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THE CRITICISM DIRECTED TO THE CASE PREPARATION PANEL IN ECONOMIC COURTS IN EGYPT

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Abstract:

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. As a result, the Egyptian legislator created special Economic Courts to deal with economic disputes, and to avoid its negative effects, by Law No. 120 of 2008. Which decide that this kind of litigation can be solved by judges specialized in this kind of litigation, to encourage investment, and to provide maximum protection for economic activity and help develop the plans and ensure justice. But, there are some Criticism Directed to the Case Preparation Panel in Economic Courts in Egypt. So, I will discuss it in my paper.

Keywords:

Law, Economy, Economic Courts, Egypt, Slow Pace of Litigation, Crisis of Justice, Law No. 120 of 2008

JEL Classification: K00, K40, K41

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1. Introduction

The phenomenon of delay in litigation is considered one of the most important topics which researchers should care¹. This research has affirm belief that the right of litigants and enabling individuals to practice it and facilitating it is considered the first step of the way of social and economic establishment of all individuals in Egypt².

The first supposition of justice necessitates and guarantees the right of citizens to resort to their usual judge to prevent the aggression on their rights³, freedom and what can lead to getting their judicial equity⁴ within a reasonable period without unreasonable delay⁵. It is not enough to mere state whether in constitution or law, the right of persons to resort to his judge in his suitable time⁶. It is a must that the litigants should feel that justice is within reach and this cannot be attained except one can get his right in the least time and in the least expenses⁷. Justice is not only conveying the right to its owner but also conveying it on two conditions: (1) in the nearest chance, (2) in the best way, namely, this must be done easily and without difficulties along with a period of time enough for preparing the means of avocation⁸.

The delay of litigation procedures for feeble reasons leads to losing the right of citizens and making those whose rights have been devoured resort to violence instead of using legal ways which can last for years^{9, 10}.

¹ **"The phenomenon of the slow pace of litigation is the basic problem in the judicial process at the present time"**, DWIDAR, T. M. 2002. *Judicial Declaration, The Value of Time in Litigation, Comparative Study*, Alexandria, Legal Books, Monshat Al-Maref.

² SEYAM, K. S. 2007. The Right of Litigation Ensuring the Economic Rights for Poor People. *In: STUDIES*, E. C. F. E. (ed.) *Conference of Legal Empowerment of the Poor in Egypt*. Al-Ahram Newspaper.

³ **"The short phrase" Access to Justice" means, or includes, access to courts and tribunals involved in the delivery of justice. Justice, as so administered, has to be available to all, on an equal footing"**, FOX, H. R. 2000. *Justice In The 21st Century*, Cavebdish Publishing Limited., See also: HENSLER, D. R. March 2009. The Globalization of Class Actions: An Overview. *Annals of the American Academy of Political and Social Science*, 622. **"The author refers to the need for access to justice as a fundamental human right"**.

⁴ TRIPP, M. J. S.-M. C. 1984. *American Government, A Brief Introduction, How America Control*, Cairo, Egypt, Matboat Ketaby, Printing Press.

⁵ MAHMOUD, A. S. 2002. *Scope of the Law of Dispute Resolution No. 7 of 2000, Critical Analysis*, Cairo, Egypt, Dar Elnhda Alarabeah, HASSABO, A. A. 2000. *Conciliation Committees in the Light of the Provisions of Act No. 7 of 2000*, Cairo, Egypt, Dar Elnhda Alarabeah, RAHMAN, M. S. A. 2011. *The Judge and the Slow Pace of Litigation, in Accordance with the Provisions of the Code of Egyptian and Comparative Law*. PhD, Faculty of Law, Tanta University, Egypt., See also: MACDONALD, R. A. 2001. Access to Justice and Law Reform Number 2. *Windsor Yearbook of Access to Justice*, ALEXANDER, G. L. 2008. Access to Justice: A Justice System Imperative. *Washington State Bar News*, 62.

⁶ MAHMOUD, A. S. 1994. *Defendant and the Slow Pace of Litigation*, Dar Elnhda Alarabeah, AHMED, T. A. A. 2004. *Conciliation Disputes of Public Legal Persons in Accordance with the Provisions of Law No. 7 of 2000*, Cairo, Egypt, Dar Elnhda Alarabeah, KANDEL, M. M. *The Role of Parties of Contract in Settlement of Contract Disputes, A Study on the Dispute Settlement of Contract Clauses*, Cairo, Egypt, Dar Elnhda Alarabeah, EL-DAMIRY, M. S. A. 2012. *The Role of Computer in Facilitating Litigation*. PhD, Faculty of Law, Tanta University, Egypt. See also: Defining the Goal: Access for what? to what? how much? and who should decide?, RHODE, D. 2004. Access to Justice: Connecting Principles to Practice. *Symposium Articles, Georgetown Journal of Legal Ethics*, 17.

⁷ **"Time is part of the justice, justice is not giving any right, but give everyone right in time"**, DWIDAR, T. M. 2002. *Judicial Declaration, The Value of Time in Litigation, Comparative Study*, Alexandria, Legal Books, Monshat Al-Maref.

⁸ AWAD, M. I. 1967. *Summary of the Code of Civil and Commercial Procedure, Part 1: Books I and II of the Code*, Cairo, Egypt, Dar Elnhda Alarabeah, GHANEM, M. A. E. 2014b. Reasons for Establishing the Economic Courts in Egypt. *The Macrotheme Review*, 3, 169- 179.

