Freedom of Expression and State Employees
Freedom of Expression and State Employees
(Legal Study)

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Publisher:
Association o Freedom of
Thought andExpression

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Methodology

The study relied mainly on the decisions issued by some administrative bodies and other state institutions to prohibit the appearance in the media or writing. The study also relied on the rulings of the Supreme Courts and some fatwas issued by the Fatwa and Legislation Department of the State Council. The study used statements by some officials and published press reports related to the right of state employees to freedom of expression.

Introduction

This study attempts to keep pace with the expansion of administrative bodies in recent years in the use of the disciplinary tool, in order to deprive public officials of the right to freedom of expression. Discipline measures were not confined to the administrative staff of the State, but extended to groups with relative independence from the executive, such as members of the faculty, students of public universities and members of judicial bodies. Therefore, the study deals with the treatment of some cases involving judges and university professors.

The study is divided into two main sections. The first section discusses the basic features related to the legislative structure governing the disciplinary process and the associated administrative irregularities. The first section also addresses the problems related to administrative irregularities, through the presentation of some legislative texts, and the extent to which these texts are applied and interpreted by reviewing the rulings of the Egyptian Supreme Courts and other courts. The first part of this study ends with the presentation of the most important restrictions on state employees and the absence of guarantees related to the free expression of their views.

The second section discusses a number of cases in which the study relied on the legal situation related to disciplining employees in the state and restricting their right to freedom of expression. These cases vary according to the different administrative bodies and the extent of their independence from the executive authority. The study presents some practices related to restricting the right of employees in the state to express their opinions. The study shows that these practices are based on erroneous applications and interpretations of the provisions of the law and the constitution.
Introduction: Freedom of expression and its relation to the public facility

The limits of the practice of State employees of their right to free expression have always been debated within public facilities, especially in the context of successive political regimes, which are highly sensitive to the civil servants exercise of any form of freedom of expression, such as the right to strike and the right to complain and criticism permitted of post-related / management policies.

The authorities face those practices with excessive arbitrariness by taking measures and imposing explicit and convincing sanctions on state employees for reasons of fear about the performance of the facility. This is confirmed by the state of diversity found in judgments issued by the Disciplinary Courts and the Supreme Administrative Court, which involved several matters related to interpretation of the constitution, laws and regulations governing the limits of freedom of expression within the public sector.

Cases brought before the disciplinary courts have increased since the events of June 30, 2013. As a result of the intense polarization at the time, it was transferred to the administrative apparatus of the state. Administrative authorities at various levels took exceptional measures towards state employees by monitoring their personal accounts on social networking sites outside working hours.

This was followed by the signing of severe penalties against some workers. As the issues of freedom of expression in the Public Facility are considered a new development, the Egyptian courts’ rulings are still in agreement to define the dividing line between the professional life and the free expression of opinions outside the scope of work. 

This could be a result of the political context in the country. The judges themselves face a number of variables, both at the level of the newly created laws, which have given the executive branch considerable discretion in choosing the heads of the judicial bodies, or at the level of the work environment itself, which makes it difficult to work without impartiality without fear of possible consequences of a judgment or decision.

There is a lack of public awareness among state employees to understand their professional rights as workers or citizens, guaranteed by the constitution and international covenants regarding freedom of expression.
Section I:

- The legislative environment governing state employees and its impact on freedom of expression

The discussion of the legislative environment is not directly related to the legal texts governing the subject under discussion. Reading texts without referring to their political and social contexts and dimensions will lead us to a premature, weak and perhaps incorrect view of the reality of things.

Laws governing the affairs of civil servants and the public office are of great importance in Egyptian society, which has always considered the public service to be safe and immune to economic fluctuations and difficult living conditions. This gave the political authority room for restrictions on the public service, both in terms of selection or continuation of staff.

The criticism of regulations without their practical implementation does not lead to accurate conclusions, so it is important to present the features of the legislative environment and how it was applied through case studies.

A - The absence of guarantees in return for broad administrative authorities:

Laws governing the affairs of state workers are characterized by a number of features. The legislation lacks clear guarantees for the employee regarding his private life and his views that are not related to the scope of the work. On the other hand, most of the provisions of this legislation discuss the details of the employee's financial and administrative benefits, such as wage, income, methods of transfer, termination of service and others, while lacking definition of their scope and limitations of administrative authorities.

This means that there is a serious lack of adequate safeguards to protect the staff member. There are broad powers within which management can question and anticipate severe penalties for acts that may be outside the framework and not related to the function or facility in which the staff member performs his daily duties.

This leads to the absence of a balance between the freedom of the employee and the authority of the administration in the accountability and organization of the facility. For decades, the legal system – article 144, first chapter of the law of financial interest, in force since the time of the
monarchy - allows for the restriction of the rights of workers in the administrative apparatus of the state. The law states that:

«Government employees are not allowed to give news to newspapers or to make personal observations through them, nor are they to correspond or communicate with them, and every employee who violates this provision is subject to termination of his work.»

The Council of Ministers’ resolution of 30 January 1929 added a paragraph to this article stating: «Employees shall also be prohibited from participating in political meetings or publicly expressing views or political tendencies.»

The memorandum to the Council of Ministers stated at the time that public interest requires that employees remain in full impartiality and in proper balance and moderation, so that the interests of the public are not exposed to the various forms of injustice and individual preferences.

The situation did not continue as such. Soon the legislation became general and vague, enabling the administrative authority to refer the employee to an investigation, trial or a direct penalty, for charges such as crossing over the requirements of the public post or exercising acts that insult the dignity of the position and others.

The administration acquired a discretionary power to adapt the facts without specific disciplinary offenses. Despite the absence of legal provisions prohibiting an employee from expressing his views freely, this does not mean that he or she has the capacity to participate in public life, to engage with certain subjects, or to criticize government policies.

