

Establishment of Economic Courts in Egypt

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Abstract

No one can deny that "The Phenomenon of the Slow Pace of Litigation" expands to include all wings of the judicial system, Civil, Criminal, and Administrative issues. And extends deeper to affect all categories of litigants: Rich and Poor, Men and Women. To paint a dark picture of what could be called a "Crisis of Justice in Egypt".

So, Egyptian legislator created special Economic Courts to solve this disputes, and to avoid its negative effects, by Law No. 120 of 2008. Which decide that this kind of litigation can be solve by judges specialized in this kind of litigation, to encourage investment, and achieve a safe environment for investment, provide maximum protection for economic activity and help develop the plans and ensure justice.

The Economic Court Law entered into force in October 2008. establishes Economic Courts in each Court of Appeal Circuit. which consists of Courts of First Instance, Courts of Appeal. These courts have a jurisdiction over criminal cases stemming from investment operations, consumer protection, commercial, banking transactions.

The Economic Court system is a three-tiered system, with first instance, intermediate, and final appellate courts. And Each Trial Chamber should be composed of three presidents of courts of first instance, consists each of the Chambers of Appeal of three judges of the appellate courts to be at least one of whom is President of the Court of Appeal.

So, I will discuss the steps taken by the legislature to set up Economic Courts in Egypt.

Keywords: Law, Economy, Economic Courts, Egypt, Litigation, Slow Pace of Litigation, Crisis of Justice.

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Introduction:

Law and economy are firmly connected. Adding to that the economic life has an effect on the judicial thinking. So, rules of law should be characterized by the care of the existing economic attitude in the state in a way that law seems to be a mirror in which the existing economic attitudes in most branches of law are reflected even if they are not of direct shape¹. Judiciary may be an attracting factor for investment through understanding and the speed of settling the disputes achieving quick justice. On the other hand, it may be a factor of dispelling of investment and development via prolonging the period of litigation and being not aware of the nature of such disputes².

The progress of production, the advance towards investment and flourishing in the economic life, in general, necessitates a good climate in which the feeling of trust towards legality prevails. Also, the clarity of the acts of legislation and regulation of production relations and the other relationships in society, facilitating means of justice and settling the disputes quickly³. The entire aforesaid make the legislator set the legal rules that govern such relations and set the suitable legal frames to be applied⁴. As long as these economic litigation procedures may take a long time to be heard in courts returning harm on the wronged, the case may take 10 years without judgment and may take 15 years in Cassation Courts or even more. This is nothing but aggression. This makes the creditor lenient with his rights or may leave them altogether thinking they will never be attained^{5,6}. Thus, the delay of litigation

¹ Sahar Abdul Sattar. (2008). *Economic Courts in Egyptian Law* (1st ed.). Cairo, Egypt: Dar Elnhda Alarabeah. no. 1, pp. 9-10, Sahar Abdul Sattar. (2010, March 10-11). *Law of Economic Courts in Egyptian Law*. Paper presented at the Recent Legislative Trends on Judicial Organization Conference, Alexandria University, Egypt. p. 265, Ahmed Badie Balegh. (2004). *Between the Judiciary and Law and Economic Courts*. Paper presented at the Eighth Annual Conference, The Judicial System and Local Variables, Faculty of Law, Mansoura University, Egypt. p. 4, Hassan Basiouny. (2012). *Towards a Contemporary Legal and Judicial Thought, The Road to Modernization and Development Legal and Judicial System*. p. 61.

² Ahmad Sharaf Al-Den. (1986, January-July). Economic Transformations of the Law. *Legal and Economic Sciences Journal*, 28, 1-128, Ahmad Sharaf Al-Den. (1987, January-July). Economic Transformations of the Law. *Legal and Economic Sciences Journal*, 29, 1-68, Mohamed Abdelnaby Elsayed Ghanem. (August 4-5, 2014). *Reasons for Establishing the Economic Courts in Egypt*. Paper presented at the Business and Social Science Research Conference, Grand Hotel Park, Dubrovnik Croatia, Mohamed Abdelnaby Elsayed Ghanem. (2014). Reasons for Establishing the Economic Courts in Egypt. *The MacrotHEME Review*, 3(7), 169

³ Osman Hussein Abdullah. (1992). Legislative and Judicial Reform Necessity for Economic Development. *Judges Journal*, 7. 21, Basiouny, 2012, *Towards a Contemporary Legal and Judicial Thought*, p. 70.