⁹ **There is no doubt that the reluctance of individual recourse to justice is very serious, "and the source of risk that individual returns to the habits and customs of the old segregated with their disputes**

The delay of justice is not only a kind of aggression which can be more difficult and painful than losing the dispute or depriving the right of litigation¹¹ but also denying it. So, it is said that: "Justice delayed, Justice denied"¹².

A contemplation of the temporary reality concerning guaranteeing the right of the Egyptian citizen to resort to judicature shows a painful fact that reflexes a real crisis regarding this right¹³. It includes all ways of judicial system whether being civil, criminal, administrative or economic issue. Further, it affects all kinds of litigants being rich or poor, strong or weak and men or women. It draws a dim picture for what we can call "The Crisis of Justice in Egypt"¹⁴.

2. Establishment of Economic Courts in Egypt¹⁵

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 Courts¹⁶ to hear investment cases aiming at facilitating litigation procedures and settling the disputes quickly in cases that demands special knowledge or experience¹⁷.

arises, which heralded the return of "revenge" which require individuals get their rights by themselves, and this may lead to chaos in society," MAHMOUD, A. S. 1991. *Prosecution of Others in Litigation in Egyptian and Comparative Procedural Law*. PhD, Faculty of Law, Cairo University, Egypt., See also: Conference Recommendations Justice and the Slow Pace of Litigation in Egypt, June 23-24 2010 Cairo, Egypt.

- ¹⁰ KANDEL, M. M. *The Role of Parties of Contract in Settlement of Contract Disputes, A Study on the Dispute Settlement of Contract Clauses, Cairo, Egypt, Dar Elnhda Alarabeah*. GHANEM, M. A. E. 2014b. Reasons for Establishing the Economic Courts in Egypt. *The Macrotheme Review*, 3, 169- 179.
- ¹¹ OMAR, N. I. 2008. *Loss Procedures and the Economics of Loss it, Study in Civil and Commercial Procedure Code*, Alexandria, Law Library, Dar Algama Algedada, ALI, A. I. Judicial Organization Between Reform and Revolutionary Change. Revolution and Law Conference, December 21-22 2011 Alexandria, Egypt. Majallat Al-Hoquuq; Legal and Economic Research Journal.
- ¹² 2006. *Justice delayed is justice denied; a case for a federal employees appeals court*. Washington, U.S.A: U.S Government Printing Office, ELLISON, B. B. 2008. *Justice Delayed, Justice Denied*, Infinity Pub, MWELA, F. March 2013. *Justice Delayed Is Justice Denied Principle: Tanzania Primary Courts: The Case Study Of Iringa Municipal*, LAP Lambert Academic Publishing.
- ¹³ TALEB, H. A. 1993. *The Egyptian Justice System Under Sharea Law*, Cairo, Egypt, Dar Elfekr Al-Araby., **"Statistics indicate that approximately fifteen million case in courts, each four Egyptians have a case in judiciary, in fact it's scary problem in all metrics"**, SAWY, A. A.-S. 2008. *The Intermediate Explanation of Civil and Commercial Procedure Code, Amended by Law No. 76 of 2007*, DARWISH, M. F. 2007. *Rules of Civil Justice in the Light of the Legal and Judicial Principles*, GHANEM, M. A. E. 2014b. Reasons for Establishing the Economic Courts in Egypt. *The Macrotheme Review*, 3, 169- 179.
- ¹⁴ SAWY, A. A.-S. 2008. *The Intermediate Explanation of Civil and Commercial Procedure Code, Amended by Law No. 76 of 2007*, GHANEM, M. A. E. 2014b. Reasons for Establishing the Economic Courts in Egypt. *The Macrotheme Review*, 3, 169- 179. For more details about Criminal Issue: GHANEM, M. A. E. August 23-24, 2014. The Negative Consequences of the Phenomenon of the Slow Pace of Litigation in Criminal Judiciary in Egypt. *Batumi International Conference on Law and Politics (BICLP 2014)*. Batumi, Georgia: The International Institute for Academic Development.
- ¹⁵ GHANEM, M. A. E. 2014a. Establishment of Economic Courts in Egypt. *The European Conference on Politics, Economics and Law 2014, ECPEL2014, "Individual, Community & Society: Conflict, Resolution & Synergy*. Thistle Brighton, Brighton, East Sussex, United Kingdom.
- ¹⁶ SATTAR, S. A. 2008. *Economic Courts in Egyptian Law*, Cairo, Egypt, Dar Elnhda Alarabeah, SATTAR, S. A. Law of Economic Courts in Egyptian Law. Recent Legislative Trends on Judicial Organization Conference, March 10-11 2010 Alexandria University, Egypt. Majallat Al-Hoquuq; Legal and Economic Research Journal.
- ¹⁷ IBRAHIM, K. M. The Limits of Economic Courts in Arbitration Matters. Ibid., GHANEM, M. A. E. August 4-5, 2014. Reasons for Establishing the Economic Courts in Egypt. *Business and Social Science Research Conference*. Grand Hotel Park, Dubrovnik Croatia. GHANEM, M. A. E. 2014b. Reasons for Establishing the Economic Courts in Egypt. *The Macrotheme Review*, 3, 169- 179.

But this procedures are not enough to face this problem. So, Egyptian legislator created special Economic Courts to deal with economic disputes, and to avoid its negative effects, by Law No. 120 of 2008.