In the absence of an text that expressly forbids the exercise of this right, there are other provisions that cover all the work of the employee and make him liable under broad legal names, as we mentioned before. In such a case, the staff member would face disciplinary action that threatened his or her career. The employee is obliged to follow the course of the administration in his private life, which is described in the literature of discipline as the employee’s loyalty to the state and the ruling regime, and this opinion was also adopted by most of the judgments of the Supreme Administrative Court.
B - Special nature of the disciplinary system:

Disciplinary regimes in regulating laws raise concerns among those who are addressed by them. These concerns derive from the special nature of these laws. Unlike criminal laws that criminalize specific acts and define the dimensions and elements of such crimes and methods of proving them, disciplinary crimes cannot be defined and pre-defined, in view of the wide scope of work within the Public Facility, in addition to the impossibility of identifying and naming performance crimes.

Therefore, we find that most of the disciplinary offenses did not come exclusively, while the legislator enumerated penalties and their forms, which means that the interest of the legislator is almost limited to signing the penalty without certainty of the criminal act. The principle of criminalization in general is the statement of the validity of the criminal acts and the necessity and proportionality of the sentence assigned to the offense in question.

However, what the majority of disciplinary judgments say is otherwise. The employee is criminalized for any act or conduct, regardless of whether it is due to his will or not, and therefore the violation of what is described as the duties of the job or the violation of the boundaries of duty, even if the error that is committed is outside the scope of career. Thus the act in itself is criminalized as it reflects on the dignity of the job.

In addition to the problem of indeterminate crimes, there are also the broad powers of administration, investigation and prosecution in assessing, characterizing and adapting facts, and a broader authority to determine the appropriate penalty.

C - The role of the disciplinary judiciary:

After the presentation of the features of the cause for criminalization and the broad authority of administration in the indictment, we reach the role of the judiciary in understanding and interpreting these general texts. Of course, the judiciary plays a major role in classifying the acts committed by the employee and placing them under other descriptions by establishing judicial principles that the management can rely on in the future.

The introduction of the matter to the judiciary and leaving space to discuss the incident separately with the possibility of amending the principles is a good method, in the presence of variables related to development or modification in the legislative environment, because the judiciary looks
at different situations through which to measure the context, and hence develop legislation that are compatible with this context.

However, at the level of state workers, leaving facts to the discretion of the judiciary is an exhausting task for state employees. The use of a referral to discipline can be accompanied by measures such as suspension. Referral to discipline in itself is a procedure that puts the staff member in a position of constant threat.

With regard to disciplinary trials on the basis of freedom of expression, disciplinary law still has a restrictive approach to freedom of expression, but the judiciary remains an important safeguard against the authority of the administration. Hence, the importance of the principles established by the higher courts with regard to discipline is paramount. There is a need to provide safeguards in the laws regulating the protection of State employees against those vast discretionary powers owned by the administration and the disciplinary courts.

- **Restrictions on freedom of expression:**

  The legislations regulating the employees of the state have adopted general definitions of some disciplinary or penal offenses. The elements of these violations have not been defined as mentioned above. However, practical practices in this context indicate that these definitions were characterized by a very broad scope of criminalization, whether by investigation bodies or disciplinary courts, while provides those bodies with wide authorities at the level of adaptation of the facts under investigation.

  Therefore, some disciplinary offenses have been used to criminalize certain acts and actions of the public servant and other employees of the State, even if they are not related to the operation of the public facility or were committed outside the scope of work. These violations have been directed to state employees when they express their views in different contexts.

  The following points will deal with the most important and common examples of criminalization, as well as how Egyptian courts deal with the definition of violations in different locations, which, of course, does not represent all the restrictions imposed by laws, regulations and decisions, but could help us understand the restrictions imposed on state employees regarding their freedom to freely express their views outside the scope of work.
A. Requirements of the public office (breach of public office duties):

Most of the laws governing the public office contain provisions concerning the requirements of public office and job duties. The State Employees Law No. 210 of 1950 in Chapter Six of Part One dealt with the duties of employees and criminal acts. The law states: «Any employee who violates the duties stipulated in this law or crosses boundaries of his duties is liable to disciplinary penalties.»

This is the same as the Civil Servants Law No. 46 of 1964, which states in its article 59: «Any worker who violates the duties stipulated in this law, or goes beyond the duty of his job or appears to violate the dignity of the job will be subject to disciplinary punishment.»

Following the repeal of this law and the application of Law No. 47 of 1978 on the civil servants' system in the State, the provision of the requirements of the job remained in effect. Article 78 of the law states that “every worker who breaches the boundary of his job or appears in a manner that insults the dignity of the job will be subject to disciplinary action.» This approach continued with the adoption of the Civil Service Law No. 81 of 2016, which is in force today, and despite the continuation of the formulations of the laws governing the employees of the State on what is described as job duties, there has been no development with regard to the definition of this concept.

The employees of the State exercise their duties in accordance with the laws and regulations governing their work, which is a working relationship whether it is a contractual relationship based on the articles and agreement contained in the contract or an organizational relationship governed by the regulations and laws. Every worker in the state has his own life and activities, which are not related to work. These aspects should in no way be subject to administrative accountability, even if the work of the administrative apparatus of the State and other public facilities has a special nature concerning the necessity of discipline and maintenance of the facility, since it provides services that the citizen cannot obtain without resorting to such facilities.

Therefore, the functional requirements of a post need to be directly related to the job, or has direct implications for the facility in which the staff member works, if it is outside the scope of work. The Egyptian courts of various degrees followed two approaches in this matter, as follows:

• The first represents the general trend, in which the courts see that private life and career are bound by an inextricable bond, and should be subject to disciplinary accountability even if they take place outside the scope of work, since they may breach job duties or constitute an insult to the dignity and respect required for the job.
This is because disciplinary offenses are not specific and limited, and it is sufficient for the disciplinary action of the worker to result in what may be considered an outright breach of the duties of the post, contrary to the due trust or prejudice to respect for him. In this vein, the Supreme Administrative Court concluded that:

«The disciplinary offense is not limited to the breach of the employee›s duties positively or negatively, but also exists whenever the worker goes into a defective behavior that involves a breach of the dignity of the job and is not consistent with the imposition of restraint and honesty and distances itself from suspicion and misconduct. There exists no thick barrier between the public and private life that would prevent mutual affection. Thus, it is not permissible for a worker to separate himself from his job outside working hours and to undertake any conduct that touch on his dignity or indirectly the dignity of his job. Thus the conduct and reputation of a worker outside his work reflects totally on his job and position.”