⁴ Ghanem, 2014, Reasons for Establishing the Economic Courts, p. 174.

⁵ Samiha Al-Qalyoobi: Professor of Commercial Law, Faculty of Law, Cairo University.

⁶ Abeer Al-Damarany. (2008, Tuesday May 6). The Economic Courts. *Al-Ahram*. p. 20, Abdel-Aal Elderby. (2012). *Development of the Egyptian Legal System and*

procedures hinders the progress and economic development and puts obstacles against the attraction of foreign investment and stops many projects in the fields of industry, commerce and exportation in addition to perplexing the markets, the increase of manipulation of some commercial dealings and hindering the banking and fiscal sectors⁷. That is why the state did not seem helpless towards commercial or investment disputes. Further, it did many attempts representing in:

1. The good offices of the State to settle disputes in investment:

The State established specialized circuits for some disputes such as division in Council of State to hear administrative disputes related to investment and assigning circuits in Trial Courts to hear investment cases⁸ aiming at facilitating litigation procedures and settling the disputes quickly in cases that demands special knowledge or experience⁹.

A. Setting up Circuits in the Council of State to hear administrative disputes related to investment

The Council of State made big efforts to set up independent circuits to hear such disputes to limit its passive effects. The council of state has actually set up, according to the decree of the head of the council of state No. 333 of 2006 "concerning setting up an independent circuits for investment disputes in the courts of administrative

Justice Benefits of Speed Justice, A Study on Motives and Mechanisms (1st ed.): National Centre for legal Versions. p. 56, Basiouny, 2012, *Towards a Contemporary Legal and Judicial Thought*, p. 68.

⁷ Hoda Mohamed Majdy. (2009). *Economic Courts Between Rationing and Application, Comments on the Provisions of the Law No. 120 of 2008*: Dar Elnhda Alarabeah. pp. 4-5, Safaa Sdky. (2010). *Causes of Slow Pace of Litigation in Egypt*. Paper presented at the Justice and Slow Pace of Litigation in Egypt, Cairo, Egypt. p. 3, *Conference Recommendations* (2010). Paper presented at the Justice and the Slow Pace of Litigation in Egypt, Cairo, Egypt. p. 1. *See Also*: Khalid Mamdouh Ibrahim. (2010, March 10-11). *The Limits of Economic Courts in Arbitration Matters*. Paper presented at the Recent Legislative Trends on Judicial Organization Conference, Alexandria University, Egypt. p. 240, Mohy Mohamed Mossad. (2010). *The Role of Economic Courts in the Judicial and Economic Reform*. Paper presented at the Recent Legislative Trends on Judicial Organization Conference, Alexandria University, Egypt. p. 631, **For More details about Slow Pace of Litigation in Economic Issue**, *See*: Ghanem, 2014, Reasons for Establishing the Economic Courts, pp. 169-173.

⁸ Abdul Sattar, 2008, *Economic Courts*, no. 4-5, p. 19, Abdul Sattar, 2010, *Law of Economic Courts*, pp. 271-272.

⁹ Mohamed Eid El-Ghareb. (2006). *The Impact of Special Court In Judicial Provisions*. Paper presented at the International Conference of the Judiciary and Justice, Riyadh, K.S.A. p. 775 etc, p. 781, p. 785, Mohamed Eid El-Ghareb. (2006, October). Criminal Justice and the Idea of Creating Specialized Economic Courts. *Journal of Legal and Economic Research*. no. 3, 78-79, Ahmad Sharaf Al-Den. (2009). *The Problems of the Subject Matter Jurisdiction of the Courts of the Economic Courts, Study in Some Aspects of the Economic Courts Law* (Judges Club ed.). Cairo, Egypt. no. 1, p. 7, Ibrahim, 2010, *The Limits of Economic Courts in Arbitration Matters*. p. 241 and footnote no. 1 at the same page.

jurisdiction in Cairo and in some governorates" ¹⁰ provided that it starts work on the first of October 2006 ¹¹.

