB MOSTAHREĪ HAY'AT AL-NEYABA AL-EDARIYYA*, *The National Academy trains Councilors of the Administrative Prosecution Authority*, (7 October 2020). Retrieved from:

<https://www.shorouknews.com/news/view.aspx?cdate=07102020&id=6ec9bbb0-590d-42e4-bf40-924fc78cd32b>

each judicial institution has a center for training members on the legal aspects,²²⁵ but the legal part in the qualification is not adequate and there must be also cultural, and managerial aspects. Thus, courses include strategic planning and project management. These types of courses were offered to senior judges who act as assistants to the Minister of Justice.

The NTA has gained, since its establishment in 2017, the opportunity to handle the responsibility of training judges and prosecutors and other members of the judicial institutions, this is besides its responsibility to train civil servants working in the leading governmental institutions. This is mainly because of the delay and sometimes the failure of the five judicial training centers, found in the four judicial institutions, to properly train and educate new and current judges. The Public Prosecution concluded a cooperation protocol with the NTA, aimed at upgrading the work capabilities of the Public Prosecution members and administrators, enhancing and developing their scientific and administrative skills in various fields to keep pace with the developments of the modern judiciary.²²⁶ The Administrative Prosecution and State Lawsuits Authorities were also keen to conclude a cooperation protocol with the NTA, to refine and develop the expertise and capabilities of their members to keep pace with all legal, administrative, and technical developments, provide the requirements for achieving effective justice, control the administrative work system, and establish the values and standards of accountability, integrity, and transparency.²²⁷

However, it is important to mention that the board of trustees of the NTA is very much executive dominated and there is no judicial representation. The board is under the presidency of the President of the Republic and the membership of the Prime Minister,²²⁸ the Minister of Planning and Economic Development, the President of the General Intelligence Authority, a representative of the Ministry of Finance, a representative of the Ministry of Higher Education and Scientific Research, a representative of the Supreme Council of Universities, as well as five experts from the

²²⁵ Bwabet Al-Ahram, *ENTIHAĀ' TA'HĪL 13 MOSAcED WAZĪR WA 5 RO'ASAA' MAHAKEM WA 8 MOSTASHRĪN BEL-WATANIYYA LEL-TADRĪB – SOWAR, The completion of the qualification of 13 Assistant Ministers, 5 Court Chiefs and 8 Councilors at the National Training Academy – Photos*, (30 January 2021). Retrieved from: <https://gate.ahram.org.eg/News/2568868.aspx>

²²⁶ See Akhbar El-Yom, *supra* note 130.

²²⁷ *Id.*

²²⁸ National Training Academy, Board of Trustees. Retrieved from: <https://www.nta.eg/ar-board-of-trustees.html>

educational field with no one specialized in the legal education.²²⁹ This too much executive-dominated board reinforces my argument that the NTA is not appropriate nor ideal for training judges and prosecutors, as it may threaten judicial independence. Thus, an independent school should be created.

Also, I will support my argument by analyzing the comparative systems of the judicial schools that are responsible for appointing and training judges. Again, as I did regarding the higher councils, I will focus on judiciaries of European civil law countries as they are very similar to a large extent to Egypt's legal and judicial systems. The subject of my analysis includes mainly France and Spain in addition to other European civil law countries. The analysis consists of three sections, which are: the first section is an overview of the comparative judicial schools and highlights the process of appointing and training judges at the ENM in France, where I intend to benefit from the French successful experience in appointing and training judges and prosecutors. The second section analyzes the leadership and the governing boards of the French Judicial School and the Spanish Judicial School, where I intend to show that the body responsible for appointing and training judges shall be independent and must include a majority of judges in its governing board along with non-judicial members such as law academia and law practitioners.

1. The Importance of Judicial Leadership and Judicial Ownership of Judicial Training

Many judiciaries make further efforts to promote judge-led learning or the judicial ownership of their training programs, recognizing that this is vital for preserving judicial independence and promoting the programs' credibility. Judge-led training indicates that judges should be the leaders of their own training. It reflects a belief that professionals in general, and judges in particular, are the best deciders of their own learning needs and how to satisfy them.

There is an international debate throughout the judiciaries whether judicial training should be mandated to an outside body or should be led by the judiciary.²³⁰ Some analysts see that imposing judicial training from outside the judiciary is considered to weaken judges' voluntary participation and their motivation to learn. However, other analysts and jurists see that a judge-led training has

²²⁹ Presidential Decree No. 207 of 2021 re-forming the Board of Trustees of the National Training Academy for a period of three years. The Official Gazette issue no. 21 repeated (H) of 1 June 2021.

²³⁰ Livingston Armytage, *Judicial Education on Equality*, The Mod. L. Rev., 162 (1995).

a risk of being blind to discovering basic deficiencies of the judicial system, and maybe blind to deciding the training programs needed to address such deficiencies.²³¹

Experience demonstrates that while judges know their own training needs, however, they can only assess half of the training needs. The other half can be provided by the lawyers, the law academia, the civil sector, other members of the private legal profession, and other interested stakeholders. Therefore, non-judicial experts should design the curriculum of the judicial training and deliver the programs under the supervision and assistance of judges.²³² In other words, it should be a partnership between judges and educational and behavioral experts.

Also, it is preferable to deliver the judicial training programs in an institutionalized structure.²³³ Moreover, it is essential that the judicial training institution is at the heart of the judiciary and must be in close contact with the judiciary. This is to increase the training's efficiency.²³⁴ Also, the governing body of the institution responsible for judicial training should include judges as this helps to strengthen the link between that institution and the judiciary. To prove that the school's credibility helps judges to be in conditions convenient for learning, and support them to continue their training all over their career paths, I will mention another example that is the French ENM, as the ENM is the institution that is training all judges in France, whether through initial or continuing training. So, this made the ENM become the home of French judges and prosecutors, a place much appreciated by them, where they can take a break from their normal judicial duties for a few days, and spend time for reflection and discussion with their peers.

Also, in contributing to solving the issue of the training body for the Egyptian judiciary, I will spot the light on an example from Australia. In Australia, the establishment of the Judicial Commission to offer judicial training was at first objected to by judges as it may interfere with judicial independence. However, the law was amended to establish the Judicial Commission as a body independent of the Executive with judicial participation in the training program.²³⁵ From the

²³¹ Bojović & Purić, *In-service Training of Judges in Europe*, 69, (2016).