3. The Criticism Directed to the Case Preparation Panel

The Criticism Directed to the Case Preparation Panel On applying the Law of Economic Courts or case preparation panel, some aspects of criticism have arisen. The most important are:

A. As For Issuing The Law of Economic Courts

- 1- Some jurists consider the Economic Courts unconstitutional as they (i.e. E C) shorten the classes of litigation, but this can be refuted by saying that the jurisdiction of the supreme court of constitution has stated that “the legislator has the right to regulate the procedures and ways of objecting judgments without considering this legislation unconstitutional”. An example of this is hearing crimes in front of the normal criminal courts and the objection to its judgments is accepted through cassation as it is not heard on two classes but on one class which is appeal only.¹⁸
- 2- Some jurists ¹⁹ think that there was no need to set up Economic Courts in Egypt as the legislator has given the economic courts the right to hear economic disputes whereas most cases are heard in front of high jurisdiction court. So, what actually has been done is transferring cases from ordinary jurisdiction to the specialized one leading to piling up cases waiting for litigation. They recommended an inner criterion in every law to determine the disputes to be heard in front of economic courts.²⁰
- 3- The legislator nullified the system of preparation judge which is taking effect in the former procedural law No. 77 of 1949 via law No. 100 of 1962 whose note indicated that: “This system did not achieve the end hoped for which is the speed of case preparation for procedure, on the contrary it hindered its course, as a lot of the procedures to be heard in front of it have been returned to the court or decided to be null for not presenting them to the court or owing to not writing the report. So, the legislator preferred to nullify this system.”²¹
- 4- Having nullified the system of preparation judge because of delaying the case decision, the suggested system will not only lead to more delay but also will

¹⁸ BASIOUNY, H. 2012. *Towards a Contemporary Legal and Judicial Thought, The Road to Modernization and Development Legal and Judicial System.*

¹⁹ Dr. Reda El Sayed, Professor of Commercial Law, Faculty of Law, Ain Shams.

²⁰ MARIE, N. *The Conflict of Opinions Concerning the Economic Courts After Three Years of Setting Them Up* [Online]. Available: <http://www.bilakoyod.net/details752.htm>.

²¹ An Explanatory Note for Civil and Commercial Procedure Law No. 100 of 1962.; AL-WAFA, A. A. 1962. *Comment on the Newly Originated Texts in the Civil and Commercial Procedural Law and Law of Cassation*, Alexandria, Egypt, Legal Books, Monshat Al-Maref, WALY, F. 2008. *Economic Courts Law*, Al-Ahram Economic Book, WALY, F. 2007. Writes about the Suggested Amendments on the Project of the Civil and Commercial Procedural Law. The Project Leads to More Slow Pace of Litigation. *Al-Masry Al-Youm*, Thursday: Feb 8, SAWY, A. A.-S. 2010. Economic Courts. *Majallat Al-Hoqouq; Legal and Economic Research Journal*. Alexandria University, Egypt, ALTHEWY, M. 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 Study*, Alexandria, Dar Algama Algadedda, KANDEL, M. M. Oct 2011. Toward Independence Processing Suit Stage from Stage of the Proceedings. *Rooh El Kwanen; Spirit of Laws Journal*, 56.

lead to complicating the procedures and wasting the time and effort of the judge uselessly.²²

- 5- The Law of Economic Courts asserted the use of the system of case preparation panel which is not applied in the present Egyptian procedural law No. 13 of 1968. The legislator, on issuing law No. 76 of 2007, has made clear his intention of not accepting the reasons which the formed committee, for studying the project of law No. 76 of 2007, has given. The committee has stated in its report that: "The system of preparation judge in the term of preparation panel will not only lead to delaying the settlement of disputes but also it will lead to complicating the procedures and wasting the time and effort of the judge uselessly"²³ Unfortunately, the legislator, once again, has adopted this system during the discussion of the project of the Law of the Economic Courts²⁴ despite of the objection of some jurists to implement of this system as well as the Egyptian Judges' Club which has sent some remarks on the project of the Economic Courts to the head of the People's Assembly.²⁵ But the legislator adopted this system on issuing the Law of Economic Courts No. 120 of 2008.²⁶
- 6- Some jurists have criticized the speed of passing this law in the people's assembly under the pretext of saving foreign investments,²⁷ specially there is

²² WALY, F. 2007. Writes about the Suggested Amendments on the Project of the Civil and Commercial Procedural Law. The Project Leads to More Slow Pace of Litigation. *Al-Masry Al-Youm*, Thursday: Feb 8, SATTAR, S. A. 2008. *Economic Courts in Egyptian Law*, Cairo, Egypt, Dar Elnhda Alarabeah, SATTAR, S. A. Law of Economic Courts in Egyptian Law. Recent Legislative Trends on Judicial Organization Conference, March 10-11 2010 Alexandria University, Egypt. Majallat Al-Hoqouq; Legal and Economic Research Journal.

²³ WALY, F. 2008. *Economic Courts Law*, Al-Ahram Economic Book, HASHISH, A. 2010. *Principles of Economic Courts in the Light of the Principle of the Primacy of Divine Law*, Dar Elnhda Alarabeah.

²⁴ **Some members of the Egyptian People's Assembly, such as Hussein Muhammad Ibrahim, objected to the adoption of the preparation system in the Economic Courts** despite refusing to admit it in the Civil and Commercial Procedural Law No. 76 of 2007 by saying that: "The committee admitted the preparation system in the proposed project of law owing to the specialty of such kinds of cases though the committee did not admit this system as a general rule during hearing the project of Civil and Commercial Procedure Law during the previous session and I said that every case had its specialty. So, why do you admit the preparation system where as it did not admit it in the Civil and Commercial Procedural Law?"