The Egyptian judiciary did not stop at many of its provisions regarding some behaviors in the private lives that may affect their jobs, but went beyond that. According to several judgments, the whole life of the employee is related to the job, and he represents the administrative body to all. This is clear in a ruling issued by the Supreme Administrative Court, which states:

«While the incident attributed to the appellant has occurred outside his or her employment, it does not affect his or her disciplinary responsibility, since the obligation of the staff member to follow in his or her life a course consistent with his or her public function necessitates the harmonization of the type of duties, obligations and behaviors, both public and private. There is no doubt that they affect each other mutually, since the private life of the public servant is not his or her own property, but he must take into consideration that his behavior outside his work does not affect his or her own work or his public image, since this may result in breaching the confidence of individuals in the public service and those in charge of it.»

• The second course: Here, some judgments saw the need to separate between the public service and what is outside it, in addition to establishing clear criteria to determine the reasons that can be used to impose disciplinary punishment, if the offence was committed by the employee outside the scope of work. The Supreme Administrative Court has concluded that:
"If an employee is deemed to have committed a breach of his or her duty or its due respect, the first thing to consider is whether the incident that the staff member incurred outside his / her career affects the employee’s honor, duty, trust or reputation, and if the court finds that it harms the employee in this context, it would be an incident that also affects the public office and that necessitates disciplinary accountability. If the court finds that the employee’s incident does not affect this framework and does not affect his/ her public post, he or she would not be held accountable for it by job disciplinary body, and if the administrative prosecution referred him to a disciplinary trial, the referral for an incident does not constitute a disciplinary offense and therefore he must be acquitted of his charge and declared innocent. "

A coherent legal logic exists in this process namely the separation and distinction between disciplinary acts and their delineation, as well as the establishment of clear criteria so that the staff member can be held accountable for what he has done outside the scope of work. However, the drawback of this position is that the behavior in question is based on loose standards such as good reputation and good conduct.

Such standards are relative and subject to the abuse by management, and there is a difference in their discretion from one judge to another. In any case, however, this view still holds a method consistent with respect for the right of workers to express their views freely without fear or restriction of prosecutions related to their work

B - Prejudice to the dignity of the post and the condition of good reputation:

It is one of the most common charges in the field of public service, and is applied to employees of the state with different names from one case to another, when the employee actually violates the dignity of the job, or the characterization of one incident to the effect that the employee loses the condition of good reputation or affects the good conduct and behavior.

Despite the similarity between different descriptions during the application, which can be attributed to the lack of specific definitions of these irregularities through which to distinguish between each, the management of its part is working to address these charges excessively. In the majority of writings on disciplinary jurisdiction, the violation of the dignity of the post or the lack of good conduct of the staff member is in most cases related to the fact that the employee commits an act, whether in the workplace or in his or her private life, which affects the sanctity, dignity and prestige of the job and its status in the minds of people.
Some judgements cited examples of such irregularities, such as: drinking alcohol in public shops, defamation or libel. The Administrative Tribunal went so far as to interpret that meaning broadly and loosely, as it considered that the public official was required, within the scope of his or her functions, to distance himself/herself from actions which would have the effect of violating the duties of that job. One of these duties is that the off-duty employee does not behave in a way that compromises the dignity of the job, ie, any conduct of negligence, indifference or tampering with the effects on the dignity of the job, which constitutes an administrative charge that requires accountability.

By reading some provisions and practical applications, we can conclude that the offense under discussion here is no different from the so-called breach of job requirements. However, violation of the dignity of the job is dealt with from an ethical or religious perspective, whereby the administrative body seeks to impose restrictions on state employees by claiming adherence to good morals, customs and traditions, even though the act is not related to the scope of the job. This is reflected in one of the Supreme Administrative Court’s rulings:

«Although the incident attributed to the offender has occurred outside his or her job, this does not preclude his disciplinary accountability. The obligation of the public official to conduct his or her life in a manner consistent with his or her public function necessitates the need to harmonize the type of job entrusted to him with their obligations and their public and private behavior, since there is no doubt that there is a mutual impact on each other, since the life of the public servant is not his own, but he must take into account that his behavior outside his work does not affect his own work or that of individuals. This may result in a breach of public confidence in the public service and those who manage their affairs. «
Section II: Cases under study:

The second part of the study deals with several models of different sectors in the administrative apparatus of the state. These cases were chosen through continuous monitoring of the state of freedom of expression in the administrative apparatus of the state, in order to analyze the implications of legislative and legal frameworks. The study reviewed the following cases:

1. Preventing judges from appearing in the media and banning the publishing of their news:

The legal and judicial landscape has been confused as part of the public scene in the post-2011 period. Questions have been raised regarding the legal status of the trials, particularly those relating to the Mubarak regime, and the possibility of prosecuting them in murder, detention, disappearance and corruption.

These questions were in need of wide debate and considerable deliberation, while the legislative environment was severely deficient. The events were not simple. The law specialists tried to deal with them, in addition to establishing fact-finding committees, drafting a constitutional declaration, and then a new constitution.

Judges were an important and essential part of this process, regardless of the characterization of this importance and the outcome of the process. It was a reality that we have experienced. These events, of course, necessitated the appearance of judges, both at the level of explaining the issues and answering some questions regarding new legislative and constitutional developments.