²³² *Id.*

²³³ *Id.*

²³⁴ Xavier Ronson, *The Principles of Judicial Training: Towards International Recognition?*, J. of the Int'l Org. for Jud. Training, 11-19, (2016).

²³⁵ Kate Lumley, *Without Fear or Favour, Affection or Ill Will: Addressing Gender Bias in NSW Judicial Education*, 22 INT'L J. LEGAL PROF. 212 (2015).

previously mentioned, there should be a balance between judicial ownership of training programs and the vital need for the induction of out-sider components.

To conclude, studying global governance structures for judicial training reveals that it is very important that the judiciary leads and owns its training institution.²³⁶ Regarding judicial leadership, judges and prosecutors who are experienced and represent various categories within the judiciary should lead the training body, with the membership of members from the government, educational experts, and law academia and law practitioners. While regarding judicial ownership, it is important that the judges take part in the faculty of trainers and instructors of the training body. Outside training for judges risks creating barriers to effective judicial learning.

Moreover, many international and regional instruments call for the judicial leadership and judicial ownership of judicial training, as article 4-2 of the Universal Charter of the Judge adopted by the International Association of Judges (IAJ), as well as Opinion no 4 of the Consultative Council of European Judges (CCJE) to the attention of the Committee of Ministers of the Council of Europe on appropriate initial and in-service training for judges at national and European levels, state that initial and in-service training shall be conducted under the supervision of the judiciary. Also, the Sixth Principle of the Amsterdam Judicial Training Principles adopted by the European Judicial Training Network (EJTN) states that judicial training should be delivered by judges and prosecutors who have been trained for such purpose.’

2. The Comparative Systems of Judicial Schools

In European countries, there was a major change in judicial appointments, which is the establishment of judicial schools to offer legal education and training for newly appointed judges.²³⁷ In Egypt, this step is highly required to bridge the gap between legal education at the university and professional work at the judiciary.

France is a pioneer in the field of judicial training, where the training of judges and prosecutors is offered by the National School for the Judiciary, *Ecole Nationale de la Magistrature* (hereinafter the ENM) which was established in 1970 under the Ministry of Justice, the ENM inherited the functions of the National Centre for Judicial Studies established in 1958.²³⁸ The ENM’s goal is to

²³⁶ Livingston Armytage, *Judges as Learners*, 17 (2004).

²³⁷ See Guarnieri, *supra* note 33, at 171.

²³⁸ *Id.*

make applying for the judiciary available to candidates from different professional environments. I will explain the training process before and after the appointment at the ENM.

In France, the newly appointed judges should receive 2 years of theoretical and practical initial judicial training. While as to the continuous judicial training, new judges shall take four months of mandatory theoretical training during the first eight years of their appointment. Following this, judges may participate in voluntary continuous training sessions held by the ENM.²³⁹

The French judicial applicants must pass two examinations. The first examination is made for law school fresh graduates holding at least a bachelor's degree or license. Centers of judicial studies attached to main universities offer preparatory courses for the examination two times a year and economic aid is offered to those who enroll in such courses.²⁴⁰ The second examination is made for government and military officials, who have at least four years of public service. Holding a law degree is not a must for admission to the ENM and a preparatory course is offered to applicants without law degrees, who pass special admission tests.²⁴¹

At the ENM, the subjects of the examinations are mainly law school subjects and sometimes legal books may be used.²⁴² There are four written tests, six oral tests on law, and the foreign language test, besides the physical fitness tests. The applicants shall take the written tests and every test is five hours long. Upon passing them, they shall take the six oral tests and each test lasts from 15 to 30 minutes.²⁴³ In order to assist the applicants in the preparation for the tests, the ENM publishes samples of previous written exam questions in each subject in the ENM bulletin.

After admission to the ENM, students go through introductory theoretical training and shall take internships in courts and prosecution offices to expose them to real-life situations.²⁴⁴ Students take theoretical courses and internships in courts and law firms. The theoretical training is delivered through modules that operate as seminars or workshops. Students are encouraged to make dialogue, role-playing, and write judicial decisions.²⁴⁵ This phase focuses also on the practical and procedural aspects of civil, criminal, and administrative law. Moreover, the school also offers

²³⁹ See Luis & Migdalia, *supra* note 7, at 14.

²⁴⁰ *Id.*

²⁴¹ *Id.* at 15.

²⁴² *Id.*

²⁴³ *Id.* at 16.

²⁴⁴ *Id.* at 17, 18.

²⁴⁵ *Id.* at 18.

specialized courses in law-related topics, such as legal medicine, psychiatry, psychology, psychosociology, accounting, and foreign languages.²⁴⁶

This is followed by 15-month internships in which students may work in courts and prosecution offices. After fifteen months, students take internships in public and private administrative offices and carry out legal research.²⁴⁷ After the internships are completed, there are one written test and two oral tests. The written test is about drafting a prosecutorial decision or statement and lasts for six hours. The two oral tests last fifteen minutes each and consist of a presentation of a civil or criminal case.²⁴⁸ These tests' grades are added to those of the 15 months' internships and are sent to the President of the Republic to issue the Presidential decree of their appointment. The standard practice is to assign the new judges in collegiate courts, to reduce the effect of any inexperienced mistakes that may happen.²⁴⁹ After the new judges in France are appointed, they shall take the mandatory last internship in a court or a prosecutor's office. This internship helps the newly appointed judges or prosecutors to specialize in the positions of their appointment and gain the necessary skills.²⁵⁰

My comparative analysis shows that the task of admitting candidates to judicial schools differs from one country to another.²⁵¹ In France, it is the Board of the ENM, dominated by the judges. While in Romania, it is a special admissions board controlled by the Romanian judicial council which consists of judicial members with representation from law academia, practitioners, and representatives of the trainees at the school.

Concerning the leadership of the judicial schools and the body responsible for appointing and training judges. I will display the organization of judicial schools in France and Spain to support my argument that judicial schools must include a mix or a combination of judicial and non-judicial members.

²⁴⁶ *Id.* at 19.