Rajab Muhammad Abu Zeid, a member of the parliament, said: "The preparation system has proved a failure and you headed the Committee of the Legislative and Constitutional Affairs in 2007 when it discussed the amendment of the Civil and Commercial Procedure Law and you heard jurists of procedural law concerning the preparation system and you agreed on letting aside the system of preparation panel for the amendment of Civil and Commercial Procedural Law No. 153 of 2007 and want us to repeat it once again in this project of law where as we aim at achieving the quick and just case in Economic Courts". 2008. Transcript of Session. *In: ASSEMBLY, P. S. (ed.)*. Cairo, Egypt.

²⁵ **The Egyptian Judges' Club noted his full remarks on the report of the Common Committee of the Committee of Legislative and Constitutional Affairs and that of the Economic Affairs in the People's Assembly** on the project of law of setting up Economic Courts. The Judges' Club, prepared by counselor Ahmad Mekki, has written down five basic remarks on the project of law under the title of "Defects in Reasoning --- or Nothing" counselor Mekki pointed out that how often you told your students about logic and the importance for everyone who practice the authority of evaluation to include what shows good contemplation of reality and correct deduction or it will be a kind of practicing authority. The committee noted, also, that the preparation system in the proposed project of law should adopted owing to the specialty of such kinds of cases though the committee did not admit this system as a general rule on hearing the project of civil and Commercial Procedural Law April 21, 2008. Judiciary Club Notes Five Basic Remarks on the Project of Economic Courts. *AL-Masry AL-Youm*, Monday: April 21.

²⁶ **The Chief of the Common Committee in the People's Assembly mentioned the reason why they did not adopt the preparation system in the Civil and Commercial Procedural Law by saying:** "The committee, on hearing the Civil and Commercial Procedural Law, adjourned the preparation system for another stage and that it did not reject it but rather adjourned this study to another stage", 2008. Transcript of Session. *In: ASSEMBLY, P. S. (ed.)*. Cairo, Egypt.

²⁷ Samir Al-Cherkaoui, Professor of Commercial Law, Faculty of Law, Cairo University, AL-CHERKAOUI, S. Economic Courts Symposium April 2008 Cairo, Egypt. Egyptian Society of Political Economy, Statistics and Legislation.

no bad need to a new exceptional law though some have asserted that: “judges are not far away from the principle of specialization and suggested setting up specialized circuits in all fields”²⁸ but “the government has neglected these suggestions without studying it fully.”²⁹

- 7- A number of jurists of law have asserted to withdraw this project and study it once again and considering the opinion of jurists before transferring it to the parliament to pass it. A lot of jurists have condemned issuing such a law without knowing its contents: “I feel sorry to say that I do not know anything about this project and worse still is that this project has not been shown to jurists and specialists” One said.³⁰ Another one said: “I have participated in three big economic projects of law: The Law of Marine Trade, Commercial Articles and the Law of Commerce. Unfortunately, I got surprised to hear of the last law which has been passed without the consent of the specialized experts of the field.”³¹ The chief of the Stock Market Panel said: “All that I know comes from the newspapers.”³² Some, also ³³ said: “On the evening of 19th of March, I, accidentally, was watching TV and I listened to the discussion of Al-Shoura Council concerning this project. I got astonished. The edifice of jurisdiction, which Egypt has set up after painful strife via a respectable parliament whose members are respectable, is still the only establishment which is coherent. I felt, on listening to the discussion in Al-Shoura Council, that the contestants are destructing the edifice which their descendants have set up”. I wondered if this is owing to lack of knowledge which is tackled in “The abundance of the explanation of the history of judges and ways of keeping it.” So, I called Dr. Sorour to tell him that “this project will constrain the structure of jurisdiction in Egypt.”³⁴
- 8- The Egyptian legislator due to this law has originated queer systems that do not go with our traditions and judicial systems and inserted them all at once un deliberately which may cause harm to our basic judicial system.³⁵

²⁸ GENEINA, H. Economic Courts Symposium, April 2008 Cairo, Egypt. Egyptian Society of Political Economy, Statistics and Legislation.

²⁹ JABALLAH, K. 2008. A Dialogue with Zakaria Abdul Aziz Head of the Egyptian Judges' Club. *Al-Masry Al-Youm*, Tuesday Apr 22.

³⁰ AL-CHERKAOUI, S. Economic Courts Symposium April 2008 Cairo, Egypt. Egyptian Society of Political Economy, Statistics and Legislation, ELSAYED, I. 2008. Experts are Demanding the Withdrawal of the Law of Economic Courts .. And Presented to the Specialist Before Approval. *Al-Masry Al-Youm*, Friday, Apr 25.

³¹ Al-Cherkaoui, ALI, W. Ibid. Law experts: Unconstitutionality Follow Up The New Economic Law Courts, and We Expect Removed from Service after Two Years. Thursday June 19.

³² FAHMI, M. Economic Courts Symposium, April 2008 Cairo, Egypt. Egyptian Society of Political Economy, Statistics and Legislation.

³³ Ahmad Mekki.

³⁴ MEKKI, A. 2008. Spotlight on Project of Economic Courts .. The bill Establishes Judicial Body which Eliminate Conflicts of Exceptional Natural Competence. *Al-Masry Al-Youm*, Sunday: Apr 20, MOSSAD, M. M. 2010. The Role of Economic Courts in the Judicial and Economic Reform. In: FACULTY OF LAW, A. U. (ed.) *Recent Legislative Trends on Judicial Organization Conference*. Alexandria University Faculty of Law: Majallat Al-Hoqouq; Legal and Economic Research Journal. For example: knowledge and Opinion, the law and its sources, 671, See also: Statistics contained in Table 6 statement on the distribution of the sample according to their knowledge of the law of the establishment of Economic Courts, as well as Table 7, 672; See Also: MAJDY, H. M. 2009. *Economic Courts Between Rationing and Application, Comments on the Provisions of the Law No. 120 of 2008*, Dar Elnhda Alarabeah.