These courts specialize, according to the first article of the decree of the Chief of Council of State and excepted from the rules of local specialization apart from the other circuits of administrative judiciary, in hearing disputes related to the following:

- 1- "The Laws of Guarantee, Investment Incentives, Central Bank, Fiscal and Banking System, Capital Market, Central Deposits for Monetary Papers, Intellectual Property, Preventing Monopoly Practices, Dumping, Saving Consumers, Supervision on Insurance, Financial Rent and Financial Real Estate.
- 2- Import and Export, Guardianship, Confiscation, Insurance, Estimation, Disputes of Land Registration and Real Registration.
- 3- The administrative decrees issued to fulfil the judgments of international trade treaties and all disputes among investors and administrative bodies".

Such a Council is intended to hear disputes arising among investors and administrative bodies depending on the fact that existing disputes among investors and any of government bodies are basically referred to the Council of State to hear and decide it according to a legal term which cannot be surpassed on the basis that it is the owner of the original specialization to decide disputes which the government or any of its bodies is a part of it according to the specializations of the Council of State ¹².

The implementation of this idea has several legal and administrative setbacks which restricted its success in the Council of State. It turned to be a bureaucratic procedures rather than a step forward to accelerate the lawsuit towards a just and quick judgments ¹³.

The most important defects resulting from this are as follows:

- 1- The establishment of one circuit covering all the state is not enough to accelerate the settlement of disputes and provide the rapid full justice depending on constitution and legislation. Further, it leads to increase its burdens and prolong the period of time to decide the disputes and make it groan from the great number of cases.

¹⁰ Decision of the Head of the State Council No. 333 of 2006 Issued in September 3, 2006, Egyptian Gazette, No. 208. September 12, 2006, p. 16.

¹¹ Article No. 7 of the Decree of the President of the State Council States that: "The provisions of this decision begins from October 1, 2006, and the competent authorities should take the necessary measures to be implemented with effect from the date of issue".

¹² Abdul Sattar, 2008, *Economic Courts*, no. 4, p. 19, Elderby, 2012, *Development of the Egyptian Legal System*, pp. 59-61.

¹³ Fahr Abdel Azem Saleh. (2008). *Explanation of Economic Court Law* (1st ed.): Al-Safa Press. p. 59.

- 2- The aim of setting up such a circuit was to leave aside the complicated and prolonged procedures to accelerate the settlement of disputes but this circuit abides with the rules and general judgments set in the Civil and Commercial Law¹⁴.

B. Assigning specialized circuits to hear investment disputes in Trial Courts:

Seven circuits in north of Cairo Court, depending on the decree of General Assembly of the court are assigned to hear investment cases quickly to settle disputes rapidly and achieving full justice. After that the assignment of these courts is generalized in the other Trial Courts.

The work of this circuit has some defects as follows:

- 1- Assigning particular circuits in trial courts to decide in investment disputes does not mean that they have some specialize regarding the legal procedures followed in this circuits or contestation the judgements they issue.
- 2- This circuits are run according to the set rules, and that its setting up is only a regulating works that has nothing to do with the specific specialization for the circuits set up in its circuit. Further, it is a way to benefit from the advantages of specialization and dividing work among judges inside courts through setting up specialized circuits to hear investment cases¹⁵.
- 3-

It has become quite clear that these circuits which are set up according to the decree of the Head of the Council of State or the decree of the General Assembly of the Court of North Cairo has been exposed to criticism and has complained of, like the other courts in general, prolonged procedure and the accumulation of cases in a way that necessitates finding a solution for such a big problem¹⁶.