²⁴⁷ *Id.*

²⁴⁸ *Id.* at 20.

²⁴⁹ *Id.*

²⁵⁰ *Id.*

²⁵¹ *See* Spac, *supra* note 6, at 2089.

3. The Leadership of the French Judicial School

The ENM board approves the regulations of the school and the subjects of the continuing training program. The board also checks the budget regulations.²⁵² Members of the ENM administrative board as of the 16th of November 2020, are: Firstly, members with voting rights who are; 1) Four ex officio members: The Chair is the Chief Justice of the Court of Cassation, and the Vice-Chair is the Chief Prosecutor at the Court of Cassation, Director of Judicial Services, and Director General of the Administration and Civil Service.²⁵³ 2) Nine members appointed by the Minister of Justice including: the Director of Civil Affairs and Seals, three judges from different courts of Appeal, one Public Prosecutor from a regional court, one member of the Council of State, one judge from a commercial court, a lawyer from the Bar, Director of the National School of Administration (ENA).²⁵⁴ 3) Two members appointed by the Minister of Justice and Minister for Education: Director of the Institute of Judicial Studies (IEJ) of Lyon, and professor at University Paris I - Panthéon-Sorbonne.²⁵⁵ 4) Eight elected members: representative of the training staff, representative of the court training delegates, representative of the ENM staff. representative of the internship center directors, and four representatives of the trainee judges and prosecutors as follows: a man and a woman from the last class, and a man and a woman from the class before.²⁵⁶ Secondly, members with advisory roles: the Director of the ENM, and three representatives of the judicial trade unions or professional bodies.²⁵⁷

4. The Leadership of the Spanish Judicial School

The Spanish Judicial School, set up as a selection and training center for judges, integrated into the General Council of the Judiciary, aims to provide comprehensive and high-quality training to members and applicants of the Judicial Career.²⁵⁸

²⁵² *Id.* at 21.

²⁵³ L'École nationale de la magistrature (ENM), Governance. (2022). Retrieved from: <https://www.enm.justice.fr/en/governance>

²⁵⁴ *Id.*

²⁵⁵ *Id.*

²⁵⁶ *Id.*

²⁵⁷ *Id.*

²⁵⁸ C.G.P.J - Presentación de la Escuela. (2022). Retrieved from: <https://www.poderjudicial.es/cgpj/es/Temas/Escuela-Judicial/Presentacion-de-la-Escuela/>

The Spanish judicial school *Escuela Judicial Consejo General del Poder Judicial*,²⁵⁹ is created under a law passed on May 26, 1944, located in Madrid, and is functioning since 1950. The Spanish judicial school has a broader mission than its French counterpart. The French judicial school trains only judges and prosecutors. While the Spanish school since 1966, has been entrusted with the mission to select and train all the public officials relevant to the Spanish justice system, such as: judges, prosecutors, court clerks, and forensic physicians.²⁶⁰

In Spain, the Judicial School is a technical body of the General Council of the Judiciary *El Consejo General del Poder Judicial*, and its essential mission is to coordinate the selection processes of judges, as well as ensure the proper execution of initial training programs for them and their continuous training, thus, the School administration is composed of: Directorate of Selection and Initial Training, and the Directorate of Continuing Training.

To carry out its functions, the Spanish school is given the power to make cooperation agreements with public or private institutions. Moreover, the School may offer training to Judges or applicants to the judiciary from other countries. Three of the most prominent functions of the Spanish Judicial School are: 1) the selection and initial training of applicants to enter the judiciary, as well as carrying out activities aimed at facilitating access to the school itself. 2) the permanent training of all the members of the judiciary and of all those who, without belonging to it, have to perform juridical functions. 3) collaboration and exchange agreements with other similar foreign entities.

The members of the Governing Council are appointed for a period of three years.²⁶¹ The Governing Council of the Judicial School is made up of the President of the General Council of the Judiciary as the chair, and of the following members: 1) Five members of the General Council of the Judiciary appointed by the Plenary Session of the Council in which three members are from judges, and the other two members are from lawyers and other jurists of recognized competence. 2) A member appointed by the Ministry of Justice and the Interior. 3) A representative of the Prosecutor.

²⁵⁹ The European Judicial Training Network EJTN, *Spain: Escuela Judicial Consejo General Del Poder Judicial*. Retrieved from: <https://www.ejtn.eu/About-us/Members/Spain/>

The Spanish judicial school has two headquarters, one in Barcelona for initial training and international programs, and one in Madrid for continuous training.

²⁶⁰ *Id.*

²⁶¹ Regulation Number 2/1995, of June 7, of the Judicial School, Published in the Official State Gazette number 166, corresponding to July 13, 1995. Retrieved from: <https://www.poderjudicial.es/cgpj/es/Temas/Escuela-Judicial/Presentacion-de-la-Escuela/Regulacion/>

4) Three members appointed by the Plenary Session of the General Council of the Judiciary at the request of the professional associations of Judges.

To sum up, in France, the ENM administrative board contains nine members, including a lawyer, appointed by the Minister of Justice, and two members from the academia appointed by the Minister of Justice and the Minister for Education. While in Spain, the Governing Council of the Spanish Judicial School includes a representative appointed by the Ministry of Justice and the Interior. Thus, from this comparative analysis, it is obvious that the governing boards of both judicial schools in both countries contain at least a member appointed by the Executive. Also, it is very clear that the governing boards must include lawyers and law professors.

At the end of this chapter, I explained that some judges within the Egyptian judiciary are reluctant to make any reform of the system of judicial appointments as this would affect their personal interests in appointing their children and relatives. Also, they are reluctant to make any reform of the system of judicial training as this would influence the status of hiring the least qualified children and relatives. Reform of both systems will make the judiciary accountable to the public. This judicial reluctance is demonstrated in this chapter by displaying two examples which are: the 2005 Farouq Gweda's article criticizing the nepotism in judicial appointments, and the 2010 issue of appointing women as judges in the State Council, then going through the ironic change of their stance on appointing women as judges right after the Presidential directives in March 2021. Moreover, I demonstrated the historical struggle of women to be appointed to the Council of State and the Public Prosecution.