³⁵ MAJDY, H. M. 2009. *Economic Courts Between Rationing and Application, Comments on the Provisions of the Law No. 120 of 2008*, Dar Elnhda Alarabeah.

B. As For Molding The Law of Economic Courts

- 1- The Economic Courts are considered an important step towards judicial specialization but the law of establishing them aroused a lot of confusion. Further. Its texts do not achieve the hopeful end behind setting up such courts besides being unconstitutional.³⁶
- 2- The texts of this law seem to be a picture of the contribution of the powers dominating the society to rewrite the laws expressing them. These texts express the interests of specific groups though this law plays on the worries of the ordinary people, it does not give them anything. Further, it increased their burdens. It is not for such a purpose legislations are molded, efforts are exerted and committees are held.³⁷
- 3- Some criticized setting up an independent Economic Courts supporting setting up specialized circuits which do its job properly by saying: "The common ground among all the laws which the Ministry of Justice issued is its attempt to over dominate both jurisdiction and judges" as a result: "judges are not against the idea of economic courts but why they should not be inside specialized circuits". He went on saying: "We aim at unifying the judicial system under the control of one high court. We are against multi judicial systems."³⁸ On another hand the carry it out through the idea of specialized circuits inside the different courts which are subject to the procedural law.³⁹
- 4- In spite of the precautions which some jurists aroused and which were under discussion during hearing the case. An agreement to adopt such a system has been reached and was given the name of courts though they are not more than economic circuits. This is to reach a political conciliation.⁴⁰ Some jurists have pointed out that:⁴¹ "The report of the common committee in the people's assembly which pointed out the new born is not a court but rather circuits established inside the existing judicial structure. The term economic courts are not more than a regulating term which does not mean adding a new kind of courts to the existing one". So, it is better to drop the term "Economic Courts" from the texts of the project and replace it with the term "Circuits" and are described as Trial or Appeal.⁴²
- 5- The Egyptian Judges' Club opposed the nomination of such circuits as courts when it made its remarks on the report of the common committee consisting of the committee of legislative and constitutional affairs and that of economic affairs in the people's assembly concerning the project of law of setting up economic courts in the first item: The purpose of commitment or the purpose of regulation. It has been stated in the prepared report that: "It is supposed that courts are set up and its competence is decided via a legislation. So, all, including judges, should comply with the will of the legislator". So, It has been

³⁶ SAWY, A. A.-S. 2010. Economic Courts. *Majallat Al-Hoquouq; Legal and Economic Research Journal*. Alexandria University, Egypt.

³⁷ MAJDY, H. M. 2009. *Economic Courts Between Rationing and Application, Comments on the Provisions of the Law No. 120 of 2008*, Dar Elnhda Alarabeah.

³⁸ AZIZ, Z. A. Economic Courts Symposium April 2008. Egyptian Society of Political Economy, Statistics and Legislation, EL-SAYED, E. 2008. Experts Call for Withdrawing the Law of Economic Courts and Referring it to Specialists Before Passing it. *Al-Masry Al-Youm*, Friday Apr 25.

³⁹ JABALLAH, K. Ibid. A Dialogue with Zakaria Abdul Aziz Head of the Egyptian Judges' Club. Tuesday Apr 22.

⁴⁰ AL-SAEED, M. Economic Courts Symposium, April 2008 Cairo, Egypt. Egyptian Society of Political Economy, Statistics and Legislation.

⁴¹ Dr. Ahmad Sharaf Al-Den, Professor in Faculty of Law, Ain Shams University.

⁴² AL-DAMARANY, A. 2008. The Economic Courts. *Al-Ahram*, Tuesday May 6.

agreed that if the general assemblies of courts formed a number of circuits to decide some kinds of cases, e.g. this circuit is for rent cases or for marine cases or for labor cases. This is considered a kind of regulation not more and it has no relation with jurisdiction.⁴³

The report of the committee said under the title of “The Comment of the Committee on the Project” The committee stated in its report: “The assertion that we mean by the economic court is not a court with a new jurisdiction of subject matter but a kind of specialization as jurisdiction is confined to the appeal and trial circuits and this is the intended meaning, namely, the term of court is only a regulating term and does not add a new court to the courts stated in the first article of the Law of Judicial Authority. So, as a matter of regulation, the appeal and trial circuits are called Economic Courts.”⁴⁴

The report of the Judges' Club has criticized this regulation by saying: “Does this phrase has a meaning that you can explain? A law of setting up courts which has a chief, a general assembly, specialization, trial circuits, special rules for jurisdiction, specific experts, special procedures for hearing the case and special body for executing judgments then the committee says in its report” It does not intend to set up a new court! And it does not add a new court to the courts stated in the first article of the Law of Judicial Authority!! It is only mere a regulation of the circuits!! I seek refuge in Allah that this committee is either of the ignorant or of deluding people.⁴⁵

- 6- Some jurists opposed the opinion of the Judges' Club by stating that the circuits of the Economic Courts are not considered as independent courts even if specific circuits had been allocated to hear certain disputes as this is no more than interior regulation for work which was intended to distribute the associated cases on the circuits of the court to facilitate work and to give judgments quickly. So, It is not allowed to object in front of the circuit owing to non-specialty or value jurisdiction. Further, the case is administratively transferred to the circuit of subject matter. This has been supposed by the Cassation Court in its judgment issued on February 12, 1975, asserting that it is not allowed to object even though the circuit allocation was done via a legal text which can be taken as a proof as for the circuits of the Economic Courts. So, it is hard to say that the legislator has meant, by using the term “circuit” differently. The Trial Circuits consist of three chiefs out of trial courts where as

⁴³April 21, 2008. Judiciary Club Notes Five Basic Remarks on the Project of Economic Courts. *AL-Masry AL-Youm*, Monday: April 21.