2. The Beginning of the Law of Economic Courts:

The talk about the idea of setting up the economic courts¹⁷ has been formed after the issuing of the judgement of Supreme Constitutional Court concerning the unconstitutional of judgement texts in the Law of Capital Market No. 95 of 1992¹⁸ on January 2002¹⁹, This has created a constitution vacuum resulted in about 3584 disputes concerning Capital Market estimated by one billion pounds according to the estimation of the Authority of Capital Market in 2003²⁰. In spite of all this the specialized authorities did not present quick and alternative solutions which guarantee the speed of setting these disputes.

¹⁴ Ibrahim Ali Hassan. (2006, January 7). Independent Courts or Only Economic Judicial district? *Al-Ahram*, Elderby, 2012, *Development of the Egyptian Legal System*, p. 60.

¹⁵ Abdul Sattar, 2008, *Economic Courts*, no. 5, p. 20.

¹⁶ Elderby, 2012, *Development of the Egyptian Legal System*, p. 59.

¹⁷ Majdy, 2009, *Economic Courts*, p. 31.

¹⁸ Issued at June 22, 1992, Official Gazette, No. 25 Repeated, June 25, 1992.

¹⁹ Case No. 55, 23 (The Supreme Constitutional Court, January 13, 2002).

²⁰ Majdy, 2009, *Economic Courts*, p. 31, Elderby, 2012, *Development of the Egyptian Legal System*, p. 59.

After the issue of the decree of the Chief of the Minister Cabinet No. 1816 of 2004, a national committee has been formed to modernizing the economic legislator²¹ and the work plan in the first year focused on the first subject which is the project of the law of Economic Courts to accelerate the settlement of these disputes and avoiding its passive effects²².

3. The Issue of the Law of Setting up Economic Courts:

The idea of setting up Economic Courts in Egypt has come to light as an aspect of developing the legislative structure for the Egyptian society as we hope with the initiative of president Mubarak in his speech to the Shura and People's Assembly on December 19, 2005 where he said: " I will work, along with you, on the development of our legislative structure to achieve this and that the government will present, during this period, a number of projects of law which reinforce the governing structure of our social and economic life and reflects the priority of providing more job opportunities... through raising the standard of investment and economic developments". One of these projects that " the economic law which sets up an independent judicial system specializes in judgment and settling the disputes among companies and working entities in the economic field in easy procedures which ensure the speed of litigation and its justices^{23, 24}.

This, this idea has come to light in a form of a law during the first week on July 2006²⁵ where the Cabinet of Ministers agreed on and then it was sent to the President of the Republic to refer it to the assemblies of Shura and People Assembly to discuss and confirm it²⁶. But the project hasn't been decreed for two years owing to the big

²¹ National Program to Support Legislative Reform, Fouad Gamal Abdel Kader. Legislative Reform in Egypt, The Achievements of the National Program to Support Legislative Reform During the Five-Year Plan 2002-2007. Specifically The First Axis: Legislative Reform, and Axis II Comprehensive Legislative Development.

²² Elderby, 2012, *Development of the Egyptian Legal System*, p. 59.

²³ The Speech of President Hosni Mubarak at the opening of the new Parliamentary Session of Parliament, 2005-2010, Monday: December 19, 2005, *See Also*: The Speech of the next parliamentary Session, Sunday: November 19, 2006, And the Speech of the next parliamentary Session, November 15, 2007.

²⁴ Mahmoud Murad. (2006, January 7). Independent Courts or Only Economic Judicial district? *Al-Ahram*, Majdy, 2009, *Economic Courts*, p. 13.

²⁵ Ahmed Ibrahim Ali. (2010, Wednesday-Thursday: March 10-11). *Comparative Economic Judiciary*. Paper presented at the Recent Legislative Trends on Judicial Organization Conference, Alexandria University, Egypt. p. 85. **To view the most important domestic and international considerations that support the importance of the issuance of this law at this time**, *See*: Mossad, 2010, The Role of Economic Courts, p. 646, On a Local Level, p. 646, International Level, pp. 647-648, **For more details about the evolution of the idea of Economic Courts**; Shams Al-Den Mirghani. (2008). *Economic Courts*. Cairo, Egypt: Al-Ahram Economic Book. p. 5 etc.