Then, I identified the relationship between judicial independence and judicial accountability, and that the 2014 Constitution established a judiciary that rules without governmental or public checks, in other words, it created an insulated judiciary above the law. The constitution of 2014 has increased judges' autonomy. The judges managed to win this autonomy with little accountability and with very few checks on their authority. Their autonomy has increased their isolation within the state and society. Also, I concluded that the Higher Council is not threatening judicial independence but rather creating a balance between judicial independence and judicial accountability and this is because the Egyptian judiciary is too autonomous from the other arms of government and also the public. I supported this argument by analyzing the comparative systems of the composition of the higher judicial councils which include judges and non-judges. Also, the

international and regional instruments governing the independence of the judiciary state that the inclusion of non-judicial members in the higher councils does not necessarily threaten judicial independence. However, the formation of the Higher Council of Egypt needs to be modified.

Furthermore, I explained the establishment of the NTA and its expanding role in training members of the different judicial institutions and its conflicting role with the already existing five fragmented judicial training centers. Then, I spotted the light on the importance of judicial leadership and judicial ownership of judicial training. Thus, I argued that the NTA is not appropriate for training judges and prosecutors because of the much executive-dominated high board and the absence of any judicial member. I supported my argument by studying the comparative systems of judicial schools that are responsible for both appointment and training of judges. I analyzed the training and appointment processes in the French judicial school (the ENM). Then, I explained that the leadership and the governing boards of both the French and the Spanish judicial schools, which are led by judges and have in their formations non-judicial members, and both of them contain at least a member appointed by the Executive.

IV. Egypt's Judicial Reform in the Light of the Egyptian Experience, the Comparative Systems, and the International Instruments

In chapter 2, I analyzed why the Egyptian judiciary is often resisting reform programs. This resistance is based on the notion that such reform constitutes an act of interference from the executive or the legislature thus threatening judicial independence. This Egyptian version of judicial independence leads to the judiciary becoming immunized and untouchable. The judiciary has become a sect with its own institutional and individual interests and not public servants.²⁶² From the previously mentioned, it is no longer believable that the judiciary will reform itself from within.²⁶³ As the judiciary is administrating its own affairs, no reform can take place except in the case that judges themselves are willing and approving such reform.

The Egyptian judiciary still believes that any judicial reform should come from within the judiciary itself to protect its independence. However, the judiciary is failing to reform the justice system from within and especially the systems of appointment and training due to two reasons which are namely: the corporate nature of Egypt's judicial institutions, and the inefficiency and the outdated of the systems of judicial appointment and judicial training. On the one hand, the sectarian or corporate identity, that is spread among the Egyptian judicial institutions, was clear during the debates on the texts of the 2014 constitution.²⁶⁴ At that time it was obvious that the judiciary itself is not one of the branches of government and that every judicial institution is a distinct group or a corporate that has great difficulty in communicating and coordinating with the other.²⁶⁵ The Egyptian judiciary has a culture of corporate identity and ambition for independence within its domain.²⁶⁶ This is maybe because the Egyptian judiciary as an institution has been working with relative independence during authoritarian eras.²⁶⁷ However, this relative independence has changed and became full independence in terms of personnel, budget, and administration. The only way to address the disadvantages of the culture of 'corporate identity' within the judiciary is through the creation of bridges and shared spaces between the different judicial institutions.²⁶⁸ This

²⁶² See El Chazli, *supra* note 123, at 10.

²⁶³ *Id.*

²⁶⁴ *Id.*

²⁶⁵ See El-Watan News, *supra* note 189.

²⁶⁶ Housam Darwisheh, *Ruling against Revolution: The Judiciary and the Restoration of Authoritarianism in Egypt*, JETRO-IDE ME-Rev., 78, 79 (2018).

²⁶⁷ *Id.*

²⁶⁸ See Nathan J. Brown, *supra* note 191, at 13.

issue of corporate identity was addressed by the creation of the Higher Council, however, the Higher Council's formation needs to be modified which will be discussed shortly in this chapter. On the other hand, the inefficiency and the outdatedness of the systems of judicial appointment and judicial training are clear after displaying the flawed systems of judicial appointment and judicial training. Thus, in this chapter, I am going to propose a reform project aiming to reform the systems of judicial appointment and judicial training.

Therefore, chapter 3 will be divided into four main parts, the first main part is highlighting the roles of judicial appointment and judicial training as agents for progress and development within the justice system. In the second main part, I will explain the reform of judges' mentality through judicial training citing the Australian experience on this topic. Then, in the third main part, I propose the modification of the formation of the Higher Council. Finally, in the fourth main part, I propose a reform project to the systems of judicial appointment and judicial training. I begin the reform project by highlighting the necessity of establishing an independent body for judicial appointments. Finally, I end my reform project by proposing the creation of the National Academy for the Judiciary (NJA), which is an independent body responsible for appointing and training judges followed by some recommendations that must be endorsed in the NJA.

A. Judicial Appointment and Judicial Training as Agents for Progress

Reforming the systems of judicial appointment and judicial training will surely act as agents for a wide and comprehensive reformist program. I will demonstrate the role of judicial appointment as an agent for change and progress followed by the role of judicial training.

1. Reforming Judicial Appointment System promotes Diversity

On the one hand, the issue of judicial appointments is highly debatable in Egypt, where the discriminating and nepotistic practices are expanding in judicial appointments. These practices led to producing an inefficient judicial system and create negative effects concerning the public confidence in the judiciary. Thus, the composition of the judiciary should reflect the diverse composition of society. Article 2.13 of the 1982 Montreal Universal Declaration on the Independence of Justice provides that 'the process and standards of judicial selection shall give due consideration to ensuring a fair reflection by the judiciary of the society in all its aspects. The judiciary as the guardian of the public rights and freedoms of the whole society shall represent and

reflect the society fairly and effectively, through the so-called 'fair reflection'.²⁶⁹ There are many reasons why 'fair reflection,' should be a target in the judicial appointment.²⁷⁰ The fact that the judiciary is one of the branches of the government and not just a dispute-resolution body, makes it important that the judiciary must carefully reflect the society.²⁷¹ Moreover, the fair reflection will grant the judiciary public confidence.²⁷² Diversity in the judiciary is encouraged, avoiding all kinds of discrimination, although that does not necessarily imply the setting of quotas. This can be found in the following international and regional instruments: 1) Dublin Declaration on Standards for the Recruitment and Appointment of Members of the Judiciary (2012).²⁷³ 2) Kyiv Recommendations on Judicial Independence in Eastern Europe, South Caucasus and Central Asia regarding Judicial Administration, Selection and Accountability.²⁷⁴