⁴⁴ **For more details about that label:** KHALIL, A. The Trial Circuit and the Appeal Circuit: Two Courts Inside one Economic Court. In: FACULTY OF LAW, A. U., ed. Recent Legislative Trends on Judicial Organization Conference, Wednesday-Thursday: March 10-11 2010 Alexandria University Faculty of Law. Majallat Al-Hoqouq; Legal and Economic Research Journal, MAJDY, H. M. 2009. *Economic Courts Between Rationing and Application, Comments on the Provisions of the Law No. 120 of 2008*, Dar Elnhda Alarabeah.

See Also; Dr. Abdul Al-Rafai Musa: Head of Commercial Department, Faculty of Law, Zagazig University, Egypt. He pointed out that: “The term: Economic Court is unspecific. Have we been on the way to adopting the economic project as an approach for the Commercial Law or we are still considering the commercial store”.

As for the Crisis of Terminology specially regarding the Economic Courts. DWIDAR, T. M. 2009. *Economic Courts Another Step Towards Judicial Specialization*, Alexandria, Egypt, Dar Algama Algadada.

⁴⁵ April 21, 2008. Judiciary Club Notes Five Basic Remarks on the Project of Economic Courts. *AL-Masry AL-Youm*, Monday: April 21.

the Appeal Circuits consists of three judges out of the appeal courts, one of them is a chief of an appeal court.⁴⁶

- 7- Article No. 8 of the Law of Economic Courts says: "A case preparation panel is set up in each economic court". The question which poses itself here is "Is the case preparation panel not allowed to prepare the disputes and cases out of the area of jurisdiction?"

It is noted that it has been legally settled that no other court other than the subject matter court that can search the matter of jurisdiction and decide it. So, the subject matter court is the only body that decides whether or not the dispute or the case is related to the economic court. The preparation panel, despite being formed of judicial elements, has not the power to give judgments in the disputes referred to it. So, the term "related to the court" mentioned in article No. 8 is not minute as regards the needed legal rewriting.⁴⁷

- 8- The legislator mentioned in article No. 8, item 3 of the Law of Economic Courts that: "the preparation stage must end within a period not exceeding 30 days from the date of enrolling the case". On considering this period and on applying the necessity of explaining the text according to the rules of legal explanation, we realize that the legislator did not want to put a timely limitation to end the task of case preparation and exerting attempts to get litigants reconciled. The legislator confined the period of 30 days only to the stage of case preparation not the stage of conciliation. The proof is that when the tasks of the case preparation panel come to an end, the legislator decided in an independent item the task of settling the disputes. This means this period differs from that of the task of conciliation.

The defects in molding led to end the third item of article No. 8 by stating the date of finishing preparation tasks where as it should adjourned till after the forth item so that the date of procedures includes the previous tasks mentioned in article No. 8 which is given to the preparation panel.⁴⁸

- 9- The State Council has objected to the project of the Law of Economic Courts by saying it draws the specializations of the state council and the Club of the Judges of the State Council has already presented a note of ten pages to the head of People's Assembly. It contained reasons for objecting the project of this law which threatens it for being unconstitutional.⁴⁹

⁴⁶ SAWY, A. A.-S. 2010. Economic Courts. *Majallat Al-Hoqouq; Legal and Economic Research Journal*. Alexandria University, Egypt.

⁴⁷ SALEH, F. A. A. 2008. *Explanation of Economic Court Law*, Al-Safa Press.

⁴⁸ Ibid.

⁴⁹ ELDERBY, A.-A. 2012. *Development of the Egyptian Legal System and Justice Benefits of Speed Justice, A Study on Motives and Mechanisms*, National Centre for Legal Versions. See Also: The Urgent General Assembly for the Judiciary Club of Council of State, AL-KARNASHAWI, S. 2008. The Assembly Judiciary Club of the Council of State Reject the Laws of Economic Courts and Judicial Academy. *Al-Masry Al-Youm*, Friday: Apr 18.

C. As For The Authorities of The Minister of Justice

- 1- The Law of Economic Courts has put a reverse rule that says: "The minister of justice has the power to tell whether or not the court needs experts⁵⁰ and the judge cannot be coerced to resort to a specific expert."⁵¹
- 2- Some condemned that the law has given the Minister of Justice the right to mandate the judge wondering: "How can we give the executive power the authority to mandate judges which is contradictory to the stability and specialized jurisdiction?"⁵²

So, the law has made a contradiction when it made permissible for the minister to mandate all the judges of the economic courts for one year that can be renewed through a decision made by the minister. This contradicts with the law of the judicial authority. Some has asserted this fact⁵³ by saying: "It is illogical, actually and legally, that all the judges of a permanent court set up the law and found in all the circuits of appeal all over Egypt do their job through mandate for one year that can be renewed by a decision from the minister. This contradicts the idea which the legislator has relied on, that is, jurisdiction in the newly originated economic courts should be taken over by specialized judges to contribute in providing the suitable climate for a permanent economic development and encourages investment with all its shape. They pointed out that working in these newly originated courts through mandate, even though it can be renewed, does not lead to the stability of judges forming these courts". It is, also, contradictory to article No. 52 of the Law of the Judicial Authority that states: "It is not allowed to transfer or mandate judges except through the ways and rules that law has set."^{54 55}

- 3- The Egyptian Judges' Club, as well as judges of State Council, has criticized the Law of Economic Courts as it has given the Minister of Justice broad authorities such as mandating the chief of the Economic Court and allocating

⁵⁰ ELSAYED, I. Ibid. Experts are Demanding the Withdrawal of the Law of Economic Courts .. And Presented to the Specialist Before Approval. Friday, Apr 25.