This situation did not last long. In July 2011, a decision was issued by the Judicial Council headed by Judge Hossam Ghariani, President of the Egyptian Court of Cassation and one of the most prominent elements of the judicial independence movement, to prohibit judges from appearing in the media. The appearance of judges may have been unusual and undesirable from the point of view of a segment of judges themselves and those responsible for judicial affairs.

The ban included judges and members of the Public Prosecution in making statements to all media on the status of cases, courts and trials, as well as preventing judges from appearing publicly in the media and from making interventions in audio and video programs. It was promoted at
the time that the decision is based on Article (72) of the Judicial Authority Law, in addition to the importance of enforcing this decision because of the circumstances of the country.

Some judges complied with the decision, but it did not last for long. The judges soon reappeared on the media scene, due to the rapid pace of events. The media appearance of judges and the dissemination of their views on the social media pages were not limited always of a non-political nature at times, which is normal in light of the events that have taken place in the country during this period.

When Judge Ahmed El Zend won the chairmanship of the Judges’ Club the General Assembly decreed a rejection of appearance of members of the judiciary and the prosecution in the media to comment on affairs related to their work. That was in March 2012.

Later, particularly after the events of June 30, 2013, the judges’ appearance and comments declined. The freedom of expression in general has also decreased. However, some judges have expressed their views through limited spaces, which are occasionally available in the media, through social media, and in some cases through judges on judicial platforms, some of whom have been referred to the investigation.

• Nature of decisions banning media appearances and publication of judges’ news:

The decisions to prevent the media appearance of judges raise several questions regarding their legal nature and the extent to which the Supreme Judicial Council has expanded the use of its powers to ban judges from addressing the public, as well as the manner in which those referred to the investigation were dealt with.

The judges’ lives and affairs are sealed with a barrier that prevents judges from interacting with political developments. The decisions of the Supreme Judicial Council adopted the removal of judges from all matters related to public affairs. The disciplinary tool was used to denounce dissenting opinions, while other views were not, despite their flagrant nature, when they were consistent with public sentiment.

The Supreme Judicial Council expanded the use of articles of the Judicial Authority Act to restrict judges in the conduct of certain acts and their connection to public affairs, such as business and certain political acts, as provided for in articles 72 and 73 of the Judicial Authority Act. But before we address the way in which this crisis was managed, the legal basis adopted by the Supreme Ju-
dicial Council in issuing such decisions or recommendations, as described by some judges, must be clarified.

We note here that the legal regulations addresses job related actions and regulations related to the nature of the work of the judge. Article 72 provides the judiciary with the power to undertake work or a position that contradicts the nature of the work of judges. The text is left without a definition to take into account the developments that are occurring on an ongoing basis. However, this authority must be specific and exercised by the Judicial Council. It is not right to issue a decision prohibiting all members of judicial bodies from appearing in the media or to comment on a matter that does not affect the judicial issue or any of the cases before the courts.

The decision to ban media appearance in this wording deprives the judges of their right to express their views freely, while the purpose of the articles of law could have been achieved by establishing criteria for appearance, authorization and writing. Here we have to distinguish between two things until the picture becomes clearer:

The first matter concerns the right of the judge to comment, make statements, and appear in the media in view of his work on one of the cases. The judicial tradition in Egypt is that the judge must adhere to the principle of neutrality, which is based on a fundamentalist principle that the defendant should be assured of his natural judge, whose judgement is righteous and impartial.

This view is supported by article 146, item no. 5 of the Code of Procedure, which specifies cases that a judge cannot preside upon and is prohibited from hearing, even if no one of the litigants has expressed objections. These cases include the case if the judge: had expressed a view or defended one of the litigants in the case, or wrote about it, even if it was before he became a judge, or had already worked on it as a judge or expert or arbitrator, or had testified in it.

The Court of Cassation interpreted the concept of article (146), where it concluded that:

«If he has pleaded or defended one of the litigants in the case or wrote in it, even before he was engaged in the judiciary or had previously been considered as its judge, expert or arbitrator, or if he had testified in it», this indicates that the judge’s power to give a fatwa, a pleading, a judgment or a testimony, does an act based on his opinion in the case or personal information that conflicts with what is required of the free mind on the subject of the lawsuit so that he can weigh the size of the opponents abstract weight for fear of clinging to his opinion even if he violated the course of justice to avoid the judge’s personal influence and subjectivity to which most human beings usually submit.”
The preceding text has merit in regard to aspects of which the legal opinion is represented as a representative of the defense, expert or judicial act in general. This is because a legal opinion is based on a doctrine that has been established in the judge's mind, as a result of the case study and the conclusion of a clear opinion related to the case in question and the papers presented.

However, the Court of Cassation went even further when expanding its interpretation to extend to the opinions expressed by the judge in general, even if it was a personal opinion in general. This assumption means that the judges are people who do not have opinions, which is illogical. Everyone has his or her views in general even if they do not express them, but it is different when the case is brought before him. Here the lesson is in restricting the judge to what is presented before him.

Strangely enough, the text of the article and what the Court of Cassation addressed is the case if these views were expressed, which makes one wonder if the matter of concern is its expression or embracing the opinion. The expression of opinion is only a disclosure of reality or fact formed in the mind of the judge. It is better to be disclosed, otherwise it would extend to the judge's mind and to the judgments issued, and then the damage might be significant.

The second issue concerns the right of media appearance and the authorization of various means to comment on a matter of public concern. It is true that the judges are citizens with all the rights provided for in the Egyptian Constitution, unless there is an explicit provision that impairs one of these rights in whole or in part, such as article 73 of the Judicial Authority Law which prohibits members of judicial bodies from exercising their right to run for parliamentary seats.

Thus, judges have the right to express their views freely, including their right to complain about the burdens of the post and its problems. However, the Supreme Judicial Council and a number of judges themselves view the comment on issues of public concern as a form of political opinion or political activity, trying to find a legal justification for preventing judges from appearing or participating with their comments on matters of public concern.