On the other hand, judicial training can be used as *an agent of change*.²⁷⁵ Judicial training has a reformatory contribution to solving issues of gender discrimination in the judiciary. Education or training is being used as a method for reform in the different judicial systems. "*Education is for development, and development entails change, so education is an agent for change*".²⁷⁶ Judicial training prepares judges, both personally and institutionally, to deal with the issues and obstacles they face. Thus, training is seen as a tool for progress.²⁷⁷

The judiciary is often resisting any kind of evolution or progress due to its conservative nature. However, one of the most effective methods to deal with the conservative nature of the judiciary is through judicial training. To explain further, we can put the example of the Australian justice system.²⁷⁸ The establishment of the Australian Judicial Studies Board in 1979 was considered by the Australian judges at that time as a threat to judicial independence. Partington, a retired member of the Australian Judicial Studies Board has noted: "Twenty years ago, a majority of judges would

²⁶⁹ Dominic O'Sullivan, *Gender and Judicial Appointment*, Univ. of Queensland L. J., 109, 110 (1996).

²⁷⁰ *Id.*

²⁷¹ *Id.*

²⁷² *Id.*

²⁷³ See Dublin Declaration, *supra* note 214.

²⁷⁴ See Kyiv Recommendations, *supra* note 216.

²⁷⁵ See Armytage, *supra* note 232, at 164.

²⁷⁶ *Id.*

²⁷⁷ *Id.*

²⁷⁸ See Malleson, *supra* note 168, at 658.

have denied there was any need for judicial training. Today, only a minority would share that view”.²⁷⁹

Also, in Australia,²⁸⁰ when it was suggested that the Judicial Studies Board be headed by a non-judicial Director of Studies and is headquartered in a university, indicating that, although other judges may provide the training, the Board does not need to be placed under the judges' close supervision.²⁸¹ These proposals were rejected on the grounds that the judges would not find the training acceptable if the Board was run by an outsider on their behalf.²⁸² In Britain, the idea of creating continuing judicial education was completely alien to a properly appointed judiciary. Lord Hailsham, for example, spoke out against what he called the ‘ignorant clamor’ in favor of the trend that judges should receive specialized training.²⁸³

The project succeeded in Australia, because they amended the law and made the judicial training owned and led by the judiciary. In Australia, the establishment of the Judicial Commission to offer judicial training was at first objected to by judges as it may interfere with judicial independence. However, the law was amended to establish the Judicial Commission as a body independent of the Executive with judicial participation in the training program.

2. The Reform of Judges’ Mentality through Judicial Training

Despite the fact pace process of including women in the judiciary, there is a lot of work that still needs to be done along the way. Despite the accomplishment of appointing fresh graduates women at the Council of State and the Public Prosecution at the bottom of the judicial career path in both institutions, however, these women may face discrimination in their career paths as the two institutions abstained for decades from appointing women as peers to the male judges. The persistent discrimination against women in the judicial appointment for decades gets us to the influential conclusion of the need to reform judges’ mentality through judicial training, especially as regards gender equality. The mentality of discrimination against women is rooted for decades and needs to be addressed and tackled through continuing training that includes gender equality, human rights, and inclusive and sustainable development.

²⁷⁹ See Malleon, *supra* note 168, at 656.

²⁸⁰ See Malleon, *supra* note 168, at 658.

²⁸¹ *Id.*

²⁸² *Id.*

²⁸³ See Armytage, *supra* note 232, at 167.

For a useful comparative example, we shall analyze the experience of the Australian government to solve the issue of gender bias in the Australian justice system. The Chief Justice of Western Australia released a report that provides several proposals aimed at eliminating gender inequality in the judicial system where one of these proposals states that continuing education should be mandatory.²⁸⁴ The report of the Australian Senate Standing Committee on Gender Bias and the Judiciary stated that there was a problem of gender bias in the Australian legal system.²⁸⁵ The report recommended that judges need to be aware of the realities of women's lives, to develop the justice system to be more responsive to women and this can be done through judicial training. Also, judicial training is one of the methods to solve the problem of discrimination in judicial appointment training is one of the methods out of many methods. Another important method is to set and announce clear criteria for appointment, thus ending discrimination and nepotism.”

B. The Modification of the Higher Council Formation

The formation of the Higher Council needs to be modified. According to Voermans, all judicial councils have been created to serve as institutional bridges between the executive branch and judicial branch of government, and their main goal is preserving judicial independence.²⁸⁶ Globally, the first judicial council was formed in the 1800s in France. Most civil code countries in Europe and Latin America, Africa, Asia, and the Middle East, formed judicial councils in the second half of the twentieth century.²⁸⁷ The main goal of creating judicial councils is balancing judicial independence with judicial accountability, also, there are two secondary goals which are: improving judicial performance and administrative management.²⁸⁸ One of the most valuable lessons learned from previous judicial reform programs around the world is that the judicial council, like the judiciary itself, should be transparent and accountable.²⁸⁹ Also, there is a global agreement among legal scholars and practitioners that judicial councils should have substantial

²⁸⁴ *Id.* at 166.

²⁸⁵ Helen Gregorczyk, *The Desirability of Judicial Education in Australia*, 14 J. Prof. Legal Educ. 89 (1996).

²⁸⁶ Tin Bunjevac, *From Individual Judge to Judicial Bureaucracy: The Emergence of Judicial Councils and the Changing Nature of Judicial Accountability in Court Administration*, Univ. of New S. Wales L. J., 822 (2017).

²⁸⁷ Violaine Autheman and Sandra Elena, *Global Best Practices: Judicial Councils. Lessons Learned from Europe and Latin America*, IFES Rule of Law White Paper Series 1, 2 (2004).

²⁸⁸ *Id.* at 1.

²⁸⁹ *Id.*

representation of judges and not complete representation, and that judicial councils with broad representation are more fair and independent. The solution to this obstacle will be discussed shortly.