²⁶ Elderby, 2012, *Development of the Egyptian Legal System*, p. 59, p. 236 and footnote no. 2 at the same page.

number of legislations which the Egyptian Authorities have taken as priority, The Constitutional Amendment, and the Law of Taxes were part of it ²⁷.

The understanding of the government and its recognition for the importance of such a law has an effect on the activation the system of economic legislations and the increase of competitiveness of the climate of investment has the greatest effect on the acceleration of the discussion of this law to achieve a quick justice to a settle the economic disputes quickly which are estimated to be millions ²⁸.

Some have expected at that time that: ²⁹ " this law will contribute to improvement and development of the environment of practicing business and as a result the ability of the economy to attract in investments" ³⁰.

Though a big number of Jurisprudence have objected to the idea of reviving the case preparation panel at the time of issuing the law No. 76 of 2007 ³¹, There were different opinions in the committee of legislation held to disusing the project of the Law of Economic Courts. But the majority of the committee thought they keep the text of the article numbers of the project the same and adopted the system of preparation panel ³². That is because the legislator still hopes to be able to benefit from the Case Preparation System.

From this course, the legislator has been issued the law No. 120 of 2008 to set up Economic Courts in Egypt ³³ to hear judicial cases of economic nature by specialized judges in such a kind of judicial cases ³⁴ to lop with the technological and economic

²⁷ Karim Fouad. (2008, May 5). Economic Courts in Egypt See the Light. *Mohet, Arab Media Network*, Wael Ali. (2008, Thursday June 19). Law Experts: Unconstitutionality Follow Up The New Economic Law Courts, and We Expect Removed from Service after Two Years. *Al-Masry Al-Youm*. p. 10, *See Also: Specialized Economic Courts to Push the Movement of Investment in Egypt*. (2008, Friday March 14). *Al-Ghareda*. p. 32.

²⁸ Saleh, 2008, *Explanation of Economic Court*, p.10, Elderby, 2012, *Development of the Egyptian Legal System*, p. 56.

²⁹ **Mahmoud Mohi Al-Den, Minister of Investment.**

³⁰ Rem Tharwat. (2008, Saturday: April 26). Courts Act Addresses Economic Disputes for a Wide Range of Citizens, Institutions and Companies. *Al-Masry Al-Youm*. p. 6, Elderby, 2012, *Development of the Egyptian Legal System*, p. 237.

³¹ Nabil Ismail Omar. (1999). *Judge Preparation System in French Law and Civil Prosecution System Which is Proposed to Work in Egypt*. Alexandria: Dar Algama Algededa. p. 38 etc, Abdul Sattar, 2008, *Economic Courts*, p. 8, and footnote no. 1, p. 83.

³² The Report of the Joint Committee, People's Assembly, February 26, 2008, Abdul Sattar, 2008, *Economic Courts*, pp. 82-83.

³³ **Law No. 120 of 2008. May 22, 2008, Official Gazette No. 21 Repeated, May 22, 2008, p. 2 etc.**

³⁴ Sharaf Al-Den. (2009). *The Problems*, no. 1, p. 7, Mahmoud Althewy. (2010). *Preparing a Lawsuit in the Economic Courts, The Idea of the Preparation of the Lawsuit and How to Organize with the Evaluation of this System, An Analytical*

development of encourage the movement of investment nationally and internationally³⁵. It came in to effect on the first of October 2008³⁶ to officially announce the birth of two legal branches for the first time in Egypt: The Economic Law³⁷, and the Law of Economic Courts³⁸.

4. Some of the Most Important Aspects and Substantive and Procedural Developments Included in the Law are:

- A. The case preparation panel has been originated to prepare disputes and cases which the Economic Court specializes in according to the text of article No. 8 of the Law of Economic Courts.
- B. Stating that it's not allowed to contestation against the issued judgments of the economic courts expect as the article No. 11 of the law stated^{39, 40}.
- C. Originating a panel to examine contestation in Cassation Court and stating the right of Cassation Court to decide in the subject of case even if it was for the first time according to what article No. 12 of the Law of Economic Courts included⁴¹.