The former President of the Supreme Judicial Council and the Court of Cassation, Counselor Fathi Khalifa, said in a statement, that the purpose of preventing the judge from engaging in politics is not intended merely to prevent him from joining political parties, but also includes discussion and comment on the decisions of the legislative or governmental authorities, when none of that is disputed before him, in which case he would be concerned with adjudicating it as a judicial act.
In spite of the erroneous adjustment, which describes media appearances and other forms of expression as either expressing political opinion or engaging in political action, this is counterproductive. The ban on the expression of political opinions is imposed on judges on the occasion of their work, as mentioned above. The use by the legislator of the term «courts» rather than «judges» indicates that this is a matter of judges' work on cases before them. Thus, the prevention of the media appearance is specific and cannot be measured or expanded in its interpretation, otherwise we would have gone beyond the meaning of the text and have reached the wrong conclusions.

If the legislator intended these conclusions, he would have to have disclosed them without hindrance, which would violate a right granted under the Egyptian Constitution. On the other hand, with regard to the attempt to characterize the participation of judges as political activity, this can be traced back to an advisory opinion, which explains the concept of engagement with political action and its limits. A fatwa issued by the Fatwa and Legislation Department of the State Council in response to the request for opinion regarding the members of the Council of State, who intend to run for membership in the Egyptian parliament, said:

“Article 17 of Law No. 66 of 1943 on the independence of the judiciary prohibits courts from expressing opinions and political tendencies, and also prohibits the judiciary from engaging in politics. It is clear from the preparations for this article that the prohibition is related to engagement in party politics other than national policy. The wisdom of this prohibition is to remove the judges from suspicions so as to reassure all people of their impartiality. The explanatory memorandum to this law states that it is forbidden for the courts to express opinions and political tendencies that reflect the bias of a party or a body. The judges should not engage in politics in practice that would give them a clear opinion in party disputes, which the judge must refrain from so that the judiciary can remain far from the suspicions and provide reassurance to all individuals. It is therefore understood that it is prohibited for the judge to run on the basis of a certain party tendency».

The response of the Fatwa and Legislation Department is specific to the concept of engaging in political activity, which is related to the actual involvement in one of the parties or to running for parliamentary elections, which has nothing to do with our subject, regarding the freedom of the judges to express their views, whether through appearing in the media or writing on social network pages.
On the other hand, the right of members of judicial bodies to express their views freely is not included in the constitutional document alone as Egyptian citizens. There are also international conventions on the protection of this right, notably the Basic Principles on the Independence of the Judiciary, adopted by the Seventh United Nations Congress on Crime and the Treatment of Offenders, which concluded with respect to freedom of expression and association to:

«In accordance with the Universal Declaration of Human Rights, members of the judiciary, like other citizens, have the right to enjoy the freedom of expression, belief, association and assembly. However, in the exercise of their rights, judges are always required to act in a manner that preserves their prestige, integrity and independence.»

The Bangalore Principles of Judicial Conduct addressed the right of judges to freedom of expression, which was adopted by the Judicial Integrity Group in Bangalore, India, in February 2001, as well as by the United Nations Commission on Human Rights, by resolution 43/2003. Article 4.6 of these principles states that:

«Like any other citizen a judge shall have the right to freedom of expression, belief, association and assembly, but in the exercise of those rights he shall always act in a manner that preserves the prestige of the judiciary and the impartiality and independence of the judiciary.»

It is good to talk about these covenants and the safeguards that guarantee the freedom of the judges to express their opinion, but more importantly, the judges themselves are persons who are entrusted with the law and its implementation and application, that is, they are fully aware of these rights. In April 2013, Judge Ahmad Al-Zind submitted a memorandum to clarify the irregularities of the Muslim Brotherhood (the country’s political ruler) in the Basic Law on the Independence of the Judiciary. In his memorandum, Al-Zind adopted the Basic Principles on the Independence of the Judiciary, adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held in Milan. Al-Zind said that this draft law is a prelude to the removal of 3,500 judges from the judiciary.
• Discipline and Disciplinary Boards are a tool to restrict freedom of expression:

The nature of the judicial profession has different characteristics, since the imposition of sanctions, but merely the investigation itself, puts pressure on judges and is an obsession that persecutes them permanently. As we have already pointed out, the instrument of discipline is a highly selective instrument that is governed by the nature of the person himself or by the opinion he espouses or repeats. In addition, the nature of the climate governing the facts, indicating the absence of criteria or determinants of space, the judge can be tried or questioned if he violates it - if we accept the validity of referral of judges to investigation because of their views - and raises another question about how Investigation bodies are informed of the incident.

We will therefore present the manner in which the views of the judges are monitored, and then review some of the cases for which the judges have been referred to investigation in cases relating to the free expression of their views, as follows:

First: Method of monitoring judges’ opinions:

Two committees were formed to monitor social network accounts of judges. The first committee was formed by Counselor Ahmad Al-Zind as Minister of Justice in mid-2015. This committee monitored all pages of social networking sites, both public and private. The Committee was composed of three members of the Technical Office of the Minister of Justice. Another committee was formed for the same purpose by the Supreme Judicial Council.

The two committees have been reporting on judges’ irregularities associated with writing posts on social networking pages, and forwarding these reports to the Minister of Justice, who in turn will refer them to a judicial review body, to investigate them in writing. The irony here is that high rank judges have agreed to use illegal tools such as monitoring the personal pages of members of judicial bodies.

Second: Investigating the judges on facts relating to the free expression of their views:

A number of judges were referred to the disciplinary boards, against the background of the decisions to ban media appearances, were interrogated, and some were punished as a result. Most of the referral decisions were due to the dissemination of opinions on personal pages on social networks, and these decisions were related to various events, including political, economic and social. For example:
- **Judges and the economic crisis (Golden Card crisis):**

The Judicial Inspection Department investigated reports filed against 9 judges for writing posts concerning the decision to reduce the quota of bread to the owners of the gold cards. The inspection department presented the accused judges with their posts on social media, which included criticism of the Minister of Supply’s decision because it increases the burdens on citizens, who suffer from high prices.