Consequently, after displaying the Egyptian Experience of the corporate identity of the judicial institutions, and after studying the comparative systems regarding higher councils for the judiciary, also, after considering the important role of the Higher Council in bridging the gaps whether between the different judicial institutions or between them and the public as well as other branches of government.

Having taking all the above into consideration, there is, however, a crucial modification that need to be made to the formation of the Higher Council. The modification entails the injection of non-judicial members such as well-known and eligible jurists from lawyers and law professors, as well as eligible individuals from the civit society. The selection of these non-judicial members should be given to the Parliament with its two chambers. The enrollment of non-judicial members to the Higher Council is to ensure the presence of diverse stakeholders in justice governance.

The presence of members of the Executive, such as the President of the Republic and the Minister of Justice, would be changed by excluding them from the formation, and give the President of the Republic the right to appoint two members in the council who are non-judicial members, as this right of appointment by the Executive is designed as one of the mechanisms of checks-and-balances to guarantee judicial efficiency and accountability, such as in the western European countries.²⁹⁰ It also protects from the jeopardy of the corporate tendencies of a bureaucratic judiciary which may lead to decreasing the guarantees of professional qualifications, as we have displayed previously. Also, according to Garoupa & Ginsburg,²⁹¹ the judicial councils sustain as institutions because they include actors from different fields of the society, where no one institution can easily be in control of the judiciary. Thus, in this way, judicial councils help to equalize independence and accountability in the judiciary.

²⁹⁰ Giuseppe Di Federico, *Independence and Accountability of the Judiciary in Italy: The Experience of a Former Transitional Country in a Comparative Perspective*, 4.

²⁹¹ See Garoupa and Ginsburg, *supra* note 204, at 228.

C. Proposing the Most Appropriate Reform to Egypt’s Systems of Judicial Appointment and Judicial Training

The significance of judicial training in civil law countries such as Egypt, France, and Italy lies in the fact that new judges in both countries are fresh law school graduates who do not have enough knowledge or experience in judicial and court procedures, thus, judicial schools offer training that provides new judges with practical knowledge of judicial administration and gets them familiar with the institutions with which they will work in the course of their careers.

Moreover, judges in bureaucratic judiciaries are generalists without experience in a specific area of law, thus they cannot perform well where they are assigned.²⁹² As in Italy,²⁹³ France, and Egypt, newly appointed judges and prosecutors are assigned to perform a variety of judicial functions which require a variety of professional qualifications and training. As they may be transferred from one court or prosecutor’s office to another and, when promoted, be assigned to fill different vacancies at the higher levels. Thus in such judicial systems, it is very complex to provide institutions to offer not only effective initial and continuous training but also specific programs for those who are transferred to different judicial functions across the entire judicial system. As an example, a judge who works for one or two years in family courts, then he/she can work in the economic courts for another two years, and after it, they can work in the civil circuits or labor circuits, and so on throughout their careers.

Consequently, it is highly recommended that the lack of judges’ practical legal experience must be compensated through training new judges whether in training schools as in the French model or through on-the-job training as in the German model.²⁹⁴

Also, I indicate that the problem of fragmentation of the judicial training system in Egypt shall be addressed by establishing a unified school or academy to appoint and train all members of the judiciary. A good example of this is the UK,²⁹⁵ where its Judicial College was created in April 2011. Until that date, judges of the courts were trained by one body, while judges of the administrative tribunals were trained by different bodies. All these bodies were merged to create

²⁹² See Spac, *supra* note 6, at 2083.

²⁹³ See Di Federico, *supra* note 296, at 13.

²⁹⁴ See Guarnieri, *supra* note 33, at 171.

²⁹⁵ European Parliament, *Workshop on Judicial Training – Session II – Improving Mutual Trust*, 6, (2013).

the Judicial College, thus anyone who performs a judicial function in England and Wales is trained by one institution, whether induction training or continuous training.

Another good example is found in the U.S. where the National Judicial College was established in 1963 at the recommendation of the U.S. Supreme Court Justice Tom C. Clark and his committee in their report.²⁹⁶ The National Judicial College is the only training institution in the United States that teaches courtroom skills to judges of all types from all over the country.

Despite the accomplishments made by the NTA in training new judges and current ones, however, the NTA is not appropriate to offer training to the members of the judiciary for an important reason, which is the ownership of the judicial training, as its high board is composed of members of the Executive and experts from the civil sector with no judicial component in it. Also, after my analysis of the NCJS, under the Ministry of Justice, and although its high board is composed of judges and some out-sider experts, however, it is ineffective and outdated, thus each judicial institution decided to create its own training center. Thus, I will divide my proposals into three main parts, firstly: analyzing the debate about the ownership of judicial training, followed by, secondly: analyzing the debate about the preferred institution to be responsible for judicial appointment. Thirdly and finally: proposing the most appropriate reform in the light of the Egyptian judicial experience as well as the comparative systems.

The judicial appointment does not necessarily have to be exclusively in the hands of the judiciary alone to ensure the judiciary's independence. As we analyzed previously, judicial independence is not an end in itself but a means. Therefore, some executive or legislative involvement in the judicial appointments and training is not necessarily incompatible with the international standards of judicial independence if they are based on objective qualifications, such as competence and integrity.

This can be found in many international instruments, for example, the Universal Charter of the Judge calls for the involvement of "an independent body, that includes substantial judicial representation" in the selection, appointment and promotion processes.²⁹⁷ It is clear that the charter does not specify that this body shall consist of judges only, however, all that concerns, is that the independent body must include considerable representation of judges and prosecutors. Therefore,

²⁹⁶ The National Judicial College: History. Available at: <https://www.judges.org/about/njc-history/>

²⁹⁷ Universal Charter of the Judge, 1999, Int'l Ass'n of Judges, art.9

it is concludable that additional checks may be added to the body responsible for judicial appointments by ensuring that the appointment power is shared among many authorities, thus, avoiding nepotistic or discriminatory practices and preventing the corporate identity of the judiciary. Other international instruments call for the inclusion of other professional groups in the body responsible for appointing judges, or the participation of the Executive or Legislature in judicial appointments, are namely: Kyiv Recommendations on Judicial Independence in Eastern Europe, South Caucasus, and Central Asia regarding Judicial Administration, Selection and Accountability,²⁹⁸ in addition to, the Universal Declaration on the Independence of Justice in 1983 (Montreal Declaration).²⁹⁹

D. The National Judicial Academy (the NJA)

The high boards of the four judicial institutions still do not address the most critical problem in the Egyptian justice system, which is the lack of clear standards and transparent criteria for selecting and appointing members of the judiciary,³⁰⁰ ignoring the drawbacks of the systems of judicial appointment and judicial training. Thus, the appointment authority shall be taken from the high boards of judicial institutions and be given to an independent body. This body shall be responsible for judicial appointment and judicial training as well. This body shall be independent, governmentally well-funded, and its governing high board shall contain members of all branches of government and all categories of society to ensure diversity in the justice system.