5. Conclusion:

It should be noted that these two articles didn't give an integrated system for Cassation appeals to say that the rules of Civil and Commercial Procedure Law argument takes no effect⁴².

All these characteristics are to reach a quick justice and the quick settlement of disputes without adding more burdens on the litigants⁴³ within the frame of

Study, Alexandria: Dar Algama Algedada. p. 1, Abdul Sattar, 2008, *Economic Courts*, p. 29.

³⁵ Mirghani, 2008, *Economic Courts*, p. 5 etc, Saleh, 2008, *Explanation of Economic Court*, p. 9, p. 11, Mohamed Ali Eweda. (2009). *Rules of Civil Procedure in the Economic Courts, An analytical Study* (1st ed.). Alexandria, Egypt: Legal Books, Monshat Al-Maref. p. 3.

³⁶ Ahmad Al-Sayed Sawy. (2010). Economic Courts. *Majallat Al-Hoqouq; Legal and Economic Research Journal*, 1. 460, Mostafa Metwally Kandel. (October 2011). Toward Independence Processing Suit Stage from Stage of the Proceedings. *Rooh El Kwanen; Spirit of Laws Journal*, 56(II). 860.

³⁷ Ahmad Sharaf Al-Den. (1988). *Economic Law, A Study in the Economic Transformation of the Law*. Cairo, Egypt. no. 1, p. 3 etc, Sharaf Al-Den. (2009). *The Problems*, no. 5, pp. 16-19, Honey Mohamed Nabil. (2008, January). Theory of Economic Law at the Thought of Pareto. *Masr Al-Moasra*, 100. 417 etc.

³⁸ Ahmed Hashish. (2010). *Principles of Economic Courts in the Light of the Principle of the Primacy of Divine Law*: Dar Elnhda Alarabeah. no. 1, p. 7, Majdy, 2009, *Economic Courts*, pp. 33-34.

³⁹ **Article No. 11, Law of Economic Courts.**

⁴⁰ For more details: Althewy, 2010, *Preparing a Lawsuit*, pp. 41- 46.

⁴¹ **The article No. 12, Law of Economic Courts states that:** "The Court of Cassation form a circle or more competent, but not others, to adjudicate in appeals of revocation provisions set forth in Article No. 11 of this law ...".

⁴² Althewy, 2010, *Preparing a Lawsuit*, p. 5.

facilitating the litigation procedures and to settle the cases quickly aiming at creating an attracting environment for investment in Egypt ⁴⁴.

From this course, the legislator has been issued the law number 120 of 2008 to set up economic courts in Egypt to hear judicial cases of economic nature by specialized judges in such a kind of judicial cases to lop with the technological and economic development to encourage the movement of investment nationally and internationally ⁴⁵. It came in to effect on the first of October 2008 to officially announce the birth of two legal branches for the first time in Egypt: The Economic Law, and the Law of Economic Courts.

⁴³ Mohamed Mahmoud Elewa. (2011). *Comment on the Law of Economic Courts, Including the Most Important Economic Principles Established by Economic Courts*. p. 3.

⁴⁴ Syed Ahmed Mahmoud. (2010, March 10-11). *Notes on the Project and Law No. 120 of 2008 about Establishment of Economic Courts*. Paper presented at the Recent Legislative Trends on Judicial Organization Conference, Alexandria University, Egypt. p. 345, p. 347, Althemy, 2010, *Preparing a Lawsuit*, pp. 2-4, Abdul Sattar, 2008, *Economic Courts*, p. 29, Ibrahim, 2010, *The Limits of Economic Courts in Arbitration Matters*. p. 239, Mossad, 2010, *The Role of Economic Courts*, p. 631, p. 650.

⁴⁵ **For More details about Benefits of Economic Courts**; Mohamed Abdelnaby Elsayed Ghanem. (September 1-3, 2014). *The Benefits of Economic Courts in Egypt under Law No. 120 of 2008*. Paper presented at the Annual International Conference on Law, Economics and Politics, (AICLEP), Green Templeton College, University of Oxford, United Kingdom.

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