During the investigation, the judges confirmed that they expressed these views objectively, that the matter was not addressed from a political aspect, stressing at the same time that the Minister of Supply is more familiar with the circumstances of his ministry, but at the same time they are entitled as citizens to express their views on matters affecting the lives of citizens, without referring to any political opinions, criticisms or prejudices. Investigations into the charges against them were closed in May 2017.

- **Crisis of the judges of the State Council and Parliamentary Elections:**

In October 2015, the President of the Supreme Judicial Council issued a decision to refer four judges to investigation. The Chairman of the Council reported that Judge Mohamed Elawani, head of the club of Judges of the Council of State, on 21 October 2015, violated the rules and norms of the judicial system, through the editing and sending a letter to the President complaining of the arbitrariness of the distribution of the judges of the Council to the electoral commissions, during the first round of the parliament elections. Al-Awani also asked that officials who failed in their duties should step down from their posts, according to the letter.

The President of the Judiciary Council considered this letter as a summons to the executive authority represented by the Presidency to intervene in a judicial matter concerning the distribution of the judges of the State Council in the second phase and their placement in the various subcommittees, thereby violating the legal complaint principles and regulations.

As for the judges Ayman Hajjaj and Wael Farhat, members of the board of directors of the club, the irregularities attributed to them included frequent media appearances and media statements, as officials of the operations room of judges of the State Council to follow up elections, without the permission of the President of the Supreme Judicial Council, and in violation of his decision in that regard.
- Judges of Tiran and Sanafir:

The Supreme Judicial Council, headed by Counselor Ahmed Jamal al-Din, adopted a number of decisions by referring 46 judges to the Judicial Inspection Department of the Attorney General, 4 to the Judicial Inspection Department of the Ministry of Justice, and the removal of the immunity of six judges and referring them to the Public Prosecution for investigation, against the background of their writing on Facebook, and expressing their opinion on the agreement to set the border between Egypt and Saudi Arabia and the return of the islands of Tiran and Sanafir to Saudi Arabia.

The decision was issued against all who posted on Facebook, and also everyone who has shared those posts or expressed to like them. The resolution was based on follow-up reports, which were periodically prepared regarding judges’ personal pages on social media. According to reports submitted to the Minister of Justice, 10 judges in various degrees of employment expressed political views regarding the islands of Tiran and Sanafir on Facebook.

The resolution ordered an investigation into this and an indication of whether the incident violated the decision of the Supreme Council of the Judiciary, which prohibits judges from engaging in politics or not. The Supreme Judicial Council, after reviewing the memorandum of the Minister of Justice, found that the actions of the six judges constituted a crime and decided to lift their immunity and refer them to the prosecution for investigation on charges of engaging in politics.

2- Crisis of Maspero officials «events Tiran and Sanafir»:

Maspero leaders’ crisis differs from other cases in which the crisis of the appearance and participation of judges and faculty members has been taken as a proactive measure in an attempt to prevent them from expressing their views in advance. In the case of Maspero staff, the administration has taken legal action by transfer and referral to disciplinary trial, based on the statements made by these employees, when they expressed their views through social media.

The investigation with an employee of the Radio and Television Union (the National Information Commission) goes back to April 2016, was made against the background of the employee writing his views on his Facebook page. The management of the Radio and Television Union charged the staff member of criticism of policies relating to the Convention on the Redeployment of Maritime Boundaries, under which the islands of Tiran and Sanafir were ceded.
The Maspero security department tracked the employee’s personal page and obtained photocopies of posts, comments and opinions published on the screen-shots, and a memorandum was prepared. After an administrative investigation into the incident, the entire case was referred to the Administrative Prosecution in April 2016, which in turn referred it to the Disciplinary Tribunal in May of the same year, which decided in 2018 to terminate the employee’s service.

A number of points must be made regarding the manner in which the investigation authority is informed of the incident, as well as the conduct of the investigating authority in characterizing the accusations, linking them to the duties of the public office, and misuse of some international instruments in support of accusations and stripping the employee of the protection provided to him by some texts.

**The impact of administrative irregularities outside the scope of the post:**

The indictment submitted by the Administrative Prosecution to the Disciplinary Tribunal stated that the assigned official had taken a course that did not conform to due respect for the post, violated the rules, instructions and the law and crossed the boundaries of the job requirement. The report attributed these accusations to the employee’s posting and writing inappropriate statements against the President of the Republic, on his personal page on Facebook.

The Public Prosecutor’s Office initiated the indictment by indicating that the administration obtained its knowledge of the incident through a memorandum issued by the head of the security sector (the Maspero building), in which the posts of the employee referred to the investigation revealed offensive statements against the political leadership and insulting statements against the political leadership.

The prosecution accused the employee of posting statements that are insulting and defaming against the President of the Republic. The prosecution added in its report:

> «If the person mentioned has the right to express his or her personal opinion on an issue, he / she must adhere to the limits of public morals, a proper manner and use phrases which do not in themselves constitute an insult to any person.»

The prosecution relied on the second paragraph of article 19 of the International Covenant on Civil and Political Rights, which places restrictions on respect for the rights and reputations of
others and the protection of national security and public order. The memorandum concluded that the incident assigned to the official constituted a criminal offense of insulting the President of the Republic, a crime which was an offense under article 179 of the Penal Code.

The employee assigned to the investigation pointed out that the security department in Maspero is not competent to submit complaints of this kind. He said: «The security department has no involvement in this matter because it is outside the scope of the work of that administration, which is concerned with maintaining the security of the building and its employees, and that the submitted memorandum goes beyond this jurisdiction «.

The assigned official explained that «the statements under investigation are an expression of his personal opinion on the issue of the islands of Tiran and Sanafir, considering that this issue is a national matter and concerns national security, that he is not in agreement with what has been done on this subject, and that expressing his opinion in that regard has nothing to do with working within the Radio and Television Union «.