Consequently, the reform of both systems of judicial appointment and judicial training can be attained through three methods, which are; firstly: either by enrolling non-judges in the NCJS, whose high board is controlled by members of the judiciary, or secondly: by enrolling judges in the NTA, whose high board is dominated by members of the Executive.

However, the NCJS is controlled by the Minister of Justice and is not independent. Also, the NTA is all controlled by the Executive and was originally established as a national academy for training young Egyptian leaders in all fields and all governmental sectors through fixed curricula.

²⁹⁸ See Kyiv Recommendations, *supra* note 216.

²⁹⁹ First World Conference on the Independence of Justice, Universal Declaration on the Independence of Justice (Montreal Declaration), 1983. Available at: <https://www.icj.org/wp-content/uploads/2016/02/Montreal-Declaration.pdf>

³⁰⁰ See El Chazli, *supra* note 123, at 9.

Therefore, the most appropriate method is through establishing an independent school only specialized in appointing and training members of the justice system, thus, replacing the NTA and the NCJS, and its high board shall be dominated by judges and prosecutors and shall include non-judicial members, where the NTA and the newly independent body will be complementing each other, such the ENA, the French National School for Administration, and the ENM in France, where the ENA is responsible for training and qualifying civil servants in all governmental bodies except the judiciary whose training is the responsibility of the ENM.

An independent body would be created that will be responsible for creating a unified system of judicial appointment and training for all judicial institutions. This independent body shall carry the name ‘The National Judicial Academy (NJA)’, and its mission is appointing and training not only judges and prosecutors, but also all the personnel and the administrative staff of the justice system and the aiding bodies that are affiliated to the Ministry of Justice such as: the Experts Authority, the Forensic Medicine, and the Real Estate Registration and Documentation Authority. This is because the literature on legal reform shows that judicial training is not only for judges and prosecutors, as evidence proves that judicial training must include other justice sector personnel, such as court staff and lawyers.³⁰¹

The governing board of the NJA would include judges as a majority in its composition along with representatives of the other branches of government as well as lawyers and law academics, in addition to, public figures representing the society that the judiciary serves. Moreover, members of the governing board of the National Academy for Judiciary are required to receive training to perform their functions in a good manner, since the functions of judicial appointment and judicial training are of great importance that require certain knowledge and abilities.³⁰² And for it to carry out its functions regarding judicial training, it must hire significant and prominent educational and behavioral experts to help in the design of the curriculum of the training programs.

The Higher Council shall set the unified criteria of the judicial appointment system as well as the unified curriculum of judicial training programs for all judicial institutions. Then, the NJA shall apply such criteria and implement such a curriculum. Also, the training centers existing in the

³⁰¹ See Iqbal, *supra* note 126, at 52.

³⁰² Norman L. Greene, *The Judicial Independence Through Fair Appointments Act*, Fordham Urb. L. J. 15 (2007).

different judicial institutions shall become branches for the NJA, in order to allocate more places to allow more participants to take training from the different judicial institutions. Furthermore, the NJA may issue and grant the diplomas and certifications that accredit the studies and the training carried out in it, such as the French and Spanish Judicial Schools.

It is highly recommended to create a system of internships in the justice system to filter the best qualifying candidates. The system of internship is adopted in France where the students of the ENM take 15-month internships in which they work in courts and prosecution offices. After fifteen months, students take internships in public and private administrative offices and carry out legal research.³⁰³

Also, it is highly recommended to activate the lateral recruitment in the Egyptian judiciary from lawyers and law professors as the non-requirement for professional legal experience before judicial appointments expand the gap between both judges and lawyers, making the relations between the two sides of the legal profession can be sometimes difficult.³⁰⁴ Adding to that, judicial socialization of the newly appointed judges happens during the period of judicial training which is generally supervised by senior judges and is controlled mainly by the judiciary.³⁰⁵ This happens in the five fragmented training centers in the four judicial institutions. This problem was tackled in France where lateral or side recruitments into the judiciary were made available, thus opening the doors to experienced lawyers or merited civil servants to apply for the judiciary in order to decrease corporatist attitudes in the judiciary.³⁰⁶ However, in Egypt recruitment from lawyers or law academics is still not functioning despite the existence of article 116 of the Judicial Authority Law,³⁰⁷ which states that the candidates who are members of the Bar Association and have at least two years of working experience shall be appointed after passing a specific exam.

Moreover, it is recommended that economic aid would be offered to those who are unable to pay the fees for applying for the NJA and the preparation courses for its examinations and tests. This will contribute to offering opportunities to competent candidates from the lower socioeconomic classes. Also, it is recommended that the appointment process should be on annual basis and the

³⁰³ *Id.* at 19.

³⁰⁴ *See* Guarnieri, *supra* note 33, at 170.

³⁰⁵ *Id.*

³⁰⁶ *Id.* at 171.

³⁰⁷ Judicial Authority Law No. 42 of 1972, art. 116.

timeline of the appointment process should be determined and clarified to the candidates and the public where the time for application and the time admitting candidates to the NJA would be announced. This will contribute to eliminating the vagueness of the appointment process and promoting its transparency and impartiality. Also, it will contribute to eliminating the unnecessarily long time in the appointment process.