⁵¹ MAHMOUD, H. Economic Courts Symposium, April 2008 Cairo, Egypt. Egyptian Society of Political Economy, Statistics and Legislation, MEKKI, A. 2008. Spotlight on Project of Economic Courts .. The bill Establishes Judicial Body which Eliminate Conflicts of Exceptional Natural Competence. *Al-Masry Al-Youm*, Sunday: Apr 20.

⁵² JABALLAH, K. Ibid. A Dialogue with Zakaria Abdul Aziz Head of the Egyptian Judges' Club. Tuesday Apr 22.

⁵³ Zakaria Abdul Aziz.

⁵⁴ AMEEN, T. 2008. The Judiciary Club has Precautions on the Project of Economic Courts as it Contradicts the Laws and Merging the Trial Circuits with the Appeal Circuits. *Al-Masry Al-Youm*, Friday Mar 21. See Also: April 21, 2008. Judiciary Club Notes Five Basic Remarks on the Project of Economic Courts. *AL-Masry AL-Youm*, Monday: April 21, ALI, W. 2008. Law experts: Unconstitutionality Follow Up The New Economic Law Courts, and We Expect Removed from Service after Two Years. *Al-Masry Al-Youm*, Thursday June 19.

⁵⁵ **Counselor Ahmad Mekki supported this contradiction by saying:** "No man of knowledge dare say what the explanatory note for the project of law said that mandating for one year is only activating the principle of the specialization of judges which article No. 12 of the Law of Judicial Power issued by the law No. 6 of 1972 stated. And I do not think judges having pride in their knowledge and independence could accept to sit on the platform to give judgment in people's cases relying on the satisfaction of the minister year after year. It should be noted that the Law of Judicial Power does not permit the Minister of Justice to mandate a judge to work in a court other than his court for more than six months, provided there should be a sore necessity and the necessity of the court which he is following it should accept for a simple reason which is stretching out the hand of the minister to mandate judges violates the principle of the equality among judges who will achieve the equality among litigants as the project aims at". MEKKI, A. Ibid. Spotlight on Project of Economic Courts .. The bill Establishes Judicial Body which Eliminate Conflicts of Exceptional Natural Competence. Sunday: Apr 20.

the place of the appeal and trial circuits in places other than those of the Economic Courts.⁵⁶ Others did not support this opinion⁵⁷ by saying that: “these matters are only regulatory as it happened in the case of family courts.”⁵⁸

D. Concerning The Mechanism of the Job of The Case Preparation Panel

- 1- The Minister of Justice, according to decree No. 8603 of 2008, confined the places of Economic Courts all over Egypt though the number of governorates is 26 which exhaust the litigants which is contradictory to the attitude of the legislator to facilitate the procedures for the litigants.⁵⁹
- 2- There are no tangible indicators that can show the flourishing in investment or in the economic growth according to declared statistics by the specialized bodies that support the intention of the legislator to decide the cases quickly and also the speed of procedures.⁶⁰
- 3- The practical experiment of applying the case preparation panel proved that it led to hindering deciding the case presented to it. The legislator has tried to take this matter and relieve its intensity by stating in article No. 8, item 3 of the Law of Economic Courts that if the case preparation panel did not do its job properly, the economic courts would take it over. This leads to what is known as the Slow Pace of Litigation.⁶¹
- 4- The legislator decided, in article No. 8, item 2 of the Law of Economic Courts, the form of the preparation panel: “headed by a judge of appeal circuits judges in the economic court and the membership of enough number of its judges with the rank of a chief of the court or a judge of the trial court selected by the general assembly at the outset of the judicial year and a needed number of clerks are annexed to it.” This leads to the slow pace of litigation, complicating the procedures and wasting the time and efforts of the judges uselessly.⁶²
- 5- This system brings about “doubling the circuits of trial courts as there would be two circuits for each case, one of them prepare the case, write its report about its events and the defense and proofs presented. The second one examines the case, hear its occurrence.”⁶³

⁵⁶ ALI, W. Ibid. Law experts: Unconstitutionality Follow Up The New Economic Law Courts, and We Expect Removed from Service after Two Years. Thursday June 19.

⁵⁷ Dr. Mustafa Saeed, Minister of Economy and Chairman of the Economic Commission In People's Assembly.

⁵⁸ AL-BEYALLY, H. 2008. Hot Cases on the Road of Economic Courts. *Al-Ahram Al-Arabi*, Saturday Aug 2.

⁵⁹ SAWY, A. A.-S. 2010. Economic Courts. *Majallat Al-Hoqouq; Legal and Economic Research Journal*. Alexandria University, Egypt, BASIOUNY, H. 2012. *Towards a Contemporary Legal and Judicial Thought, The Road to Modernization and Development Legal and Judicial System*.

The Minister of Justice has the right to set up circuits in the governorates with increasing number of economic cases in the jurisdiction appeal circuit.

⁶⁰ MAJDY, H. M. 2009. *Economic Courts Between Rationing and Application, Comments on the Provisions of the Law No. 120 of 2008*, Dar Elnhda Alarabeah.