He continued that «The administration is not charged with defending the person of the President of the Republic or defending anyone, and he has the right to express his personal opinions in accordance with the law and the constitution.»

Despite the merit of the points raised by the employee, the Administrative Prosecution deliberately ignored the points relating to the communication of the investigating body›s knowledge, as well as the nature of the security department of the Radio and Television Union, while the prosecution replied to the employee›s defense of himself, that the constitutional legislator guaranteed freedom of opinion and imposed restrictions on non-derogation, but demanded adherence to moral values and public morals so as not to take the freedom of opinion as a way to deprive the dignity of the honorable, insulting, defaming or undertaking other acts that the legislator refuses to accept under the guise of freedom of opinion.»

The Administrative Prosecution›s response also stated: «Furthermore, it is not possible to rely on what was stated in the aforementioned statement that this incident does not affect the scope of the work and does not fall within its provisions in order to remove any responsibility for it because this is reflected in the Supreme Administrative Court ruling, which demands that the employee in the scope of his work and beyond, to distance himself from acts that impact his public function and duties, which include that the employee does not behave outside the job in a way that is detrimental to the dignity of the job».
• Extending the scope of criminalization (exceeding the administrative jurisdiction):

After the investigation was completed, the Investigating Entity released a memorandum to refer the employee to the Disciplinary Court. The investigation concluded with a decision that was contrary to the law, with regard to the adjustment of the case and the scope of the referral authority. The Administrative Prosecution concluded:

«Since the incident assigned to the employee and the above statement is based on the criminal offense of insulting the President of the Republic and the accused by the provisions of Article 279 of the Penal Code, which required that the Public Prosecution be informed of the incident in order to carry out its affairs before it as the custodian of the criminal case, referring the accused to a disciplinary trial for such an incident, as well as the court's right to order a penalty is sufficient to ensure deterrence against the accused. «

Thus, the Administrative Prosecution did not explain why it did not comply with the jurisdiction, despite the characterization of the incident as a criminal offense. In this way, the administrative prosecution contravenes the provisions of the law regulating its work: «If the investigation results in a criminal offense, the administrative prosecution shall refer the papers to the Public Prosecution. The Public Prosecution shall conduct and complete the investigation, if it deems this necessary, at its earliest convenience.»

This is in addition to the misinterpretation of the objective of the disciplinary court's response to the case despite the lack of jurisdiction. The Administrative Prosecution considers that the function and jurisdiction of the disciplinary courts is to deter the assigned employee. This confirms the general trend of using disciplinary systems to restrict the right of the State employees to freedom of expression.

3- Prohibition of appearance of faculty members in the media and publishing articles:

Academic life is characterized by a special nature related to the state of intellectual and scientific richness and addresses many of the problems related to the community, so to discuss matters of public affairs is not free of the theoretical aspects, where there are purely scientific details which require a specialist academic opinion.
This makes the participation of faculty members and their appearance in the various media outlets and the writing of articles necessary in the issues of the various public affairs of different, as well as is consistent with the role and function of universities in the advancement of society. This role that does not stop at the end of teaching, but extends to include different forms of the dissemination of knowledge.

The first article of the Law on the Organization of Universities states that universities are a stronghold of human thought at its highest level and a source of investment and development of the most important and most valuable assets of society, namely its human resources.

The appearance of faculty members in the media is a disturbing issue for some officials, and some university departments have issued decisions and instructions to prevent faculty members from appearing in the media or writing articles, while other universities required to obtain prior permission to appear in the media.

- **Administrative decisions and prohibitions banning appearance in the media:**

In September 2015, the University of Kafr El-Sheikh issued a decision directed at university colleges to ban media appearances and to issue or publish any articles or press releases, except with prior permission from the university president or written approval from the competent authorities of the university.

The resolution on the prohibition of appearance indicated that it came upon the recommendation of a professor at the Faculty of Law to establish controls and standards for media appearance. The decision not only prevented members of the faculty, but also extended its influence to the supporting bodies and university staff.

In November 2015, the President of the Suez Canal University issued a similar decision to alert faculty members and the supporting bodies not to publish or publish any articles or opinions or to appear in any of the media without prior approval of the university president. The President of the University attributed his decision to the text of Article 104 of Law No. 49 of 1972 concerning the organization of universities. The decision refers to the application of the law to those who contravene these instructions.
Copy of the decision of the President of Suez Canal University

السيد الأستاذ الدكتور...

سلام عليكم ورحمة الله وبركاته...

تطبيقاً لنص المادة (10) من قانون تنظيم الجامعات رقم (49) لسنة 1972 بمعدل إصدار أو نشر أي مقالات أو موضوعات أو الظهور بأي من وسائل الإعلام إلا بعد الموافقة المسبقة من رئيس الجامعة وسوف يطبق القانون في حالة مخالفته ذلك.

وبتفضل سيداك بقبول وأمرك الاحترام والتقدير...

رئيس الجامعة

[Signature]

[Date]

[Points and handwritten notes]
• Reasons for media bans:

The decisions taken by the universities of Kafr El-Sheikh and the Suez Canal were not implemented in pursuance of decisions issued by the Minister of Higher Education or the Supreme Council of Universities, but were based on verbal instructions only. In this case, it is not possible to make statements other than published resolutions or official statements. The media advisor to the Minister of Higher Education and the Secretary of the Supreme Council of Universities, made statement to Al-Shorouq newspaper, saying: «The Media advisor to the Ministry of Higher Education and Scientific Research, Dr. Mohammad Hijazi, denied issuing decisions by the ministry to prevent the appearance of university professors. «Said the secretary of the Supreme Council of Universities in the media or talking to newspapers.» The secretary general of the council of universities said that the Council has not been presented with any decision to prevent the appearance of professors in the media, and every university president should be asked if such a decision has been made.