Furthermore, to promote judicial ownership and judicial leadership of judicial training, it is recommended to adopt some methods such as:³⁰⁸ 1) Leading and participating in the administration of the training body. 2) Taking part in the faculty of the training body. 3) Participation in training needs assessments. 4) Providing feedback on training services as part of monitoring and evaluation. Furthermore, it is recommended that the training methodology within the NJA adopts participatory and experiential methods based on interactive learning, and this is achieved through a variety of designed experiments such as: simulation, legal events, conferences, competitions, sports, discussion boards, lectures, workshops, simulation models, experiential learning, research, and seminars. This technique is used in the NTA for high-level governmental officials.³⁰⁹

Moreover, it is recommended that the NJA creates a network of regional and international strategic partnerships with reputable organizations that have common goals and objectives to exchange experiences and share resources to provide a learning curve with good results. Therefore, the NJA would enter into partnerships with leading organizations around the world in the field of justice training. Also, it is highly recommended that besides the NJA's essential mission in handling the appointment process of new judges, it must also conduct proper initial training programs for them in addition to continuous training programs throughout the judicial career, thus, the NJA's

³⁰⁸ See Livingston Armytage, *supra* note 238, at 17.

³⁰⁹ Akhbar El-Youm, *AL-AKADEMIYYA AL-WATANIYYA LEL-TADRĪB: TAKHARROG AL-DOFcA AL-THALTHA MEN MOSTASHRĪ AL-NEYABA AL-EDARIYYA*, National Training Academy: Graduation of the Third Batch of Administrative Prosecution Counselors, (8 December 2020). Retrieved from: <https://m.akhbarelyom.com/news/newdetails/3187584/1/-%D8%A7%D9%84%D8%A3%D9%83%D8%A7%D8%AF%D9%8A%D9%85%D9%8A%D8%A9-%D8%A7%D9%84%D9%88%D8%B7%D9%86%D9%8A%D8%A9-%D9%84%D9%84%D8%AA%D8%AF%D8%B1%D9%8A%D8%A8---%D8%AA%D8%AE%D8%B1%D8%AC-%D8%A7%D9%84%D8%AF%D9%81%D8%B9%D8%A9-%D8%A7%D9%84%D8%AB%D8%A7%D9%84%D8%AB%D8%A9-%D9%85%D9%86-%D9%85%D8%B3%D8%AA%D8%B4%D8%A7%D8%B1%D9%8A-%D8%A7%D9%84%D9%86%D9%8A%D8%A7%D8%A8%D8%A9-%D8%A7%D9%84%D8%A5%D8%AF%D8%A7%D8%B1%D9%8A%D8%A9>

administration is must consist of two departments, the first is concerned with appointment and initial training, and the second is concerned with Continuous Training.

It is highly recommended that the NJA uses the modern methods in training, also, that the state would provide the NJA with the necessary funds to perform its responsibility properly, as the Seventh Principle of the Amsterdam Judicial Training Principles adopted by the EJTN encourages the use of modern educational methods in judicial training, and the Eighth Principle of the previous instrument states that judicial training bodies should be provided with sufficient funding and any other resources to attain their goals and objectives.

Consequently, the creation of the NJA would solve many issues existing in the justice system concerning appointments and training which are, firstly, eliminating the fragmentation of the judicial training centers. Secondly, the non-effectivity of the NCJS since 1981. Thirdly, the impropriety of the NTA as a training center for judges and prosecutors.

V. CONCLUSION

I began chapter one by explaining Egypt's judicial appointment system and judicial training system, followed by the defects and drawbacks of both systems. I highlighted the creation of the NCJS and the non-activation of its appointment power since 1981 and the inefficiency of its training authority which led each judicial institution to create its training center causing fragmentation of the judicial training system.

In chapter two, I displayed the establishment of the Higher Council and the National Training Academy (NTA), their formations, and their functions, as well as the accomplishments made by both institutions in tackling many issues prevailing in the justice system, and most importantly the arguments and discourses stating that both the newly created bodies are posing threats to the independence of the judiciary. Thus, chapter 2 consists of two main parts, where in the first main part, I am spotting the light on the Higher Council, where I explained judges' reluctance to reform the system of judicial appointments by stating two of the most famous incidents as examples and proofs in addition to the abstention of appointing women as judges because of cultural and social restrictions. Afterward, I discussed the status of the Egyptian judiciary in the 2014 Constitution with respect to independence and accountability as well as the great need to create some degree of judicial accountability. Then, I analyzed the comparative systems of judicial higher councils. While in the second main part, I discussed the expansive role of the NTA in training judges. I argued that it is not ideal to train judges because of the absence of judicial leadership and ownership. Then, I analyzed the comparative systems of judicial schools.

In chapter three, I discussed how to use judicial appointment and judicial training as agents for progress in the judiciary followed by the reform of judges' mentality through judicial training, especially regarding topics of gender equality. After it, I proposed a reform project to the systems of judicial appointment and judicial training. I began the reform project by displaying the importance of establishing an independent body responsible for judicial appointments and judicial training. Then, I ended the reform project by proposing the creation of the National Judicial Academy (NJA) which is responsible for judicial appointment and judicial training. Also, I stated some recommendations that should be endorsed in the NJA.

I concluded that the Higher Council is not threatening judicial independence but rather creating a balance between judicial independence and judicial accountability and this is because the Egyptian

judiciary is too autonomous. I supported this argument by analyzing the comparative systems and the international instruments regarding the composition of the higher judicial councils which state that the existence of non-judicial members in the formation of the higher councils does not necessarily threaten judicial independence. However, I proposed that the formation of the Egyptian Higher Council needs to be modified.

I concluded that the NTA is not appropriate for training members of the judiciary because of the domination of the Executive of its high board and the absence of any judicial component. I supported my argument by studying the comparative systems of judicial schools. I indicated that the governing boards of both the French and the Spanish judicial schools are led by judges and have in their formations non-judicial members, and both of the governing boards contain at least a member appointed by the Executive.

In conclusion, the Higher Council is not necessarily threatening judicial independence and the NTA is not appropriate for judicial training. Also, the independence of the judiciary can be promoted if the members of the judiciary are selected through a transparent and fair appointment system which must be specified by the rules of law and not the whims of judges, along with continuous and mandatory training programs whose content is determined by judges themselves, with the significant participation of the private legal profession, law practitioners, law professors, civil society actors, and educational experts. The design and application of any program for judicial reform in order to be successful, it should include all the stakeholders of the justice system as well as representatives of civil society.