⁶¹ SAWY, A. A.-S. 2010. Economic Courts. *Majallat Al-Hoqouq; Legal and Economic Research Journal*. Alexandria University, Egypt, KANDEL, M. M. Oct 2011. Toward Independence Processing Suit Stage from Stage of the Proceedings. *Rooh El Kwanen; Spirit of Laws Journal*, 56.

⁶² DWIDAR, T. M. 2009. *Economic Courts Another Step Towards Judicial Specialization*, Alexandria, Egypt, Dar Algama Algededa, SATTAR, S. A. 2008. *Economic Courts in Egyptian Law*, Cairo, Egypt, Dar Elnhda Alarabeah, KANDEL, M. M. Oct 2011. Toward Independence Processing Suit Stage from Stage of the Proceedings. *Rooh El Kwanen; Spirit of Laws Journal*, 56, ELDERBY, A.-A. 2012. *Development of the Egyptian Legal System and Justice Benefits of Speed Justice, A Study on Motives and Mechanisms*, National Centre for Legal Versions.

⁶³ WALY, F. 2007. Writes about the Suggested Amendments on the Project of the Civil and Commercial Procedural Law. The Project Leads to More Slow Pace of Litigation. *Al-Masry Al-Youm*, Thursday: Feb 8,

- 6- Having no executive agenda that tells the judge the mechanism of showing conciliation and doing his best to conciliate litigants, led to the probability of not applying the text in the way the family courts follow. The preparation panel mentions in its court hearing agenda that: "it showed conciliation to the plaintiff but he refused it and the defendant has been notified of conciliation with no avail." Thus, the preparation panel has exhausted what the legislator has ordained to make real settlement for the existing dispute uselessly.

Family courts have been accustomed to show conciliation to litigants by addressing the litigants saying: "Do you agree to conciliate with the defendant?" The expected answer is "No". So the court states in the court hearing agenda: "The court showed conciliation but the plaintiff refused". If the defendant was not present, the court obliges the plaintiff to notify the defendant of the conciliation. In this way, the court seems to be complying with the procedure of the text. This is nothing but promissory procedures that cannot lead to the settlement of the dispute.⁶⁴

E. Concerning The Procedures in Front of Preparation Panel

- 1- The parties of the dispute linger to be present in front of the members of the preparation panel and presenting the needed documents that mean going ahead in the process of litigation, specially there is no punishment when the parties of dispute are not serious in the stage of preparation. So, the defendant will consider it a chance for prolonging the period of litigation uselessly.⁶⁵
- 2- The legislator, relying on this law, amended the principle of litigation on two classes in a way that contradicts its aim. Thus, the one whose case is estimated at five millions or less has the advantage of two classes of litigation where as the one whose case is over five millions or not estimated is deprived of one class unlike the case in ordinary jurisdiction.⁶⁶
- 3- The court panel may need to form its dogma in the case and do investigations other than that done by the case preparation panel. Thus, it leads to hindering the course of procedures instead of deciding the case quickly and preparing it for settlement.⁶⁷
- 4- As for the disputes, which the law No. 7 of 2000 necessitates presenting them to the committees of settling disputes, it would be catastrophic as the case passes the committee of settling disputes, then the preparation panel and finally the trial court.⁶⁸

SATTAR, S. A. 2008. *Economic Courts in Egyptian Law*, Cairo, Egypt, Dar Elnhda Alarabeah, SATTAR, S. A. Law of Economic Courts in Egyptian Law. Recent Legislative Trends on Judicial Organization Conference, March 10-11 2010 Alexandria University, Egypt. Majallat Al-Hoquuq; Legal and Economic Research Journal.

⁶⁴ SALEH, F. A. A. 2008. *Explanation of Economic Court Law*, Al-Safa Press.

⁶⁵ Ibid.

⁶⁶ MAJDY, H. M. 2009. *Economic Courts Between Rationing and Application, Comments on the Provisions of the Law No. 120 of 2008*, Dar Elnhda Alarabeah, EL-SAYED, E. 2008. Experts Call for Withdrawing the Law of Economic Courts and Referring it to Specialists Before Passing it. *Al-Masry Al-Youm*, Friday Apr 25.

⁶⁷ OMAR, N. I. 1999. *Judge Preparation System in French Law and Civil Prosecution System Which is Proposed to Work in Egypt*, Alexandria, Dar Algama Algedada, SATTAR, S. A. 2008. *Economic Courts in Egyptian Law*, Cairo, Egypt, Dar Elnhda Alarabeah.

⁶⁸ WALY, F. 2007. Writes about the Suggested Amendments on the Project of the Civil and Commercial Procedural Law. The Project Leads to More Slow Pace of Litigation. *Al-Masry Al-Youm*, Thursday: Feb 8, SATTAR, S. A. 2008. *Economic Courts in Egyptian Law*, Cairo, Egypt, Dar Elnhda Alarabeah, SATTAR, S. A.

4. Conclusion

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 quickly. The entire aforesaid make the legislator set the legal rules that govern such relations and set the suitable legal frames to be applied.

From this course, the legislator has been issued the law No. 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 top with the technological and economic development of encourage the movement of investment nationally and internationally. 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.

The legislator should take into account the criticism directed to Economic courts in order to eliminate the phenomenon of the slow pace of litigation, All these characteristics are to reach a quick justice and the quick settlement of disputes without adding more burdens on the litigants within the frame of facilitating the litigation procedures and to settle the cases quickly aiming at creating an attracting environment for investment in Egypt.

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