The denial of the Ministry of Higher Education and the Supreme Council of Universities came almost three months after the issuance of these decisions. The absence of such denial from the outset was unusual, but this denial did not stop the debate about the motives behind issuing the ban.

The denial may have been linked to an attempt to remove the suspicion of interventions issued by the Ministry of Higher Education, especially after the statements of Dr. Majid al-Qamri, then president of Kafr El-Sheikh University, in which he said: «The faculty members were not prevented from appearing in the media, we are only organizing the matter, upon requests thereof by the minister of higher education and a sovereign body.”

The debate on these decisions, in January 2016, probably prevented such decisions from being implemented in other universities, and there were no cases where the decisions were made at the universities that issued them.

Subsequently, in April 2017, the University of Suez referred Dr. Mona El-Prince, professor at the Faculty of Arts at the University of Suez to investigation because of «posting on her account on Facebook clips and videos, and appearing in several television channels without the permission of the university and making statements contrary to law and university values.» This is in addition to a number of other accusations made by the university administration against Prince, which means that the decisions to prevent the appearance in the media has entered into force, which calls for an examination of the arguments and legal claims made by the administration of universities that
issued these decisions. The Disciplinary Board concluded in 2018 after a 14-month investigation with Dr. Mona’s removal from her university post.

- **The arguments of university administrations to ban media appearances:**

These decisions were based on Article 101 of the duties of the Law on Organizing Universities, which deals with the work of experience and consultation that may be carried out by some faculty members concerning the nature of their work. For example, consultations by staff members of the Faculty of Engineering on Technical advisory committees in some projects, as well as the assignment of faculty members to evaluate some work through the writing of technical reports.

The text of the article is defective because it contains very general descriptions, in addition to the lack of clarity about the words used in the text. However, the text of the article as a whole is no more than a regulatory text, requiring faculty members to obtain a license from the university administration in case of an activity related or connected to their academic work.

However, the text in its direct meaning does not affect the issue of decisions to prevent the appearance in the media or writing articles, as acting as an expert has specific legal forms, which are through engaging in contracts and clear terms of reference in exchange for an honorarium deserved by the work required. This means that the expressed opinion is a professional interaction, and can be exercised only by the specialist and as an expert in this field, which does not apply to the text of the resolution, since appearing in the media and expressing opinions are not exclusive to anyone. The appearance in the media in any case cannot be considered an expert act of consultation for the lack of the above mentioned conditions, and the same applies to the writing of articles, which are mere opinions, even if linked or merged in part or all with scientific details.

The decisions of the ban are also based on Article 104 of the Law on the Organization of Universities. The article sets out controls prohibiting that a faculty member engages in another job in addition to that of the university, whether commercial or financial, or incompatible with the dignity of the job. The text of the article is similar to what is mentioned in most of the legal regulations relating to employees in the State. It can only be recognized if the elements included in the text are fulfilled. In the absence of one or all of them, the act cannot be characterized as a business, since “business” has been defined by the inventory in the Egyptian Trade Act No. 17 of 1999.

We still have the matter related to the dignity of the job, which is unlikely by evidence that the administrations of the universities have agreed to appear and participate in the media on condition
of obtaining permission, which means that the act in itself does not affect the dignity of the position. The exclusion of all these elements makes it clear that the text of Article 104 does not relate to decisions to prevent appearance and that these arguments have no legal basis to support them.

The university administration was not successful in using the legal basis on which the decision was based. The decision includes members of the teaching staff, assistants and university employees, while articles 101 and 104 of the University Organization Law regulate the duties of faculty members. The decision was extended to functional categories not covered by the texts on which the decision was based. This means that the arguments regarding the prohibition of media appearance or writing have no valid basis. The administration of universities has searched for texts that can be used regardless of its relevance to the subject matter of the resolution, which leads us to reconfirm the absence of a clear and explicit text that prevents faculty members or others from carrying out the activities banned by the decision.

The decisions restricting the freedom of faculty members and other university employees did not stop at banning their appearance in the media or writing of articles. One of these decisions included preventing the circulation of any university-related documents in the media without written permission. The question here is what harms the university administration with the emergence of any document related to the university, and what is the relationship of preventing the circulation of documents with consultancy work, on which the decision was based?

Unless the prevention here is to prevent faculty members and others from referring to facts that may constitute irregularities that the university administration fears to disclose, which may restrict the right of university workers to complain and report through the use of documents to substantiate certain facts. It also prohibits the use of documents in an unspecified manner, which also means that these documents may not be used to report corruption or irregularities.

The importance of these questions lies in view of the absence of laws regulating the right of citizens to circulate information or laws protecting whistleblowers and witnesses, especially among public officials, in addition to the existence of a legislative environment that may harm the employee, if he reveals irregularities in his work environment.

These decisions cannot be considered separately. Rather, decisions must be seen as a single unit, based on a fact, which leads to a decision-making, as well as legal grounds for the right to take decisions, as well as the outcome the resolution seeks to achieve.
These resolutions lack logical and legal cohesion. The decisions use legal provisions that apply only to some of the parties who are subject to them. The subject of the decision also differs from the legal rules that were used to issue it. This means that the arguments put forward by university administrations are baseless arguments that cannot be relied upon nor can their validity or the validity of their motives be assured. These arguments cannot be interpreted outside the framework of restricting the right of citizens to freely express their views and their right to complain against their seniors.

**Conclusion**

In this study, AFTE aimed to address the issue of the right of the public official to freedom of expression, especially since there is a lack of monitoring the state of freedom of expression in state institutions. AFTE hopes that researchers and lawyers will benefit from this legal study to interact with many issues and developments on the level of the right of state employees to express their opinion.

The study presented a legal analysis of the legislative environment governing the affairs of state employees, reviewed the relevant judicial rulings, and then moved on to several cases from different institutions, highlighting the administration’s attempt to restrict the right to freedom of expression. These cases are expected to assist future groups and stakeholders in monitoring state of freedom of expression in the State administration and providing assistance to victims of such violations.